

THIRD DIVISION

[G.R. NO. 163509, December 06, 2006]

**PICOP RESOURCES, INC., PETITIONER, VS. BASE METALS
MINERAL RESOURCES CORPORATION, AND THE MINES
ADJUDICATION BOARD, RESPONDENTS .**

D E C I S I O N

TINGA, J.:

PICOP Resources, Inc. (PICOP) assails the Decision^[1] of the Court of Appeals dated November 28, 2003 and its Resolution^[2] dated May 5, 2004, which respectively denied its petition for review and motion for reconsideration.

The undisputed facts quoted from the appellate court's Decision are as follows:

In 1987, the Central Mindanao Mining and Development Corporation (CMMCI for brevity) entered into a Mines Operating Agreement (Agreement for brevity) with Banahaw Mining and Development Corporation (Banahaw Mining for brevity) whereby the latter agreed to act as Mine Operator for the exploration, development, and eventual commercial operation of CMMCI's eighteen (18) mining claims located in Agusan del Sur.

Pursuant to the terms of the Agreement, Banahaw Mining filed applications for Mining Lease Contracts over the mining claims with the Bureau of Mines. On April 29, 1988, Banahaw Mining was issued a Mines Temporary Permit authorizing it to extract and dispose of precious minerals found within its mining claims. Upon its expiration, the temporary permit was subsequently renewed thrice by the Bureau of Mines, the last being on June 28, 1991.

Since a portion of Banahaw Mining's mining claims was located in petitioner PICOP's logging concession in Agusan del Sur, Banahaw Mining and petitioner PICOP entered into a Memorandum of Agreement, whereby, in mutual recognition of each other's right to the area concerned, petitioner PICOP allowed Banahaw Mining an access/right of way to its mining claims.

In 1991, Banahaw Mining converted its mining claims to applications for Mineral Production Sharing Agreements (MPSA for brevity).

While the MPSA were pending, Banahaw Mining, on December 18, 1996, decided to sell/assign its rights and interests over thirty-seven (37) mining claims in favor of private respondent Base Metals Mineral Resources Corporation (Base Metals for brevity). The transfer included

mining claims held by Banahaw Mining in its own right as claim owner, as well as those covered by its mining operating agreement with CMMCI.

Upon being informed of the development, CMMCI, as claim owner, immediately approved the assignment made by Banahaw Mining in favor of private respondent Base Metals, thereby recognizing private respondent Base Metals as the new operator of its claims.

On March 10, 1997, private respondent Base Metals amended Banahaw Mining's pending MPSA applications with the Bureau of Mines to substitute itself as applicant and to submit additional documents in support of the application. Area clearances from the DENR Regional Director and Superintendent of the Agusan Marsh and Wildlife Sanctuary were submitted, as required.

On October 7, 1997, private respondent Base Metals' amended MPSA applications were published in accordance with the requirements of the Mining Act of 1995.

On November 18, 1997, petitioner PICOP filed with the Mines Geo-Sciences Bureau (MGB), Caraga Regional Office No. XIII an Adverse Claim and/or Opposition to private respondent Base Metals' application on the following grounds:

- I. THE APPROVAL OF THE APPLICATION AND ISSUANCE OF THE MPSA OF BASE METALS WILL VIOLATE THE CONSTITUTIONAL MANDATE AGAINST IMPAIRMENT OF OBLIGATION IN A CONTRACT.
- II. THE APPROVAL OF THE APPLICATION WILL DEFEAT THE RIGHTS OF THE HEREIN ADVERSE CLAIMANT AND/OR OPPOSITOR.

In its Answer to the Adverse Claim and/or Opposition, private respondent Base Metals alleged that:

- a) the Adverse Claim was filed out of time;
- b) petitioner PICOP has no rights over the mineral resources on their concession area. PICOP is asserting a privilege which is not protected by the non-impairment clause of the Constitution;
- c) the grant of the MPSA will not impair the rights of PICOP nor create confusion, chaos or conflict.

Petitioner PICOP's Reply to the Answer alleged that:

- a) the Adverse Claim was filed within the reglementary period;
- b) the grant of MPSA will impair the existing rights of petitioner PICOP;

c) the MOA between PICOP and Banahaw Mining provides for recognition by Banahaw Mining of the Presidential Warranty awarded in favor of PICOP for the exclusive possession and enjoyment of said areas.

As a Rejoinder, private respondent Base Metals stated that:

1. it is seeking the right to extract the mineral resources in the applied areas. It is not applying for any right to the forest resources within the concession areas of PICOP;
2. timber or forest lands are open to Mining Applications;
3. the grant of the MPSA will not violate the so called "presidential fiat";
4. the MPSA application of Base Metals does not require the consent of PICOP; and
5. it signified its willingness to enter into a voluntary agreement with PICOP on the matter of compensation for damages. In the absence of such agreement, the matter will be brought to the Panel of Arbitration in accordance with law.

In refutation thereto, petitioner PICOP alleged in its Rejoinder that:

- a) the Adverse Claim filed thru registered mail was sent on time and as prescribed by existing mining laws and rules and regulations;
- b) the right sought by private respondent Base Metals is not absolute but is subject to existing rights, such as those which the adverse claimant had, that have to be recognized and respected in a manner provided and prescribed by existing laws as will be expounded fully later;
- c) as a general rule, mining applications within timber or forest lands are subject to existing rights as provided in Section 18 of RA 7942 or the Philippine Mining Act of 1995 and it is an admitted fact by the private respondent that petitioner PICOP had forest rights as per Presidential Warranty;
- d) while the Presidential Warranty did not expressly state exclusivity, P.D. 705 strengthened the right of occupation, possession and control over the concession area;
- e) the provisions of Section 19 of the Act and Section 15 of IRR expressly require the written consent of the forest right holder, PICOP.

After the submission of their respective position paper, the Panel Arbitrator issued an Order dated December 21, 1998, the dispositive portion of which reads as:

WHEREFORE, premises considered, Mineral Production Sharing Agreement Application Nos. (XIII) 010, 011, 012 of Base Metal Resources Corporation should be set aside.

The disapproval of private respondent Base Metals' MPSA was due to the following reasons:

Anent the first issue the Panel find (sic) and so hold (sic) that the adverse claim was filed on time, it being mailed on November 19, 1997, at Metro Manila as evidenced by Registry Receipt No. 26714. Under the law (sic) the date of mailing is considered the date of filing.

As to whether or not an MPSA application can be granted on area subject of an IFMA^[3] or PTLA^[4] which is covered by a Presidential Warranty, the panel believes it can not, unless the grantee consents thereto. Without the grantee's consent, the area is considered closed to mining location (sec. 19) (b) (No. 2), DAO No. 96-40). The Panel believe (sic) that mining location in forest or timberland is allowed only if such forest or timberland is not leased by the government to a qualified person or entity. If it is leased the consent of the lessor is necessary, in addition to the area clearance to be issued by the agency concerned before it is subjected to mining operation.

Plantation is considered closed to mining locations because it is off tangent to mining. Both are extremes. They can not exist at the same time. The other must necessarily stop before the other operate.

On the other hand, Base Metals Mineral Resources Corporation can not insist the MPSA application as assignee of Banahaw. PICOP did not consent to the assignment as embodied in the agreement. Neither did it ratify the Deed of Assignment. Accordingly, it has no force and effect. Thus, for lack of consent, the MPSA must fall.

On January 11, 1999, private respondent Base Metals filed a Notice of Appeal with public respondent MAB and alleged in its Appeal Memorandum the following arguments:

1. THE CONSENT OF PICOP IS NOT NECESSARY FOR THE APPROVAL OF BASE METALS' MPSA APPLICATION.
2. EVEN ASSUMING SUCH CONSENT IS NECESSARY, PICOP HAD CONSENTED TO BASE METALS' MPSA APPLICATION.

In Answer thereto, petitioner PICOP alleged that:

1. Consent is necessary for the approval of private respondent's MPSA application;
2. Provisions of Memorandum Order No. 98-03 and IFMA 35 are not applicable to the instant case;
3. Provisions of PD 705^[5] connotes exclusivity for timber license holders; and
4. MOA between private respondent's assignor and adverse claimant provided for the recognition of the latter's rightful claim over the disputed areas.

Private respondent Base Metals claimed in its Reply that:

1. The withholding of consent by PICOP derogates the State's power to supervise and control the exploration, utilization and development of all natural resources;
2. Memorandum Order No, 98-03, not being a statute but a mere guideline imposed by the Secretary of the Department of Environment and Natural Resources (DENR), can be applied retroactively to MPSA applications which have not yet been finally resolved;
3. Even assuming that the consent of adverse claimant is necessary for the approval of Base Metals' application (which is denied), such consent had already been given; and
4. The Memorandum of Agreement between adverse claimant and Banahaw Mining proves that the Agusan-Surigao area had been used in the past both for logging and mining operations.

After the filing of petitioner PICOP's Reply Memorandum, public respondent rendered the assailed decision setting aside the Panel Arbitrator's order. Accordingly, private respondent Base Metals' MPSA's were reinstated and given due course subject to compliance with the pertinent requirements of the existing rules and regulations.^[6]

The Court of Appeals upheld the decision of the MAB, ruling that the Presidential Warranty of September 25, 1968 issued by then President Ferdinand E. Marcos merely confirmed the timber license granted to PICOP and warranted the latter's peaceful and adequate possession and enjoyment of its concession areas. It was only given upon the request of the Board of Investments to establish the boundaries of PICOP's timber license agreement. The Presidential Warranty did not convert PICOP's timber license into a contract because it did not create any obligation on the part of the government in favor of PICOP. Thus, the non-impairment clause finds no application.

Neither did the Presidential Warranty grant PICOP the exclusive possession, occupation and exploration of the concession areas covered. If that were so, the