

## SECOND DIVISION

**[ G.R. No. 149638, December 10, 2014 ]**

**MONCAYO INTEGRATED SMALL-SCALE MINERS ASSOCIATION, INC. [MISSMA], PETITIONER, VS. SOUTHEAST MINDANAO GOLD MINING CORP., JB. MGT. MINING CORP., PICOP RESOURCES, INC., MT. DIWATA UPPER ULIP MANDAYA TRIBAL COUNCIL, INC. AND BALITE INTEGRATED SMALL-SCALE MINING CORP., (BISSMICO), RESPONDENTS.**

**[G.R. NO. 149916]**

**HON. ANTONIO H. CERILLES, IN HIS CAPACITY AS SECRETARY OF DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, PETITIONER, VS. SOUTHEAST MINDANAO GOLD MINING CORPORATION (SMGMC) AND BALITE INTEGRATED SMALL-SCALE MINING CORP., (BISSMICO), RESPONDENTS.**

### D E C I S I O N

**LEONEN, J.:**

These two consolidated cases involve the “Diwalwal Gold Rush Area” in Mt. Diwata, Mindanao that has been embroiled in controversies since the mid-1980’s.<sup>[1]</sup> The instant controversy focuses on the 729-hectare portion excluded from respondent Southeast Mindanao Gold Mining Corporation’s Mineral Production Sharing Agreement application, and declared as People’s Small Scale Mining Area. Due to supervening events, we declare the petitions moot and academic.

Before us are two petitions for review<sup>[2]</sup> assailing the Court of Appeals’ August 27, 2001 amended decision<sup>[3]</sup> that annulled and set aside the Department of Environment and Natural Resources (DENR) Secretary’s September 20, 1999 decision<sup>[4]</sup> for having been issued with grave abuse of discretion in excess of his discretion.

Moncayo Integrated Small-Scale Miners Association, Inc. (MISSMA) filed the first petition<sup>[5]</sup> docketed as G.R. No. 149638. Then DENR Secretary Antonio H. Cerilles filed the second petition docketed as G.R. No. 149916.<sup>[6]</sup>

The facts as summarized by the Court of Appeals follow:<sup>[7]</sup>

On July 1, 1985, the Bureau of Forest Development issued to Marcopper Mining Corporation (Marcopper) a prospecting permit (Permit to Prospect No. 755-123185) covering 4,941 hectares within the Agusan-Davao-Surigao Forest Reserve. This forest reserve was instituted by Proclamation No. 369 issued by then Governor General Dwight F. Davis on February 27, 1931.

On March 10, 1986, the Bureau of Mines and Geo-Sciences issued to Marcopper a permit to explore (EP 133) covering the same area.

On February 16, 1994, Marcopper assigned EP 133 to Southeast Mindanao Gold Mining Corporation (SMGMC).

On December 19, 1995, the Mines and Geo-Sciences Bureau director ordered the publication of SMGMC's application for Mineral Production Sharing Agreement (MPSA No. 128) for the 4,941 hectares covered by EP 133.

JB Management Mining Corporation, Davao United Miners Cooperative, Balite Integrated Small Scale Miners Cooperative, MISSMA, PICOP, Rosendo Villaflor, et al., Antonio G. Dacudao, Puting Bato Gold Miners Cooperative, and Romeo Altamera, et al. filed adverse claims against MPSA No. 128.<sup>[8]</sup>

The adverse claims were anchored on DENR Administrative Order No. 66<sup>[9]</sup> (DAO No. 66) issued on December 27, 1991, declaring 729 hectares of the Agusan-Davao-Surigao Forest Reserve as forest land open for small-scale mining purposes, subject to existing and valid private rights.

The DENR constituted a panel of arbitrators pursuant to Section 77 of the Philippine Mining Act of 1995 tasked to resolve the adverse claims against MPSA No. 128.

The panel of arbitrators, in its decision dated June 13, 1997, reiterated the validity of EP 133 and dismissed all adverse claims against MPSA No. 128. The adverse claimants appealed to the Mines Adjudication Board.

The Mines Adjudication Board (MAB), in its decision<sup>[10]</sup> dated January 6, 1998, vacated the decision of the panel of arbitrators:

**WHEREFORE, PREMISES CONSIDERED**, the decision of the Panel of Arbitrators dated 13 June 1997 is hereby **VACATED** and a new one entered in the records of the case as follows:

1. SEM's MPSA application is hereby given due course subject to the full and strict compliance of the provisions of the Mining Act and its Implementing Rules and Regulations.
2. The area covered by DAO 66, series of 1991, actually occupied and actively mined by the small-scale miners on or before August 1, 1987 as determined by the Provincial Mining Regulatory Board ("PMRB"), **is hereby excluded from the area applied for by SEM;** (Emphasis supplied)
3. A moratorium on all mining and mining-related activities, is hereby imposed until such time that all necessary procedures, licenses, permits and other requisites as provided for by RA 7076, the Mining Act and its Implementing Rules and Regulations and all other pertinent laws, rules and regulations are complied with, and the appropriate environmental

protection measures and safeguards have been effectively put in place.

4. Consistent with the spirit of RA 7076, the Board encourages SEM and all small-scale miners to continue to negotiate in good faith and arrive at an agreement beneficial to all. In the event of SEM's strict and full compliance with all the requirements of the Mining Act and its Implementing Rules and Regulations, and the concurrence of the small-scale miners actually occupying and actively mining the area, SEM may apply for the inclusion of portions of the areas segregated under paragraph 2 hereof, to its MPSA application. In this light, subject to the preceding paragraph, the contract between JB and SEM is hereby recognized.

**SO ORDERED.**<sup>[11]</sup>

Both SMGMC and the adverse claimants questioned the Mines Adjudication Board's decision before this court. These petitions were remanded to the Court of Appeals as CA-G.R. SP Nos. 61215-16, later elevated to this court as G.R. No. 152613, G.R. No. 152628, G.R. Nos 152619-20, and G.R. Nos. 152870-71.<sup>[12]</sup>

Meanwhile, independent of the MAB decision and the appeals to the Court of Appeals and this court, the Provincial Mining Regulatory Board of Davao proposed to declare a People's Small Scale Mining Area in accordance with the MAB decision.<sup>[13]</sup>

On February 24, 1992, the notice for the proposed declaration was approved and issued for publication to notify any and all oppositors or protestors.<sup>[14]</sup> Those who filed oppositions included SMGMC, Picop Resources Incorporated, Mt. Diwata-Upper Ulip Mandaya Tribal Council, and JB Management Mining Corporation.<sup>[15]</sup>

The Provincial Mining Regulatory Board (PMRB), in its decision<sup>[16]</sup> dated March 30, 1999, dismissed the oppositions for lack of merit, then segregated and declared the 729-hectare gold rush area as People's Small Scale Mining Area:

WHEREFORE, in view of the foregoing premises, the instant protest/opposition of herein Oppositors are hereby DISMISSED for lack of merit. This Board hereby segregates and declares the 729-hectare gold rush area in Mt. Diwalwal actually occupied and actively mined on or before August 1, 1987 as People's Small-Scale Mining Area. Thereafter, the concerned local government unit through the recommendation of this Board shall issue/execute the necessary small-scale mining contract to qualified applicants upon compliance of the requisites for small scale mining under R.A. 7076 and its implementing rules and regulations.

**SO ORDERED.**<sup>[17]</sup>

Then DENR Secretary Antonio H. Cerilles, in his decision dated September 20, 1999, affirmed with modification the Provincial Mining and Regulatory Board decision:<sup>[18]</sup>

**WHEREFORE**, premises considered, the Decision of the PMRB of Compostela Valley dated March 30, 1999 is hereby **AFFIRMED**, subject to the following modifications:

1. For effective management and equitable utilization of resources, the two main areas of operations as described above of the 729 hectares shall be delineated and embodied in a Memorandum of Agreement (MOA) among the stakeholders concerned to ensure recognition of delineated boundaries and rational operation of the concerned areas.
2. These two areas are divided as follows: a) **Block I** [Balete-Nang Area], composed of Sub-Block A and Sub-Block B, intended for Blucor and Helica Group of Tunnels, representing MISSMA, and for various qualified Small-Scale Miners who are actually occupying and actively mining in the area and b) **Block II** [Buenas-Tinago Area], intended for JB Management, and other qualified Small-Scale Miners who are actually occupying and actively mining in the area.
3. Qualified Small-Scale Miners in each area, as maybe determined by the PMRB, shall apply for Small Scale Mining Contracts with option thereafter to apply for an MPSA.
4. Consistent with the provisions of DENR Memorandum Order No. 99-02, mineral processing plants in the Diwalwal area shall be relocated to processing zones duly designated by the DENR where appropriate tailings disposal systems have been put in place.
5. The Natural Resources Development Corporation (NRDC), the corporate arm of the DENR, shall extend the necessary technical expertise and supervision over all mining and milling operations in the area, environmental clean-up and rehabilitation activities, and the identification of alternative livelihood activities for the families of small-scale miners and other residents in the area.

**SO ORDERED.**<sup>[19]</sup> (Emphasis and underscoring in the original)

The DENR Secretary denied reconsideration on February 2, 2000. SMGMC filed a petition under Rule 43 before the Court of Appeals.

The Court of Appeals, in its decision<sup>[20]</sup> dated July 31, 2000, denied the petition.

The Court of Appeals discussed that since “there being no injunction from the Supreme Court which would prevent the enforcement of the MAB decision, respondent DENR Secretary acted with propriety in issuing the assailed decision which affirmed the PMRB’s declaration of a People’s Small Scale Mining Area.”<sup>[21]</sup> It also denied the petition based on *litis pendencia*, considering that the pending case before this court assailing the MAB decision involved a prejudicial question.<sup>[22]</sup>

SMGMC and Balite Integrated Small-Scale Mining Corp. (BISSMICO) filed separate motions for reconsideration.

The Court of Appeals, in its amended decision<sup>[23]</sup> dated August 27, 2001, granted the motions for reconsideration and, consequently, set aside and annulled the DENR Secretary's decision for having been issued with grave abuse of discretion in excess of his jurisdiction.<sup>[24]</sup>

The Court of Appeals limited its discussion on the propriety of the DENR Secretary's decision.

It cited at length a memorandum dated March 27, 1998 by then DENR Undersecretary, Antonio La Viña, to support its finding that SMGMC "may apply and be entitled to a particular area within the 729 hectares potential coverage of the People's Small-Scale Mining Area, subject to the fulfilment of several conditions."<sup>[25]</sup>

The Court of Appeals found that the "DENR Secretary's outright delineation of the subject area in favor of certain entities contravenes the mandate of the MAB Decision and the purpose of RA 7076 (People's Small-Scale Mining Act of 1991), inasmuch as it disenfranchises the petitioner and other small-scale miners who may apply for and be awarded small-scale mining contracts by the local government units upon recommendation of the PMRB after the fulfilment of necessary conditions set forth in the law."<sup>[26]</sup>

Hence, these two petitions for review were filed assailing the Court of Appeals' amended decision.

Petitioner MISSMA<sup>[27]</sup> argues that the Court of Appeals should not have amended its decision considering it already found SMGMC guilty of forum shopping and *litis pendencia*.<sup>[28]</sup>

Petitioner MISSMA contends that the petition docketed as G.R. No. 132475 assailing the portion of the MAB's decision that excluded the 729-hectare area covered by DAO No. 66 from SMGMC's Mines Production Sharing Agreement application<sup>[29]</sup> involves the same issues as the present cases. MISSMA submits that "the ultimate objective of the two cases is [SMGMC] to solely obtain all mining rights over the subject 729 hectare gold rush area, to the exclusion of MISSMA and other claimants thereon."<sup>[30]</sup>

Petitioner MISSMA also argues that "[i]n carrying out the function of declaring and segregating gold rush areas for small-scale mining purposes [pursuant to Republic Act No. 7076], both the PMRB, and upon review, the DENR Secretary, may well act independently of the MAB, which, on the other hand is a quasi-judicial body tasked to settle mining conflicts, disputes or claims[.]"<sup>[31]</sup> Moreover, the DENR Secretary's decision only delineated and identified areas available for small-scale mining contract applications. The decision did not make actual awards.<sup>[32]</sup>

Petitioner Hon. Antonio H. Cerilles, in his capacity as then DENR Secretary,<sup>[33]</sup> similarly argues that the Court of Appeals should have maintained its earlier decision dismissing the case due to forum shopping and *litis pendencia*.<sup>[34]</sup>