584 Phil. 207

FIRST DIVISION

[G.R. No. 174918, August 13, 2008]

BONAVENTURE MINING CORPORATION, PETITIONER, VS. V.I.L. MINES, INCORPORATED, REPRESENTED BY ITS CORPORATE SECRETARY, ROXANNA S. GO, RESPONDENT.

D E C I S I O N

PUNO, CJ.:

Before us is a Petition for Review under Rule 45 of the Rules of Court filed by the petitioner Bonaventure Mining Corporation (BMC), to set aside the Decision[1] of the Court of Appeals dated August 29, 2006 (CA Decision) which reversed the Decision[2] of the Mines Adjudication Board (MAB) and reinstated the Decision[3] of the Panel of Arbitrators upholding the EPA-IVA-63 of respondent V.I.L. Mines, Incorporated (VMI), and canceling the EPA-IVA-72 of petitioner BMC.

This case involves a conflict over mining claims between BMC and VMI over a mountainous section that transcends the common boundaries of the provinces of Quezon and Camarines Norte, specifically within the municipal jurisdictions of Tagkawayan and Guinigayangan in Quezon, and Labo and Sta. Elena in Camarines Norte.[4]

The facts are of record.

On February 20, 1995, Tapian Mining Corporation (now Greenwater Mining Corporation [Greenwater]) filed an application for a Financial and Technical Assistance Agreement (FTAA) with the Central Office of the Mines and Geosciences Bureau (MGB) covering approximately 100,000 hectares in Tagkawayan, Quezon as well as in the provinces of Camarines Norte and Camarines Sur. Before that time, Greenwater had already filed other FTAA applications, specifically in Marinduque, covering 73,000 hectares, and in the Bulacan, Quezon and Rizal provinces totaling another 100,000 hectares.[5]

On March 3, 1995, Republic Act No. 7942 (R.A. No. 7942), otherwise known as "The Philippine Mining Act of 1995," was passed by Congress. It provided for the maximum allowable area that may be granted a qualified person under a FTAA, *viz*:

> SECTION 34. Maximum Contract Area. — The maximum contract area that may be granted per qualified person, subject to relinquishment shall be:
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> (a) 1,000 meridional blocks onshore;
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> (b) 4,000 meridional blocks offshore; or

(c) Combinations of (a) and (b) provided that it shall not exceed the maximum limits for onshore and offshore areas.

On March 12, 1996, the Department of Environment and Natural Resources (DENR) issued the implementing rules and regulations (IRR) of R.A. No. 7942 in the form of Department Administrative Order No. (DAO) 95-23. It gave FTAA applicants a deadline of one (1) year from its date of effectivity within which to divest or relinquish from their applications areas exceeding the maximum provided by R.A. No. 7942. Section 257 of DAO 95-23 provides:

> Section 257. Non-impairment of Existing Mining/Quarrying Rights. —
>
> x x x
>
> All pending applications for MPSA/FTAA and exploration permits issued prior to the promulgation of these implementing rules and regulations shall be governed by the provisions of the Act and these implementing rules and regulations; Provided, however, that where the grant of such FTAA application/proposals would exceed the maximum contract area restrictions contained in Section 34 of the Act, **the applicant/proponent shall have one year, from the effectivity of these implementing rules and regulations, to divest or relinquish applications or portions thereof which, if granted, would exceed the maximum contract area allowance provided under the Act**; Provided, finally, that this provision is applicable only to all FTAA applications filed under DAO 63 prior to the approval of the Act. (Emphasis supplied)
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> x x x

On August 27, 1996, Section 257 of DAO 95-23 was amended by DAO 96-25 giving FTAA applicants an extension of one (1) year within which to divest or relinquish excess areas from their applications, *viz*:

> Section 257. Non-Impairment of Existing Mining/Quarrying Rights.—
>
> x x x
>
> All pending applications for MPSA/FTAA covering forest land and other government reservations shall not be required to re-apply for exploration permit **provided, that where the grant of such FTAA applications/proposals would exceed the maximum contract area restrictions contained in Section 34 of the Act, the applicant/proponent shall be given an extension of one year, reckoned from September 13, 1996, to divest or relinquish in favor of government, areas in excess of the maximum area allowance provided under the Act**. (Emphasis supplied)

On December 19, 1996, DAO 96-40, the revised IRR of R.A. No. 7942, was issued. Among other provisions, DAO 96-40 reiterated the deadline of one (1) year from September 13, 1996, or until September 13, 1997, within which FTAA applicants may divest or relinquish certain areas in their applications which exceed the

maximum allowable area under R.A. No. 7942. Section 272 of DAO 96-40 provides as follows:

> **Section 272. Non-Impairment of Existing Mining/Quarrying Rights.—**
>
> x x x
>
> All pending applications for MPSA/FTAA covering forest land and Government Reservations shall not be required to re-apply for Exploration Permit: *Provided*, That where the grant of such FTAA applications/proposals would exceed the maximum contract area restrictions contained in Section 34 of the Act**, the applicant/proponent shall be given an extension of one (1) year, reckoned from September 13, 1996, to divest or relinquish pursuant to Department Administrative Order No. 96-25 in favor of the Government, areas in excess of the maximum area allowance provided under the Act**. For this purpose, a Special Exploration Permit of limited applications and activities shall be issued by the Secretary upon the recommendation of the Director, subject to the terms and conditions specified in the Permit and pertinent provisions of Chapter V hereof: *Provided*, That an area permission shall be granted likewise by the Secretary to undertake limited exploration activities in non-critical forest reserves and forest reservations and such other areas within the jurisdiction of the Department. In other areas, however, the applicant/proponent shall secure the necessary area clearances or written consent by the concerned agencies or parties, as provided for by law: *Provided, further*, That the time period shall be deducted from the life of the MPSA/FTAA and exploration costs can be included as part of pre-operating expenses for purposes of cost recovery should the FTAA be approved: *Provided, finally*, That this provision is applicable only to all FTAA/MPSA applications filed under Department Administrative Order No. 63 prior to the effectivity of the Act and these implementing rules and regulations. (Emphasis supplied)
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> x x x

On August 27, 1997, the DENR issued Department Memorandum Order No. 97-07 (DMO 97-07), entitled "Guidelines in the Implementation of the Mandatory September 15, 1997 Deadline for the Filing of Mineral Agreement Applications by Holders of Valid and Existing Mining Claims and Lease/Quarry Applications and for Other Purposes." DMO 97-07 provides, among others, for the following: (1) the deadline for the relinquishment of excess areas shall be on September 15, 1997 (September 13, 1997 falling on a Saturday);[6] (2) all applicants of FTAA applications filed under DAO 57 and DAO 63 with insufficient compliance of the mandatory requirements shall submit, on September 15, 1997, a Status Report indicating the requirements that have not been complied with and a Letter with the undertaking that the said requirements will be completely complied with on or before October 30, 1997;[7] and (3) the deadlines prescribed shall not be subject to extension.[8]

On September 17, 1996, St. Joe Mining Corporation filed an Exploration Permit

Application, denominated as EPA-IVA-24, with an area of 11,340 hectares situated in Tagkawayan, Quezon which overlaps the FTAA application of Greenwater.

On September 26, 1997, pursuant to DMO 97-07, Greenwater filed a Letter of Intent[9] dated September 10, 1997 with the MGB stating its intention to retain its first FTAA application in Marinduque and to relinquish the areas in excess of the maximum allowable 81,000 hectares covered by its other FTAA applications including those which cover areas of Quezon Province and Camarines Norte.

On October 22, 1997, OIC-Regional Director Reynulfo Juan sent a letter[10] to Greenwater stating that the latter has fifteen (15) days from receipt of the letter to submit the technical descriptions of the areas Greenwater intends to relinquish with a warning that failure to do so would cause the denial of the FTAA application in those areas.

On November 10, 1997, VMI filed an Exploration Permit Application,[11] denominated as EPA-IVA-63, with an area of 11,826 hectares. VMI's application covers areas included in Greenwater's FTAA application in Quezon Province and Camarines Norte.

On December 8, 1997, MGB Region IV rejected EPA-IVA-24 of St. Joe Mining Corporation on the ground that it was filed at the time that Greenwater's FTAA application was still valid and existing.

On February 23, 1998, OIC-Regional Director Reynulfo Juan sent another letter[12] to Greenwater stating that due to failure to comply with the directives in the letter dated October 22, 1997, Greenwater's FTAA applications "are deemed to have been relinquished as provided for under DENR Memorandum Order No. 97-07."

On May 4, 1999, BMC filed an Exploration Permit Application,[13] denominated as EPA-IVA-72, with an area of 9,794 hectares which almost completely overlaps the area covered by VMI's application.

On October 4, 1999, VMI filed a petition for the cancellation of BMC's exploration permit application claiming that it overlaps with its prior and existing application. The petition was later amended on February 28, 2000, to include the cancellation and confirmation of the nullity of St. Joe Mining Corporation's EPA-IVA-24.

On March 22, 2002, the Panel of Arbitrators rendered its Decision[14] upholding the validity of VMI's exploration permit application and declaring BMC's and St. Joe Mining Corporation's applications as null and void.

On July 5, 2002, BMC filed a Notice of Appeal and Memorandum of Appeal with the MAB. On August 24, 2004, the MAB rendered its Decision,[15] modifying the decision of the Panel of Arbitrators. The MAB gave due course to BMC's application for an exploration permit but allowed VMI's application to proceed, sans the areas covered by BMC's application.

From this decision, VMI filed its Petition for Review with the Court of Appeals. The Court of Appeals reversed and set aside the decision of the MAB and reinstated the

decision of the Panel of Arbitrators.

Hence, BMC now comes to this Court raising the following issues:

A.

> WHETHER THE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT RULED THAT FAILURE TO COMPLY WITH *DENR MEMORANDUM ORDER NO. 97-07* ON RETENTION REQUIREMENTS WOULD CAUSE THE CANCELLATION OF THE FTAA APPLICATION BY OPERATION OF LAW.

B.

> WHETHER THE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT RULED THAT THE DISPUTED AREA IS OPEN FOR MINING APPLICATIONS AFTER 30 OCTOBER 1997 AND CONSEQUENTLY UPHOLDING THE MINING APPLICATION OF RESPONDENT AND CANCELING PETITIONER'S.[16]

VMI, however, questions the timeliness of the filing of the petition. Hence, before we can consider the merits of the case, it is imperative that the Court address this issue in view of the procedural stricture that the timely perfection of an appeal is both a mandatory and jurisdictional requirement.

In its Comment, VMI contends that BMC received a copy of the CA Decision on September 5, 2006 and not on October 9, 2006 as alleged by BMC.[17] To support its claim, VMI presented a Certification[18] from the Makati Central Post Office dated October 5, 2005 stating that a copy of the CA Decision was served by Letter Carrier Larry Lopez to BMC's counsel on September 5, 2006 but the same was returned by the Letter Carrier to the sender, the Court of Appeals, for the reason that counsel for BMC had allegedly "MOVED OUT" of his address of record. Thus, the filing of the Petition only on October 23, 2006 is out of time.

In its Reply, BMC alleges that the office address of its counsel, Atty. Fernando Peñarroyo (Atty. Peñarroyo), is and has always been at **Unit 201** Orient Mansions, Tordecillas St., Salcedo Village, Makati City and at no time has Atty. Peñarroyo ever transferred or moved out of the said address.[19] BMC and Atty. Peñarroyo further contend that they are perplexed on how the alleged Letter Carrier from the Makati Central Post Office could have delivered a copy of the CA Decision on September 5, 2006 and be informed that Atty. Peñarroyo had moved out.[20] To prove the said allegations, BMC presented the following: 1) affidavit[21] of Ms. Eloisa M. Josef, Building Administrator of Orient Mansions; 2) pertinent portion of the security logbook[22] of Orient Mansions; and 3) affidavit[23] of Mr. Jeffrey A. Dalisay, the guard on duty on September 5, 2006.

According to VMI, the CA Decision which was received on October 9, 2006 was the copy sent to BMC, whose address is at **Unit 201** Orient Mansions, Tordecillas St., Salcedo Village, Makati City. Atty. Peñarroyo's office address is, however, at **L/2** Orient Mansions, Tordecillas St., Salcedo Village, Makati City, which is the same address used by the Court of Appeals when it mailed the CA Decision to him and the