429 Phil. 668

FIRST DIVISION

[G.R. No. 135190, April 03, 2002]

SOUTHEAST MINDANAO GOLD MINING CORPORATION, PETITIONER, VS. BALITE PORTAL MINING COOPERATIVE AND OTHERS SIMILARLY SITUATED; AND THE HONORABLE ANTONIO CERILLES, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), PROVINCIAL MINING REGULATORY BOARD OF DAVAO (PMRB-DAVAO), RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review of the March 19, 1998 decision of the Court of Appeals in CA- G.R. SP No. 44693, dismissing the special civil action for *certiorari, prohibition* and *mandamus*, and the resolution dated August 19, 1998 denying petitioner's motion for reconsideration.

The instant case involves a rich tract of mineral land situated in the Agusan-Davao-Surigao Forest Reserve known as the "Diwalwal Gold Rush Area." Located at Mt. Diwata in the municipalities of Monkayo and Cateel in Davao Del Norte, the land has been embroiled in controversy since the mid-80's due to the scramble over gold deposits found within its bowels.

From 1985 to 1991, thousands of people flocked to Diwalwal to stake their respective claims. Peace and order deteriorated rapidly, with hundreds of people perishing in mine accidents, man-made or otherwise, brought about by unregulated mining activities. The multifarious problems spawned by the gold rush assumed gargantuan proportions, such that finding a "win-win" solution became a veritable needle in a haystack.

On March 10, 1988, Marcopper Mining Corporation (Marcopper) was granted Exploration Permit No. 133 (EP No. 133) over 4,491 hectares of land, which included the hotly-contested Diwalwal area.[1] Marcopper's acquisition of mining rights over Diwalwal under its EP No. 133 was subsequently challenged before this Court in "*Apex Mining Co., Inc., et al. v. Hon. Cancio C. Garcia, et al.*,"[2] where Marcopper's claim was sustained over that of another mining firm, Apex Mining Corporation (Apex). The Court found that Apex did not comply with the procedural requisites for acquiring mining rights within forest reserves.

Not long thereafter, Congress enacted on June 27, 1991 Republic Act No. 7076, or the People's Small-Scale Mining Act. The law established a People's Small-Scale Mining Program to be implemented by the Secretary of the DENR[3] and created the Provincial Mining Regulatory Board (PMRB) under the DENR Secretary's direct supervision and control.[4] The statute also authorized the PMRB to declare and set

aside small-scale mining areas subject to review by the DENR Secretary[5] and award mining contracts to small-scale miners under certain conditions.[6]

On December 21, 1991, DENR Secretary Fulgencio S. Factoran issued Department Administrative Order (DAO) No. 66, declaring 729 hectares of the Diwalwal area as non-forest land open to small-scale mining.[7] The issuance was made pursuant to the powers vested in the DENR Secretary by Proclamation No. 369, which established the Agusan-Davao-Surigao Forest Reserve.

Subsequently, a petition for the cancellation of EP No. 133 and the admission of a Mineral Production Sharing Arrangement (MPSA) proposal over Diwalwal was filed before the DENR Regional Executive Director, docketed as RED Mines Case No. 8-8-94 entitled, "*Rosendo Villaflor, et al. v. Marcopper Mining Corporation*."

On February 16, 1994, while the RED Mines case was pending, Marcopper assigned its EP No. 133 to petitioner Southeast Mindanao Gold Mining Corporation (SEM),[8] which in turn applied for an integrated MPSA over the land covered by the permit.

In due time, the Mines and Geosciences Bureau Regional Office No. XI in Davao City (MGB-XI) accepted and registered the integrated MPSA application of petitioner. After publication of the application, the following filed their 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.;
e) MAC Case No. 008(XI) - Paper Industries Corporation of the Philippines;
f) MAC Case No. 009(XI) - Rosendo Villaflor, 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; and
k) MAC Case No. 97-01(XI) - Romeo Altamera, et al.

In the meantime, on March 3, 1995, Republic Act No. 7942, the Philippine Mining Act, was enacted. Pursuant to this statute, the above-enumerated MAC cases were referred to a Regional Panel of Arbitrators (RPA) tasked to resolve disputes involving conflicting mining rights. The RPA subsequently took cognizance of the RED Mines case, which was consolidated with the MAC cases.

On April 1, 1997, Provincial Mining Regulatory Board of Davao passed Resolution No. 26, Series of 1997, authorizing the issuance of ore transport permits (OTPs) to small-scale miners operating in the Diwalwal mines.

Thus, on May 30, 1997, petitioner filed a complaint for damages before the Regional Trial Court of Makati City, Branch 61, against the DENR Secretary and PMRB-Davao. SEM alleged that the illegal issuance of the OTPs allowed the extraction and hauling of P60,000.00 worth of gold ore per truckload from SEM's mining claim.

Meanwhile, on June 13, 1997, the RPA resolved the Consolidated Mines cases and decreed in an Omnibus Resolution as follows:

> VIEWED IN THE LIGHT OF THE FOREGOING, the validity of Exploration Permit No. 133 is hereby reiterated and all the adverse claims against MPSAA No. 128 are DISMISSED.[9]

On June 24, 1997, the DENR Secretary issued Memorandum Order No. 97-03[10] which provided, among others, that:

> 1. The DENR shall *study thoroughly and exhaustively the option of direct state utilization of the mineral resources in the Diwalwal Gold-Rush Area*. Such *study shall include*, but shall not be limited to, studying and *weighing the feasibility of entering into management agreements or operating agreements*, or both, with the appropriate government instrumentalities or private entities, or both, in carrying out the declared policy of rationalizing the mining operations in the Diwalwal Gold Rush Area; such *agreements shall include provisions for profit-sharing* between the state and the said parties, *including profit-sharing arrangements with small-scale miners*, as well as the payment of royalties to indigenous cultural communities, among others. The Undersecretary for Field Operations, as well as the Undersecretary for Legal and Legislative Affairs and Attached Agencies, and the Director of the Mines and Geo-sciences Bureau are hereby *ordered to undertake such studies.*
>
> x x x[11]

On July 16, 1997, petitioner filed a special civil action for *certiorari, prohibition* and *mandamus* before the Court of Appeals against PMRB-Davao, the DENR Secretary and Balite Communal Portal Mining Cooperative (BCPMC), which represented all the OTP grantees. It prayed for the nullification of the above-quoted Memorandum Order No. 97-03 on the ground that the "direct state utilization" espoused therein would effectively impair its vested rights under EP No. 133; that the DENR Secretary unduly usurped and interfered with the jurisdiction of the RPA which had dismissed all adverse claims against SEM in the Consolidated Mines cases; and that the memorandum order arbitrarily imposed the unwarranted condition that certain studies be conducted before mining and environmental laws are enforced by the DENR.

Meanwhile, on January 6, 1998, the MAB rendered a decision in the Consolidated Mines cases, setting aside the judgment of the RPA.[12] This MAB decision was then elevated to this Court by way of a consolidated petition, docketed as G.R. Nos. 132475 and 132528.

On March 19, 1998, the Court of Appeals, through a division of five members voting 3-2,[13] dismissed the petition in CA-G.R. SP No. 44693. It ruled that the DENR Secretary did not abuse his discretion in issuing Memorandum Order No. 97-03 since the same was merely a directive to conduct studies on the various options available to the government for solving the Diwalwal conflict. The assailed memorandum did not conclusively adopt "direct state utilization" as official government policy on the matter, but was simply a manifestation of the DENR's

intent to consider it as one of its options, after determining its feasibility through studies. MO 97-03 was only the initial step in the ladder of administrative process and did not, as yet, fix any obligation, legal relationship or right. It was thus premature for petitioner to claim that its "constitutionally-protected rights" under EP No. 133 have been encroached upon, much less, violated by its issuance.

Additionally, the appellate court pointed out that petitioner's rights under EP No. 133 are not inviolable, sacrosanct or immutable. Being in the nature of a privilege granted by the State, the permit can be revoked, amended or modified by the Chief Executive when the national interest so requires. The Court of Appeals, however, declined to rule on the validity of the OTPs, reasoning that said issue was within the exclusive jurisdiction of the RPA.

Petitioner filed a motion for reconsideration of the above decision, which was denied for lack of merit on August 19, 1998.[14]

Hence this petition, raising the following errors:

> I. THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR, AND HAS DECIDED A QUESTION OF SUBSTANCE NOT THERETOFORE DETERMINED BY THIS HONORABLE SUPREME COURT, OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT IN UPHOLDING THE QUESTIONED ACTS OF RESPONDENT DENR SECRETARY WHICH ARE IN VIOLATION OF MINING LAWS AND IN DEROGATION OF PETITIONER'S VESTED RIGHTS OVER THE AREA COVERED BY ITS EP NO. 133;
>
> II. THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN HOLDING THAT AN ACTION ON THE VALIDITY OF ORE TRANSPORT PERMIT (OTP) IS VESTED IN THE REGIONAL PANEL OF ARBITRATORS.[15]

In a resolution dated September 11, 2000, the appealed Consolidated Mines cases, docketed as G.R. Nos. 132475 and 132528, were referred to the Court of Appeals for proper disposition pursuant to Rule 43 of the 1997 Rules of Civil Procedure.[16] These cases, which were docketed as CA-G.R. SP Nos. 61215 and 61216, are still pending before the Court of Appeals.

In the first assigned error, petitioner insists that the Court of Appeals erred when it concluded that the assailed memorandum order did not adopt the "direct state utilization scheme" in resolving the Diwalwal dispute. On the contrary, petitioner submits, said memorandum order *dictated* the said recourse and, in effect, granted management or operating agreements as well as provided for profit sharing arrangements to illegal small-scale miners.

According to petitioner, MO 97-03 was issued to preempt the resolution of the Consolidated Mines cases. The "direct state utilization scheme" espoused in the challenged memorandum is nothing but a legal shortcut, designed to divest petitioner of its vested right to the gold rush area under its EP No. 133.

We are not persuaded.

We agree with the Court of Appeals' ruling that the challenged MO 97-03 did not conclusively adopt "direct state utilization" as a policy in resolving the Diwalwal dispute. The terms of the memorandum clearly indicate that what was directed thereunder was merely a *study* of this option and nothing else. Contrary to petitioner's contention, it did not grant any management/operating or profit-sharing agreement to small-scale miners or to any party, for that matter, but simply instructed the DENR officials concerned to undertake studies to determine its feasibility. As the Court of Appeals extensively discussed in its decision:

> x x x under the Memorandum Order, the State still had to study prudently and exhaustively the various options available to it in rationalizing the explosive and ever perilous situation in the area, the debilitating adverse effects of mining in the community and at the same time, preserve and enhance the safety of the mining operations and ensure revenues due to the government from the development of the mineral resources and the exploitation thereof. The government was still in earnest search of better options that would be fair and just to all parties concerned, including, notably, the Petitioner. The direct state utilization of the mineral resources in the area was only one of the options of the State. Indeed, it is too plain to see, x x x that before the State will settle on an option, x x x an extensive and intensive study of all the facets of a direct state exploitation was directed by the Public Respondent DENR Secretary. And even if direct state exploitation was opted by the government, the DENR still had to promulgate rules and regulations to implement the same x x x, in coordination with the other concerned agencies of the government. [17]

Consequently, the petition was premature. The said memorandum order did not impose any obligation on the claimants or fix any legal relation whatsoever between and among the parties to the dispute. At this stage, petitioner can show no more than a mere apprehension that the State, through the DENR, would directly take over the mines after studies point to its viability. But until the DENR actually does so and petitioner's fears turn into reality, no valid objection can be entertained against MO 97-03 on grounds which are purely speculative and anticipatory.[18]

With respect to the alleged "vested rights" claimed by petitioner, it is well to note that the same is invariably based on EP No. 133, whose validity is still being disputed in the Consolidated Mines cases. A reading of the appealed MAB decision reveals that the continued efficacy of EP No. 133 is one of the issues raised in said cases, with respondents therein asserting that Marcopper cannot legally assign the permit which purportedly had expired. In other words, whether or not petitioner actually has a vested right over Diwalwal under EP No. 133 is still an indefinite and unsettled matter. And until a positive pronouncement is made by the appellate court in the Consolidated Mines cases, EP No. 133 cannot be deemed as a source of any conclusive rights that can be impaired by the issuance of MO 97-03.

Similarly, there is no merit in petitioner's assertion that MO 97-03 sanctions violation of mining laws by allowing *illegal miners* to enter into mining agreements with the State. Again, whether or not respondent BCMC and the other mining entities it represents are conducting illegal mining activities is a factual matter that has yet to be finally determined in the Consolidated Mines cases. We cannot