

## **FIRST DIVISION**

**[ G.R. NO. 152613 & NO. 152628, June 23, 2006 ]**

**APEX MINING CO., INC., PETITIONER, VS. SOUTHEAST MINDANAO GOLD MINING CORP., THE MINES ADJUDICATION BOARD, PROVINCIAL MINING REGULATORY BOARD (PMRB-DAVAO), MONKAYO INTEGRATED SMALL SCALE MINERS ASSOCIATION, INC., ROSENDO VILLAFLORES, BALITE COMMUNAL PORTAL MINING COOPERATIVE, DAVAO UNITED MINERS COOPERATIVE, ANTONIO DACUDAO, PUTING-BATO GOLD MINERS COOPERATIVE, ROMEO ALTAMERA, THELMA CATAPANG, LUIS GALANG, RENATO BASMILLO, FRANCISCO YOBIDO, EDUARDO GLORIA, EDWIN ASION, MACARIO HERNANDEZ, REYNALDO CARUBIO, ROBERTO BUNIALES, RUDY ESPORTONO, ROMEO CASTILLO, JOSE REA, GIL GANADO, PRIMITIVA LICAYAN, LETICIA ALQUEZA AND JOEL BRILLANTES MANAGEMENT MINING CORPORATION, RESPONDENTS.**

**[G.R. NO. 152619-20]**

**BALITE COMMUNAL PORTAL MINING COOPERATIVE, PETITIONER, VS. SOUTHEAST MINDANAO GOLD MINING CORP., APEX MINING CO., INC., THE MINES ADJUDICATION BOARD, PROVINCIAL MINING REGULATORY BOARD (PMRB-DAVAO), MONKAYO INTEGRATED SMALL SCALE MINERS ASSOCIATION, INC., ROSENDO VILLAFLORES, DAVAO UNITED MINERS COOPERATIVE, ANTONIO DACUDAO, PUTING-BATO GOLD MINERS COOPERATIVE, ROMEO ALTAMERA, THELMA CATAPANG, LUIS GALANG, RENATO BASMILLO, FRANCISCO YOBIDO, EDUARDO GLORIA, EDWIN ASION, MACARIO HERNANDEZ, REYNALDO CARUBIO, ROBERTO BUNIALES, RUDY ESPORTONO, ROMEO CASTILLO, JOSE REA, GIL GANADO, PRIMITIVA LICAYAN, LETICIA ALQUEZA AND JOEL BRILLANTES MANAGEMENT MINING CORPORATION, RESPONDENTS.**

**[G.R. NO. 152870-71]**

**THE MINES ADJUDICATION BOARD AND ITS MEMBERS, THE HON. VICTOR O. RAMOS (CHAIRMAN), UNDERSECRETARY VIRGILIO MARCELO (MEMBER) AND DIRECTOR HORACIO RAMOS (MEMBER), PETITIONERS, VS. SOUTHEAST MINDANAO GOLD MINING CORPORATION, RESPONDENT.**

## **D E C I S I O N**

**CHICO-NAZARIO, J.:**

On 27 February 1931, Governor General Dwight F. Davis issued Proclamation No. 369, establishing the Agusan-Davao-Surigao Forest Reserve consisting of approximately 1,927,400 hectares.<sup>[1]</sup>

The disputed area, a rich tract of mineral land, is inside the forest reserve located at Monkayo, Davao del Norte, and Cateel, Davao Oriental, consisting of 4,941.6759 hectares.<sup>[2]</sup> This mineral land is encompassed by Mt. Diwata, which is situated in the municipalities of Monkayo and Cateel. It later became known as the "Diwalwal Gold Rush Area." It has since the early 1980's been stormed by conflicts brought about by the numerous mining claimants scrambling for gold that lies beneath its bosom.

On 21 November 1983, Camilo Banad and his group, who claimed to have first discovered traces of gold in Mount Diwata, filed a Declaration of Location (DOL) for six mining claims in the area.

Camilo Banad and some other natives pooled their skills and resources and organized the Balite Communal Portal Mining Cooperative (Balite).<sup>[3]</sup>

On 12 December 1983, Apex Mining Corporation (Apex) entered into operating agreements with Banad and his group.

From November 1983 to February 1984, several individual applications for mining locations over mineral land covering certain parts of the Diwalwal gold rush area were filed with the Bureau of Mines and Geo-Sciences (BMG).

On 2 February 1984, Marcopper Mining Corporation (MMC) filed 16 DOLs or mining claims for areas adjacent to the area covered by the DOL of Banad and his group. After realizing that the area encompassed by its mining claims is a forest reserve within the coverage of Proclamation No. 369 issued by Governor General Davis, MMC abandoned the same and instead applied for a prospecting permit with the Bureau of Forest Development (BFD).

On 1 July 1985, BFD issued a Prospecting Permit to MMC covering an area of 4,941.6759 hectares traversing the municipalities of Monkayo and Cateel, an area within the forest reserve under Proclamation No. 369. The permit embraced the areas claimed by Apex and the other individual mining claimants.

On 11 November 1985, MMC filed Exploration Permit Application No. 84-40 with the BMG. On 10 March 1986, the BMG issued to MCC Exploration Permit No. 133 (EP 133).

Discovering the existence of several mining claims and the proliferation of small-scale miners in the area covered by EP 133, MMC thus filed on 11 April 1986 before the BMG a *Petition for the Cancellation of the Mining Claims of Apex and Small Scale Mining Permit Nos. (x-1)-04 and (x-1)-05* which was docketed as MAC No. 1061. MMC alleged that the areas covered by its EP 133 and the mining claims of Apex were within an established and existing forest reservation (Agusan-Davao-Surigao Forest Reserve) under Proclamation No. 369 and that pursuant to Presidential Decree No. 463,<sup>[4]</sup> acquisition of mining rights within a forest reserve is through the application for a permit to prospect with the BFD and not through registration of a

DOL with the BMG.

On 23 September 1986, Apex filed a motion to dismiss MMC's petition alleging that its mining claims are not within any established or proclaimed forest reserve, and as such, the acquisition of mining rights thereto must be undertaken via registration of DOL with the BMG and not through the filing of application for permit to prospect with the BFD.

On 9 December 1986, BMG dismissed MMC's petition on the ground that the area covered by the Apex mining claims and MMC's permit to explore was not a forest reservation. It further declared null and void MMC's EP 133 and sustained the validity of Apex mining claims over the disputed area.

MMC appealed the adverse order of BMG to the Department of Environment and Natural Resources (DENR).

On 15 April 1987, after due hearing, the DENR reversed the 9 December 1996 order of BMG and declared MMC's EP 133 valid and subsisting.

Apex filed a Motion for Reconsideration with the DENR which was subsequently denied. Apex then filed an appeal before the Office of the President. On 27 July 1989, the Office of the President, through Assistant Executive Secretary for Legal Affairs, Cancio C. Garcia,<sup>[5]</sup> dismissed Apex's appeal and affirmed the DENR ruling.

Apex filed a Petition for *Certiorari* before this Court. The Petition was docketed as G.R. No. 92605 entitled, "*Apex Mining Co., Inc. v. Garcia*."<sup>[6]</sup> On 16 July 1991, this Court rendered a Decision against Apex holding that the disputed area is a forest reserve; hence, the proper procedure in acquiring mining rights therein is by initially applying for a permit to prospect with the BFD and not through a registration of DOL with the BMG.

On 27 December 1991, then DENR Secretary Fulgencio Factoran, Jr. issued Department Administrative Order No. 66 (DAO No. 66) declaring 729 hectares of the areas covered by the Agusan-Davao-Surigao Forest Reserve as non-forest lands and open to small-scale mining purposes.

As DAO No. 66 declared a portion of the contested area open to small scale miners, several mining entities filed applications for Mineral Production Sharing Agreement (MPSA).

On 25 August 1993, Monkayo Integrated Small Scale Miners Association (MISSMA) filed an MPSA application which was denied by the BMG on the grounds that the area applied for is within the area covered by MMC EP 133 and that the MISSMA was not qualified to apply for an MPSA under DAO No. 82,<sup>[7]</sup> Series of 1990.

On 5 January 1994, Rosendo Villaflor and his group filed before the BMG a Petition for Cancellation of EP 133 and for the admission of their MPSA Application. The Petition was docketed as RED Mines Case No. 8-8-94. Davao United Miners Cooperative (DUMC) and Balite intervened and likewise sought the cancellation of EP 133.

On 16 February 1994, MMC assigned EP 133 to Southeast Mindanao Gold Mining Corporation (SEM), a domestic corporation which is alleged to be a 100% -owned subsidiary of MMC.

On 14 June 1994, Balite filed with the BMG an MPSA application within the contested area that was later on rejected.

On 23 June 1994, SEM filed an MPSA application for the entire 4,941.6759 hectares under EP 133, which was also denied by reason of the pendency of RED Mines Case No. 8-8-94. On 1 September 1995, SEM filed another MPSA application.

On 20 October 1995, BMG accepted and registered SEM's MPSA application and the Deed of Assignment over EP 133 executed in its favor by MMC. SEM's application was designated MPSA Application No. 128 (MPSAA 128). After publication of SEM's application, the following filed before the BMG their adverse claims or oppositions:

- a) MAC Case No. 004 (XI) – JB Management Mining Corporation;
- b) MAC Case No. 005(XI) – Davao United Miners Cooperative;
- c) MAC Case No. 006(XI) – Balite Integrated Small Scale Miner's Cooperative;
- d) MAC Case No. 007(XI) – Monkayo Integrated Small Scale Miner's Association, Inc. (MISSMA);
- e) MAC Case No. 008(XI) – Paper Industries Corporation of the Philippines;
- f) MAC Case No. 009(XI) – Rosendo Villafor, et al.;
- g) MAC Case No. 010(XI) – Antonio Dacudao;
- h) MAC Case No. 011(XI) – Atty. Jose T. Amacio;
- i) MAC Case No. 012(XI) – Puting-Bato Gold Miners Cooperative;
- j) MAC Case No. 016(XI) – Balite Communal Portal Mining Cooperative;
- k) MAC Case No. 97-01(XI) – Romeo Altamera, et al.<sup>[8]</sup>

To address the matter, the DENR constituted a Panel of Arbitrators (PA) to resolve the following:

- (a) The adverse claims on MPSAA No. 128; and
- (b) The Petition to Cancel EP 133 filed by Rosendo Villaflor docketed as RED Case No. 8-8-94.<sup>[9]</sup>

On 13 June 1997, the PA rendered a resolution in RED Mines Case No. 8-8-94. As to the Petition for Cancellation of EP 133 issued to MMC, the PA relied on the ruling in *Apex Mining Co., Inc. v. Garcia*,<sup>[10]</sup> and opined that EP 133 was valid and

subsisting. It also declared that the BMG Director, under Section 99 of the Consolidated Mines Administrative Order implementing Presidential Decree No. 463, was authorized to issue exploration permits and to renew the same without limit.

With respect to the adverse claims on SEM's MPSAA No. 128, the PA ruled that adverse claimants' petitions were not filed in accordance with the existing rules and regulations governing adverse claims because the adverse claimants failed to submit the sketch plan containing the technical description of their respective claims, which was a mandatory requirement for an adverse claim that would allow the PA to determine if indeed there is an overlapping of the area occupied by them and the area applied for by SEM. It added that the adverse claimants were not claim owners but mere occupants conducting illegal mining activities at the contested area since only MMC or its assignee SEM had valid mining claims over the area as enunciated in *Apex Mining Co., Inc. v. Garcia*.<sup>[11]</sup> Also, it maintained that the adverse claimants were not qualified as small-scale miners under DENR Department Administrative Order No. 34 (DAO No. 34),<sup>[12]</sup> or the Implementing Rules and Regulation of Republic Act No. 7076 (otherwise known as the "People's Small-Scale Mining Act of 1991"), as they were not duly licensed by the DENR to engage in the extraction or removal of minerals from the ground, and that they were large-scale miners. The decretal portion of the PA resolution pronounces:

VIEWED IN THE LIGHT OF THE FOREGOING, the validity of Expoloration Permit No. 133 is hereby reiterated and all the adverse claims against MPSAA No. 128 are DISMISSED.<sup>[13]</sup>

Undaunted by the PA ruling, the adverse claimants appealed to the Mines Adjudication Board (MAB). In a Decision dated 6 January 1998, the MAB considered erroneous the dismissal by the PA of the adverse claims filed against MMC and SEM over a mere technicality of failure to submit a sketch plan. It argued that the rules of procedure are not meant to defeat substantial justice as the former are merely secondary in importance to the latter. Dealing with the question on EP 133's validity, the MAB opined that said issue was not crucial and was irrelevant in adjudicating the appealed case because EP 133 has long expired due to its non-renewal and that the holder of the same, MMC, was no longer a claimant of the Agusan-Davao-Surigao Forest Reserve having relinquished its right to SEM. After it brushed aside the issue of the validity of EP 133 for being irrelevant, the MAB proceeded to treat SEM's MPSA application over the disputed area as an entirely new and distinct application. It approved the MPSA application, excluding the area segregated by DAO No. 66, which declared 729 hectares within the Diwalwal area as non-forest lands open for small-scale mining. The MAB resolved:

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