

SECOND DIVISION

[G.R. No. 115104, October 12, 1998]

**MACAWIWILI GOLD MINING AND DEVELOPMENT CO., INC. AND
OMICO MINING AND INDUSTRIAL CORPORATION,
PETITIONERS, VS. COURT OF APPEALS AND PHILEX MINING
CORPORATION, RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a petition for certiorari to set aside the resolution, dated April 12, 1994, of the Tenth Division of the Court of Appeals in CA-G.R. CV No. 42120, denying petitioners' motion to dismiss the appeal of private respondent from a ruling of the trial court.^[1]

The antecedent facts are as follows:

On October 16, 1992, respondent Philex Mining Corporation filed a complaint for expropriation against petitioners Macawiwili Gold Mining and Development Co., Inc. and Omico Mining & Industrial Corporation. The complaint, entitled "Philex Mining Corporation v. Macawiwili Gold Mining and Development Co., Inc., et al.," was filed before the Regional Trial Court of La Trinidad, Benguet, where it was docketed as Civil Case No. 92-CV-0727.

Based on §53 of P.D. No. 463, Philex Mining sought to expropriate 21.9 hectares of petitioners' mining areas where the latter's "Macawiwili claims" are located. Philex Mining likewise moved for the issuance of a writ of preliminary injunction to enjoin petitioners from ejecting it (Philex Mining) from the mining areas sought to be expropriated.

Although a temporary restraining order was initially issued by the Regional Trial Court of La Trinidad, Branch X, on November 11, 1992, it denied respondent's application for a preliminary injunction.

On February 18, 1993, the trial court, acting on the motion of petitioners, dismissed the complaint of Philex Mining. In its resolution, the trial court stated:^[2]

To better appreciate the incident submitted for resolution, a review of the antecedent facts which gave rise to this case is in order.

The decision of the Supreme Court dated October 2, 1991 in *Poe Mining Association vs. Garcia*, 202 SCRA 222 upheld the decision of the then Minister of Natural Resources which was affirmed by the Office of the President. This decision recognized the possessory rights of defendants Macawiwili and Omico over their mining claims located at Tuba and

Itogon, Benguet as against Poe Mining Association and plaintiff herein Philex Mining Corporation as operator. However, on the surface of 21.9 hectares of these mining claims awarded to defendants Macawiwili and Omico, we find improvements of the plaintiff consisting of a network of roads, a motorpool facility, a tailings dam and three bunkhouses. The Department of Environment and Natural Resources - Cordillera Administrative Region (DENR-CAR), in pursuance of the Supreme Court decision is poised to order the removal or demolition of plaintiff's improvements and to hand possession of the area to defendants Macawiwili and Omico. Plaintiff, while admitting the possessory rights of defendant mining companies, stresses that the improvements already existing thereon are vital to the conduct of its mining operations particularly, its Nevada claims. Thus, it came to court seeking the expropriation of this area pursuant to Section 59 of Presidential Decree No. 463.

The conflict between the plaintiff and defendant mining companies spans a period of almost 23 years until finally, it reached the Supreme Court, the final arbiter of all disputes. The Supreme Court has spoken and it has awarded to defendants Macawiwili and Omico the portion sought to be expropriated by the plaintiff.

Can this Court now grant to plaintiff the right to expropriate the very land which has been denied it by the decision of the highest court of the land?

This Court believes not. To do so would not only be presumptuous of this Court but a patent defiance of the decision of the highest tribunal.

The plaintiff states that the expropriation is necessary in order for it to continue with the operation of its Nevada claims. The improvements now existing on the land sought to be expropriated consists of a network of roads constructed sometime in 1958, a motorpool facility built in 1963, a tailings dam and three (3) two-storey concrete bunkhouses. It is thus clear that these improvements have been existing for quite sometime now. Aware that these improvements are essential to their mining operations, plaintiff should have initiated expropriation proceedings long before it even started putting up said improvements. Why exercise the right of eminent domain only now that the land has been adjudged in favor of defendant mining companies by no less than the Supreme Court? It seems the plaintiff, mindful of the Supreme Court decision, would now look for avenues of escape to evade the repercussions of such a decision. What it has not achieved through the decision, it tries to gain through the power of eminent domain. Clearly, this is forum-shopping, plain and simple. Stripped of all its legal niceties, this expropriation proceeding is patently a last ditch effort on the part of the plaintiff to overcome the adverse effects of the Supreme Court decision.

Can this Court countenance such a procedure under the guise of the legal process of expropriation?

No. To agree to it would be to encourage forum-shopping which is abhorred as there will no longer be any end to any litigation.

Nevertheless, plaintiff asserts that its right to expropriate is distinct and separate from the rights of Macawiwili and Omico under the Supreme Court decision, anchoring said right on Section 59 of Presidential Decree No. 463 which states:

SEC. 59. Eminent Domain. - When the claim owner or an occupant or owner of private lands refuses to grant to another claim owner or lessee the right to build, construct or install any of the facilities mentioned in the next preceding section, the claim owner or lessee may prosecute an action for eminent domain under the Rules of Court in the Court of First Instance of the province where the mining claims involved are situated. In the determination of the just compensation due the claim owner or owner or occupant of the land, the court shall appoint at least one duly qualified mining engineer or geologist to be recommended by the Director as one of the commissioners.

There are two (2) stages in every action of expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends either with an order of dismissal or an order of condemnation. The second phase of the eminent domain action is concerned with the determination by the court of the "just compensation for the property sought to be taken" (Municipality of Biñan vs. Hon. Jose Mar Garcia, et al., 180 SCRA 576 as quoted in National Power Corporation vs. Jocson, G.R. Nos. 94193-99, February 25, 1992, 206 SCRA 520).

Going to the first stage of the expropriation proceeding in the case at bar, the question is: Is the right to expropriate granted to mining companies under Section 59 of P.D. No. 463 an absolute right?

An examination of Presidential Decree No. 463 would readily show that Section 59 upon which plaintiff asserts its right to expropriate is found under Chapter XI with the heading "Auxiliary Mining Rights". From the title alone, it would seem that the right to expropriate is not an absolute one but a mere auxiliary right. The right of eminent domain granted to mining companies is given in aid of its mining operations and not as a matter of right. Thus, it should be construed strictly against the mining company seeking the right. Thus, taking into context the antecedent facts arising from this case, is it proper for plaintiff to exercise the power of eminent domain?

Absolutely not. But, granting *arguendo* that the right of expropriation can be awarded to plaintiff, a bigger question arises on whether a mining company can expropriate land belonging to another mining company. It would be absurd if not ridiculous. In the first place, the land would no longer be subject to expropriation. Expropriation demands that the land be private land. When the Supreme Court awarded the possessory rights over the land subject of this case to defendants Macawiwili and Omico, it has stripped said land of its private character and gave it its public character, that is, to be utilized for mining operations. Although property

already devoted to public use is still subject to expropriation, this must be done directly by the national legislature or under a specific grant of authority to the delegate (Constitutional Law by Isagani Cruz, 1989 edition, page 64). Section 59 of Presidential Decree No. 463 is not a specific grant of authority given to plaintiff but a mere general authority which will not suffice to allow plaintiff to exercise the power of eminent domain.

The plaintiff also states that it does not question the mining rights of defendant mining companies over the area as it is only interested in the surface rights as this is where its improvements are located. But this is an illusory dream which cannot be given reality by this Court. It is a well-known principle that the owner of a piece of land has rights not only to its surface but also to everything underneath and the airspace above it to a reasonable height (Art. 437, Civil Code of the Philippines). The surface area cannot be segregated from the subjacent minerals. There is no dividing line between the surface and what is underneath that one can categorically state that one belongs to the plaintiff while the other forms part of the property of the defendant mining companies. For that is in effect what the plaintiff wants, just the surface area where its improvements are. It would be like dismembering a human body of a lady and awarding the upper part including her bosom to someone while giving the lower part to another, making it a useless proposition to either one. For how can defendant mining companies operate their mining claims when the surface belongs to somebody else and for that matter, how will the plaintiff improve the surface area without affecting what is underneath?

As the Supreme Court stated in the case of Republic vs. Court of Appeals, No. L-43938, April 15, 1988, 160 SCRA 228: "Under the (no- conflict) theory of the respondent court, the surface owner will be planting on the land while the mining locator will be boring tunnels underneath. The farmer cannot dig a well because he may interfere with the mining operations below and the miner cannot blast a tunnel lest he destroys the crops above. How deep can the farmer, and how high can the miner, go without encroaching on each other's right? Where is the dividing line between the surface and sub-surface rights? The Court feels that the rights over the land are indivisible and that the land itself cannot be half agricultural and half mineral. The classification must be categorical; the land must be either completely mineral or completely agricultural."

All told, it is clear that plaintiff has not shown that it has the right to expropriate the land subject of this case. Moreover, that land has been placed out of its reach by the Supreme Court decision when it awarded it to defendants Macawiwili and Omico. Both plaintiff and defendants are engaged in mining, and the Supreme Court has adjudged defendant mining companies to be the owner of the land. This Court now, on the ground of the exercise of the power of eminent domain, cannot and will not overwhelm said decision by awarding it to plaintiff.

As the other motions have become moot and academic, this Court will no longer delve into them. However, as to the motion for reduction of

deposit, the Court will make its last point. In the case of National Power Corporation vs. Jocson, supra, the Supreme Court made this pronouncement: "Presidential Decree No. 42 requires the petitioner, to deposit with the Philippine National Bank in its main office or any of its branches or agencies, 'an amount equivalent to the assessed value of the property for purposes of taxation'. This assessed value is that indicated in the tax declaration. P.D. No. 42 repealed the provisions of Rule 67 of the Rules of Court and any other existing law contrary to or inconsistent with it. Accordingly, it repealed Section 2 of Rule 67 insofar as the determination of the provisional value, the form of payment and the agency with which the deposit shall be made, are concerned. P.D. No. 42, however effectively removes the discretion of the court in determining the provisional value. What is to be deposited is an amount equivalent to the assessed value for taxation purposes. No hearing is required for that purpose. All that is needed is notice to the owner of the property sought to be condemned".

Thus, the plaintiff is right in depositing the assessed value of the property as appearing on the tax declaration of defendant Macawiwili as the provisional value of the land sought to be expropriated. While this case remains pending, the plaintiff may then withdraw the balance of the Two Million Pesos (P2,000,000.00) from the Philippine National Bank after deducting the provisional value of the land amounting to Forty Eight Thousand Six Hundred Pesos (P48,600.00).

WHEREFORE, premises considered, the Motion to Dismiss filed by defendants Macawiwili Gold Mining and Development Mining Co., Inc. and Omico Mining and Industrial Corporation is granted. This case is hereby DISMISSED without pronouncement as to costs.

SO ORDERED.

Philex Mining moved for a reconsideration, but its motion was denied. It then appealed to the Court of Appeals.

On February 16, 1994, petitioners filed a Motion to Dismiss Appeal on the ground that only questions of law were involved and, therefore, the appeal should be to the Supreme Court. However, the appellate court denied petitioners' motion in a resolution, dated April 12, 1994. Without filing a motion for reconsideration, petitioners filed the instant petition for certiorari.

Respondent Philex Mining seeks the dismissal of the petition on the ground that petitioner should have filed a motion for reconsideration giving the appellate court an opportunity to correct itself.

Rule 65, §1 of the 1964 Rules of Court in part provides:

Section 1. *Petition for certiorari.* - When any tribunal, board or officer exercising judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor