

## SECOND DIVISION

[ G.R. No. 183573, July 18, 2012 ]

**DIZON COPPER SILVER MINES, INC., PETITIONER, VS. DR. LUIS D. DIZON, RESPONDENT.**

### D E C I S I O N

**PEREZ, J.:**

For review<sup>[1]</sup> are the Decision<sup>[2]</sup> dated 9 May 2008 and Resolution<sup>[3]</sup> dated 1 July 2008 of the Court of Appeals in CA-G.R. SP No. 99947. In the assailed decision, the Court of Appeals declared as void *ad initio* petitioner's applications for Mineral Production Sharing Agreements (MPSA) but held as valid a similar application of the respondent. The decision was a reversal of the ruling<sup>[4]</sup> of the Office of the President (OP) in O.P. Case No. 06-C-113 and a reinstatement of the previous orders<sup>[5]</sup> issued by the Secretary of the Department of Environment and Natural Resources (DENR). The decretal portion of the decision of the appellate court accordingly reads:<sup>[6]</sup>

**WHEREFORE**, the petition is **GRANTED**. The assailed decision dated December 4, 2006 and resolution dated June 20, 2007 of the Office of the President are hereby **REVERSED** and **SET ASIDE**. The orders dated December 29, 2005 and February 14, 2006 issued by the Secretary of the Department of Environment and Natural Resources are **REINSTATED**.

The antecedents are as follows:

#### *The 57 Mining Claims*

On 13 November 1935, Celestino M. Dizon (Celestino) filed with the Office of the Mining Recorder,<sup>[7]</sup> *Declarations of Location*<sup>[8]</sup> over fifty-seven (57) mining claims in San Marcelino, Zambales. The 57 mining claims, with an aggregate area of 513 hectares, were thereby recorded in the following manner:<sup>[9]</sup>

1. Twenty-nine (29) mining claims were registered in the name of Celestino.
2. Twelve (12) mining claims were registered in the name of Maria D. Dizon, the wife of Celestino.
3. Eleven (11) mining claims were registered in the name of Helen D. Dizon, a daughter of Celestino.
4. Three (3) mining claims were registered in the name of the heirs of Eustaquio L. Dizon, who was the father of Celestino.
5. Two (2) mining claims were registered in the name of the heirs of Tiburcia M. Dizon, who was the mother of Celestino.

In 1966, herein petitioner Dizon Copper-Silver Mines, Inc. was organized.<sup>[10]</sup> Among its incorporators were Celestino and his son, herein respondent Dr. Luis D. Dizon.<sup>[11]</sup>

On 27 January 1967, Celestino, for himself and as attorney-in-fact of the other registered claim-owners, assigned their 57 mining claims to petitioner.<sup>[12]</sup>

On 6 September 1975, petitioner entered into an *Operating Agreement*<sup>[13]</sup> with Benguet Corporation<sup>[14]</sup> (Benguet). In such agreement, petitioner authorized Benguet to, among others, “*explore, equip, develop and operate*” the 57 mining claims.<sup>[15]</sup>

In 1977, Celestino died.

In 1978, the 57 mining claims became the subject of a mining lease application<sup>[16]</sup> with the Bureau of Mines.<sup>[17]</sup> Consequently, on 1 February 1980, the government issued five (5) Mining Lease Contracts (MLCs) covering six (6) out of the 57 mining claims. They are:<sup>[18]</sup>

1. MLC No. MRD-211 – issued in favor of the **heirs of Celestino**;
2. MLC No. MRD-212 – issued in favor of the **heirs of Celestino**;
3. MLC No. MRD-213 – issued in favor of **Maria D. Dizon**;
4. MLC No. MRD-219 – issued in favor of **Helen D. Dizon**;
5. MLC No. MRD-222 – issued in favor of the **heirs of Celestino**.

The MLCs were issued for a term of twenty-five (25) years, or up to *31 January 2005*.<sup>[19]</sup>

#### *The MPSA Applications*

On 4 July 1991, Benguet filed an MPSA application with the DENR.<sup>[20]</sup> The application, designated as **MPSA-P-III-16**,<sup>[21]</sup> seeks to place all existing mining claims and interests then operated by Benguet under production sharing agreements in line with Executive Order No. 279 of 25 July 1987.<sup>[22]</sup> Specifically, MPSA-P-III-16 covers the following mining interests:<sup>[23]</sup>

1. Forty-two (42) mining claims<sup>[24]</sup> of the Sagittarius Alpha Realty Corporation;
2. Two (2) prospecting permits over two (2) parcels of land<sup>[25]</sup> of the Camalca Mining Corporation; *and*
3. The remaining **51 mining claims of petitioner** are *not* under MLCs.

On 3 March 1995, Republic Act No. 7942, or the Philippine Mining Act of 1995, was enacted.

On 12 December 1997, Benguet and petitioner terminated their *Operating Agreement*. In 2004, Benguet assigned MPSA-P-III-16 in favor of the latter.<sup>[26]</sup> On 22 October 2004, the DENR Mines and Geosciences Bureau (MGB) Regional Office

III signified its acquiescence and recorded MPSA-P-III-16 in the name of petitioner.<sup>[27]</sup>

On 16 December 2004, petitioner sent a letter to the DENR MGB Regional Office III, requesting the said office to include the 6 mining claims under MLCs in MPSA-P-III-16.<sup>[28]</sup> On 4 January 2005, the DENR MGB Regional Office III informed<sup>[29]</sup> the petitioner of its approval of the request and manifested that the 6 mining claims under the MLCs will now be included in MPSA-P-III-16.

Despite the pendency of MPSA-P-III-16, petitioner nonetheless filed with the DENR another MPSA application on 31 January 2005. This time, petitioner's application was designated as **MPSA-P-III-0305**<sup>[30]</sup> and covers **all 57 of its mining claims, inclusive of the 6 under MLCs.**<sup>[31]</sup>

On 28 February 2005, respondent filed with the DENR his **MPSA-P-III-05-05**<sup>[32]</sup>—an MPSA application covering 281.9544 hectares of mineral location in San Marcelino, Zambales. **It includes the 6 mining claims under MLCs.**<sup>[33]</sup>

Subsequently, the DENR MGB Regional Office III verified that several areas applied for by respondent in MPSA-P-III-05-05 overlaps with those in petitioner's MPSA-P-III-16 and MPSA-III-03-05.<sup>[34]</sup>

#### The DENR Orders

On 29 December 2005, the DENR Secretary issued an Order<sup>[35]</sup> declaring petitioner's MPSA-P-III-16 and MPSA-P-III-03-05 void *ab initio*. In contrast, the order held respondent's MPSA-P-III-05-05 as a valid MPSA application worthy of due course.<sup>[36]</sup> The dispositive portion of the order thus reads:<sup>[37]</sup>

**WHEREFORE,** in view of the foregoing considerations, Benguet Corporation MPSA-III-P-16 [sic] application and Dizon Copper Silver Mines Incorporated Application MP-P-III-03-05 [sic] are declared, as they are, declared VOID AB-INITIO, while Dr. Luis D. Dizons MA-P-III-05-05 [sic] (APSA-0001389-III) is hereby, as it is declared VALID and EXISTING and can be given due course, subject to strict compliance with the provision of the Philippine Mining Act of 1995 and its Implementing Rules and Regulations.

In nullifying petitioner's applications, the DENR Secretary echoed the findings of the DENR MGB Regional Office III that:

1. **With respect to MPSA-P-III-16.** Benguet has no personality to file MPSA-P-III-16.<sup>[38]</sup> Benguet, by itself, has no legal personality to file such application because it is a mere operator of petitioner.<sup>[39]</sup> Moreover, MPSA-P-III-16 was denied *area status and clearance* by the Forest Management Services of DENR Region III.<sup>[40]</sup>
2. **With respect to MPSA-P-III-03-05.** MPSA-P-III-03-05 was filed at a time when several areas included therein were still *closed* to mining applications.<sup>[41]</sup>

Such areas refer to those subject to the MLCs that, as it turned out, were not yet expired when MPSA-P-III-03-05 was filed.<sup>[42]</sup>

On 17 January 2006, petitioner filed before the DENR a *Motion for Reconsideration*<sup>[43]</sup> of the 29 December 2005 order. Petitioner also submitted a *Supplemental Motion for Reconsideration*<sup>[44]</sup> on 31 January 2006.

On 14 February 2006, the DENR Acting Secretary issued an Order<sup>[45]</sup> denying petitioner's motion for reconsideration. The motion for reconsideration of the petitioner was dismissed for being moot and academic, on account of the fact that on the day before such motion was filed, or on 17 January 2006, the DENR already approved MPSA P-III-05-05 and a full-fledged MPSA, designated as **MPSA No. 227 2006-III**,<sup>[46]</sup> was already issued in favor of the respondent.<sup>[47]</sup>

Petitioner promptly filed an appeal<sup>[48]</sup> to the Office of the President.

#### The OP Ruling.

On appeal, the OP completely reversed the DENR Secretary. In its Decision<sup>[49]</sup> dated 4 December 2006, the OP: (1) overturned the 29 December 2005 and 14 February 2006 orders of the DENR Secretary, (2) cancelled the approval of MPSA-P-III-05-05 into MPSA No. 2272006- III, and (3) revived petitioner's MPSA-P-III-03-05 for further re-evaluation by the DENR. The *falla* of the OP ruling reads:<sup>[50]</sup>

**WHEREFORE**, premises considered, the DENR Order dated December 29, 2005 declaring MPSA-P-III-16 and MA-P-III-03-05 void *ab initio* and declaring MA-P-III-05-05 as valid and existing, and the DENR ORDER dismissing DCSMI's [petitioner's] motion for reconsideration, are hereby **REVERSED** and **SET ASIDE**. The issuance of MPSA No. 227-2006-III in favor of Dr. Dizon [respondent] is likewise **SET ASIDE**. The Mineral Production Agreement Application of DCMI [petitioner], denominated as MA-P-III-03-05, is hereby **REMANDED** to the DENR for **REEVALUATION** if the same is compliant with the requirements of the law

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Aggrieved, respondent appealed<sup>[51]</sup> to the Court of Appeals.

#### The Decision of the Court of Appeals and This Petition

As earlier intimated, the Court of Appeals reversed the ruling of the OP and reinstated the 29 December 2005 and 14 February 2006 Orders of the DENR Secretary.<sup>[52]</sup> In doing so, the appellate court substantially agreed with the findings of the DENR.

Hence, the present appeal<sup>[53]</sup> raising the core issue of whether the Court of Appeals erred in reinstating the 29 December 2005 and 4 February 2006 Orders of the DENR Secretary.

The petitioner, for its part, would like this Court to answer in the affirmative.

Petitioner maintains that MPSA-P-III-16 and MPSAP- III-03-05 were valid MPSA applications.<sup>[54]</sup> In support thereof, petitioner contradicts the findings of the DENR, as concurred in by the Court of Appeals, and argues that:

1. Benguet has the personality to file MPSA-P-III-16.<sup>[55]</sup> The authority of Benguet to file mining applications on behalf of petitioner is justified by—

a. Sections 1.01(b), 1.03, 7.01(j) and 9.04 of the *Operating Agreement* between petitioner and Benguet:

- i. Section 1.01(b)<sup>[56]</sup> gives Benguet authority for the “*acquisition of other real rights xxx.*”
- ii. Section 1.03<sup>[57]</sup> grants Benguet authority to “*apply for patent or lease and/or patent or lease surveys*” with respect to the 57 mining claims.
- iii. Section 7.01(j)<sup>[58]</sup> gives Benguet authority to “*xxx enter into contracts, agreements xxx.*”
- iv. Section 9.04<sup>[59]</sup> constitutes Benguet as attorney-in-fact of petitioner, authorized “*to prepare, execute, amend, correct, supplement and register any document relating to or affecting*” the 57 mining claims “*which may be necessary to be executed, amended, corrected, supplemented, filed or registered.*”

b. *Letter dated 14 June 1991* of petitioner to Benguet,<sup>[60]</sup> which was appended in MPSA-P-III-16. In the said letter, petitioner, thru its then president Mr. Juvencio D. Dizon, signified its conformity with the proposal of Benguet to file a production sharing agreement application covering the 57 mining claims.<sup>[61]</sup>

2. Benguet, by submitting the complete requirements for an MPSA application in MPSA-P-III-16, fully complied with the requirements of Sections 112 and 113 of Republic Act No. 7942.<sup>[62]</sup> Thus, petitioner still has the preferential right over any other similar applicants to pursue the area covered by the subject 57 mining claims.<sup>[63]</sup>

3. While MPSA-P-III-03-05 was filed during the subsistence of the MLCs, such fact does not suffice to totally nullify said application. The claims under the MLCs, which are supposedly not open to mining applications, all but occupy only a small portion of the area covered in MPSA-P-III-03-05.<sup>[64]</sup>

Petitioner also accuses the DENR Secretary of “*hastily*” approving MPSA-P-III-05-05 into MPSA No. 227-2006-III.<sup>[65]</sup> Petitioner alleges that MPSA-P-III-05-05 was approved despite noncompliance by the respondent with the “*mandatory*” requirements under Sections 37 and 38 of the Implementing Rules and Regulations (IRR) of Republic Act No. 7942.<sup>[66]</sup>

## **OUR RULING**