

EN BANC

[G.R. No. 127882, January 27, 2004]

LA BUGAL-B'LAAN TRIBAL ASSOCIATION, INC., REPRESENTED BY ITS CHAIRMAN F'LONG MIGUEL M. LUMAYONG, WIGBERTO E. TAÑADA, PONCIANO BENNAGEN, JAIME TADEO, RENATO R. CONSTANTINO, JR., F'LONG AGUSTIN M. DABIE, ROBERTO P. AMLOY, RAQIM L. DABIE, SIMEON H. DOLOJO, IMELDA M. GANDON, LENY B. GUSANAN, MARCELO L. GUSANAN, QUINTOL A. LABUAYAN, LOMINGGES D. LAWAY, BENITA P. TACUAYAN, MINORS JOLY L. BUGOY, REPRESENTED BY HIS FATHER UNDERO D. BUGOY, ROGER M. DADING, REPRESENTED BY HIS FATHER ANTONIO L. DADING, ROMY M. LAGARO, REPRESENTED BY HIS FATHER TOTING A. LAGARO, MIKENY JONG B. LUMAYONG, REPRESENTED BY HIS FATHER MIGUEL M. LUMAYONG, RENE T. MIGUEL, REPRESENTED BY HIS MOTHER EDITHA T. MIGUEL, ALDEMAR L. SAL, REPRESENTED BY HIS FATHER DANNY M. SAL, DAISY RECARSE, REPRESENTED BY HER MOTHER LYDIA S. SANTOS, EDWARD M. EMUY, ALAN P. MAMPARAIR, MARIO L. MANGCAL, ALDEN S. TUSAN, AMPARO S. YAP, VIRGILIO CULAR, MARVIC M.V.F. LEONEN, JULIA REGINA CULAR, GIAN CARLO CULAR, VIRGILIO CULAR, JR., REPRESENTED BY THEIR FATHER VIRGILIO CULAR, PAUL ANTONIO P. VILLAMOR, REPRESENTED BY HIS PARENTS JOSE VILLAMOR AND ELIZABETH PUA-VILLAMOR, ANA GININA R. TALJA, REPRESENTED BY HER FATHER MARIO JOSE B. TALJA, SHARMAINE R. CUNANAN, REPRESENTED BY HER FATHER ALFREDO M. CUNANAN, ANTONIO JOSE A. VITUG III, REPRESENTED BY HIS MOTHER ANNALIZA A. VITUG, LEAN D. NARVADEZ, REPRESENTED BY HIS FATHER MANUEL E. NARVADEZ, JR., ROSERIO MARALAG LINGATING, REPRESENTED BY HER FATHER RIO OLIMPIO A. LINGATING, MARIO JOSE B. TALJA, DAVID E. DE VERA, MARIA MILAGROS L. SAN JOSE, SR., SUSAN O. BOLANIO, OND, LOLITA G. DEMONTEVERDE, BENJIE L. NEQUINTO,^[1] ROSE LILIA S. ROMANO, ROBERTO S. VERZOLA, EDUARDO AURELIO C. REYES, LEAN LOUEL A. PERIA, REPRESENTED BY HIS FATHER ELPIDIO V. PERIA,^[2] GREEN FORUM PHILIPPINES, GREEN FORUM WESTERN VISAYAS, (GF-WV), ENVIRONMETAL LEGAL ASSISTANCE CENTER (ELAC), PHILIPPINE KAISAHAN TUNGO SA KAUNLARAN NG KANAYUNAN AT REPORMANG PANSAKAHAN (KAISAHAN),^[3] KAISAHAN TUNGO SA KAUNLARAN NG KANAYUNAN AT REPORMANG PANSAKAHAN (KAISAHAN), PARTNERSHIP FOR AGRARIAN REFORM AND RURAL DEVELOPMENT SERVICES, INC. (PARRDS), PHILIPPINE PART`NERSHIP FOR THE DEVELOPMENT OF HUMAN RESOURCES IN THE RURAL AREAS, INC. (PHILDHRRRA), WOMEN'S LEGAL

BUREAU (WLB), CENTER FOR ALTERNATIVE DEVELOPMENT INITIATIVES, INC. (CADI), UPLAND DEVELOPMENT INSTITUTE (UDI), KINAIYAHAN FOUNDATION, INC., SENTRO NG ALTERNATIBONG LINGAP PANLIGAL (SALIGAN), LEGAL RIGHTS AND NATURAL RESOURCES CENTER, INC. (LRC), PETITIONERS, VS. VICTOR O. RAMOS, SECRETARY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), HORACIO RAMOS, DIRECTOR, MINES AND GEOSCIENCES BUREAU (MGB-DENR), RUBEN TORRES, EXECUTIVE SECRETARY, AND WMC (PHILIPPINES), INC.^[4] RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

The present petition for mandamus and prohibition assails the constitutionality of Republic Act No. 7942,^[5] otherwise known as the PHILIPPINE MINING ACT OF 1995, along with the Implementing Rules and Regulations issued pursuant thereto, Department of Environment and Natural Resources (DENR) Administrative Order 96-40, and of the Financial and Technical Assistance Agreement (FTAA) entered into on March 30, 1995 by the Republic of the Philippines and WMC (Philippines), Inc. (WMCP), a corporation organized under Philippine laws.

On July 25, 1987, then President Corazon C. Aquino issued Executive Order (E.O.) No. 279^[6] authorizing the DENR Secretary to

accept, consider and evaluate proposals from foreign-owned corporations or foreign investors for contracts or agreements involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, which, upon appropriate recommendation of the Secretary, the President may execute with the foreign proponent. In entering into such proposals, the President shall consider the real contributions to the economic growth and general welfare of the country that will be realized, as well as the development and use of local scientific and technical resources that will be promoted by the proposed contract or agreement. Until Congress shall determine otherwise, large-scale mining, for purpose of this Section, shall mean those proposals for contracts or agreements for mineral resources exploration, development, and utilization involving a committed capital investment in a single mining unit project of at least Fifty Million Dollars in United States Currency (US \$50,000,000.00).^[7]

On March 3, 1995, then President Fidel V. Ramos approved R.A. No. 7942 to “govern the exploration, development, utilization and processing of all mineral resources.”^[8] R.A. No. 7942 defines the modes of mineral agreements for mining operations,^[9] outlines the procedure for their filing and approval,^[10] assignment/transfer^[11] and withdrawal,^[12] and fixes their terms.^[13] Similar provisions govern financial or technical assistance agreements.^[14]

The law prescribes the qualifications of contractors^[15] and grants them certain rights, including timber,^[16] water^[17] and easement^[18] rights, and the right to

possess explosives.^[19] Surface owners, occupants, or concessionaires are forbidden from preventing holders of mining rights from entering private lands and concession areas.^[20] A procedure for the settlement of conflicts is likewise provided for.^[21]

The Act restricts the conditions for exploration,^[22] quarry^[23] and other^[24] permits. It regulates the transport, sale and processing of minerals,^[25] and promotes the development of mining communities, science and mining technology,^[26] and safety and environmental protection.^[27]

The government's share in the agreements is spelled out and allocated,^[28] taxes and fees are imposed,^[29] incentives granted.^[30] Aside from penalizing certain acts,^[31] the law likewise specifies grounds for the cancellation, revocation and termination of agreements and permits.^[32]

On April 9, 1995, 30 days following its publication on March 10, 1995 in *Malaya* and *Manila Times*, two newspapers of general circulation, R.A. No. 7942 took effect.^[33]

Shortly **before the effectivity of R.A. No. 7942**, however, or on March 30, 1995, the President entered into an FTAA with WMCP covering 99,387 hectares of land in South Cotabato, Sultan Kudarat, Davao del Sur and North Cotabato.^[34]

On August 15, 1995, then DENR Secretary Victor O. Ramos issued DENR Administrative Order (DAO) No. 95-23, s. 1995, otherwise known as the Implementing Rules and Regulations of R.A. No. 7942. This was later repealed by DAO No. 96-40, s. 1996 which was adopted on December 20, 1996.

On January 10, 1997, counsels for petitioners sent a letter to the DENR Secretary demanding that the DENR stop the implementation of R.A. No. 7942 and DAO No. 96-40,^[35] giving the DENR fifteen days from receipt^[36] to act thereon. The DENR, however, has yet to respond or act on petitioners' letter.^[37]

Petitioners thus filed the present petition for prohibition and mandamus, with a prayer for a temporary restraining order. They allege that at the time of the filing of the petition, 100 FTAA applications had already been filed, covering an area of 8.4 million hectares,^[38] 64 of which applications are by fully foreign-owned corporations covering a total of 5.8 million hectares, and at least one by a fully foreign-owned mining company over offshore areas.^[39]

Petitioners claim that the DENR Secretary acted without or in excess of jurisdiction:

I

x x x in signing and promulgating DENR Administrative Order No. 96-40 implementing Republic Act No. 7942, the latter being unconstitutional in that it allows fully foreign owned corporations to explore, develop, utilize and exploit mineral resources in a manner contrary to Section 2, paragraph 4, Article XII of the Constitution;

II

x x x in signing and promulgating DENR Administrative Order No. 96-40 implementing Republic Act No. 7942, the latter being unconstitutional in that it allows the taking of private property without the determination of public use and for just compensation;

III

x x x in signing and promulgating DENR Administrative Order No. 96-40 implementing Republic Act No. 7942, the latter being unconstitutional in that it violates Sec. 1, Art. III of the Constitution;

IV

x x x in signing and promulgating DENR Administrative Order No. 96-40 implementing Republic Act No. 7942, the latter being unconstitutional in that it allows enjoyment by foreign citizens as well as fully foreign owned corporations of the nation's marine wealth contrary to Section 2, paragraph 2 of Article XII of the Constitution;

V

x x x in signing and promulgating DENR Administrative Order No. 96-40 implementing Republic Act No. 7942, the latter being unconstitutional in that it allows priority to foreign and fully foreign owned corporations in the exploration, development and utilization of mineral resources contrary to Article XII of the Constitution;

VI

x x x in signing and promulgating DENR Administrative Order No. 96-40 implementing Republic Act No. 7942, the latter being unconstitutional in that it allows the inequitable sharing of wealth contrary to Sections [sic] 1, paragraph 1, and Section 2, paragraph 4[,] [Article XII] of the Constitution;

VII

x x x in recommending approval of and implementing the Financial and Technical Assistance Agreement between the President of the Republic of the Philippines and Western Mining Corporation Philippines Inc. because the same is illegal and unconstitutional.^[40]

They pray that the Court issue an order:

(a) Permanently enjoining respondents from acting on any application for Financial or Technical Assistance Agreements;

(b) Declaring the Philippine Mining Act of 1995 or Republic Act No. 7942 as unconstitutional and null and void;

(c) Declaring the Implementing Rules and Regulations of the Philippine

Mining Act contained in DENR Administrative Order No. 96-40 and all other similar administrative issuances as unconstitutional and null and void; and

(d) Cancelling the Financial and Technical Assistance Agreement issued to Western Mining Philippines, Inc. as unconstitutional, illegal and null and void.^[41]

Impleaded as public respondents are Ruben Torres, the then Executive Secretary, Victor O. Ramos, the then DENR Secretary, and Horacio Ramos, Director of the Mines and Geosciences Bureau of the DENR. Also impleaded is private respondent WMCP, which entered into the assailed FTAA with the Philippine Government. WMCP is owned by WMC Resources International Pty., Ltd. (WMC), "a wholly owned subsidiary of Western Mining Corporation Holdings Limited, a publicly listed major Australian mining and exploration company."^[42] By WMCP's information, "it is a 100% owned subsidiary of WMC LIMITED."^[43]

Respondents, aside from meeting petitioners' contentions, argue that the requisites for judicial inquiry have not been met and that the petition does not comply with the criteria for prohibition and mandamus. Additionally, respondent WMCP argues that there has been a violation of the rule on hierarchy of courts.

After petitioners filed their reply, this Court granted due course to the petition. The parties have since filed their respective memoranda.

WMCP subsequently filed a Manifestation dated September 25, 2002 alleging that on January 23, 2001, WMC sold all its shares in WMCP to Sagittarius Mines, Inc. (Sagittarius), a corporation organized under Philippine laws.^[44] WMCP was subsequently renamed "Tampakan Mineral Resources Corporation."^[45] WMCP claims that at least 60% of the equity of Sagittarius is owned by Filipinos and/or Filipino-owned corporations while about 40% is owned by Indophil Resources NL, an Australian company.^[46] It further claims that by such sale and transfer of shares, "WMCP has ceased to be connected in any way with WMC."^[47]

By virtue of such sale and transfer, the DENR Secretary, by Order of December 18, 2001,^[48] approved the transfer and registration of the subject FTAA from WMCP to Sagittarius. Said Order, however, was appealed by Lepanto Consolidated Mining Co. (Lepanto) to the Office of the President which upheld it by Decision of July 23, 2002.^[49] Its motion for reconsideration having been denied by the Office of the President by Resolution of November 12, 2002,^[50] Lepanto filed a petition for review^[51] before the Court of Appeals. Incidentally, two other petitions for review related to the approval of the transfer and registration of the FTAA to Sagittarius were recently resolved by this Court.^[52]

It bears stressing that this case has not been rendered moot either by the transfer and registration of the FTAA to a Filipino-owned corporation or by the non-issuance of a temporary restraining order or a preliminary injunction to stay the above-said July 23, 2002 decision of the Office of the President.^[53] The validity of the transfer remains in dispute and awaits final judicial determination. This assumes, of course, that such transfer cures the FTAA's alleged unconstitutionality, on which question