

TWENTY-FIRST DIVISION

[CA-G.R. SP NO. 05609-MIN, March 27, 2014]

PHILNICO INDUSTRIAL CORPORATION AND PACIFIC NICKEL PHILIPPINES, INC., PETITIONERS, VS. HON. ERNESTO T. MATUGAS, MAYOR OF THE CITY OF SURIGAO, RESPONDENT.

D E C I S I O N

FRANCISCO, J.:

This is a Petition for Certiorari and Prohibition^[1] assailing the Advisory^[2] dated 1 July 2013, issued by the respondent, Hon. Mayor Ernesto T. Matugas of Surigao City, with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) to enjoin the respondent, and all other persons acting in his behalf, from taking over possession, custody and assuming control over the 106-hectare parcel of land covered by Special Patent No. 3745 subject of this instant petition.

Factual Antecedents

The present petition involves a parcel of land located in Nonoc Island, Surigao City with an area of approximately 106 hectares. This 106-hectare parcel of land was formerly covered under the Surigao Mineral Reservation.

The Petition alleges that the petitioners and their related companies (the "Philnico Group"), as a group of companies, are engaged in the business of mining and mineral processing.^[3] According to the petitioners, the Philnico Group is the owner and possessor, and maintains certain facilities inside the nickel refinery complex found in the subject 106-hectare parcel of land.^[4] On the other hand, petitioner Pacific Nickel Philippines, Inc. (PNPI) is the holder of Mineral Production Sharing Agreement ("MPSA") No. 072-97-XIII covering about 23,771 hectares of mining contract area located in Nonoc Island and nearby areas.^[5]

On 1 May 1999, a Memorandum of Agreement^[6] (hereafter referred to as "MOA") was entered into by and between the City of Surigao, represented by its then Mayor, Rolando A. Sering, and herein petitioner, Philnico Industrial Corporation (Philnico), geared towards the creation and establishment of an Ecozone within the subject 106-hectare property. Through the MOA, Philnico and the City of Surigao made the following declarations:

WHEREAS, Philnico and the City of Surigao are both interested in establishing, developing and operating a Special Economic Zone, however, in view of the keen interest of foreign locators on the existing facilities and infrastructure within the Nonoc Nickel Refinery, Philnico assumes the responsibility in establishing, developing and operating a Special Economic Zone in initially a 106-hectare portion of Nonoc Island,

Surigao City originally covered by a Mineral Production Sharing Agreement (MPSA) between the Republic of the Philippines and Philnico;

WHEREAS, the Parties realize that as a prerequisite to the successful establishment and operation of the Ecozone in the Property wherein foreign locators may locate or relocate, there is a need to reclassify the Property from mineral land into private land which can be accomplished by the reclassification of the Property by act of the President of the Republic of the Philippines and the subsequent acquisition of the Property, by sale or donation or otherwise, by a Filipino Public Corporation, such as, the City of Surigao;

WHEREAS, the City of Surigao realizes that the Ecozone will bring needed development and other economic opportunities to the city and nearby municipalities, and create job and other economic opportunities for the residents of the city and of the nearby municipalities;

WHEREAS, in view of the foregoing, the City of Surigao has manifested its support for the aforestated plan of Philnico of establishing, developing and operating an Ecozone in the Property and has, therefore, offered its assistance and cooperation towards the successful completion of the same;

WHEREAS, the City of Surigao is interested in acquiring the Property from the Philippine National Government (hereinafter named the "National Government") for eventual lease to Philnico for the purpose of establishing the Ecozone therein;

WHEREAS, in the spirit of cooperation that has existed between Philnico and the City and residents of Surigao for several decades now, Philnico has offered, subject to a definitive repayment scheme and the lease of the Property to Philnico, to advance the necessary funding for the reclassification of the Property and the subsequent acquisition thereof by the City of Surigao;^[7]

On 26 August 1999, then President of the Republic of the Philippines, Joseph E. Estrada, issued Proclamation No. 172^[8] excluding the subject 106-hectare land from the operation of the Surigao Mineral Reservation, declaring it open for disposition, and donating the said property to the City of Surigao for the purpose of establishing a special economic zone.

Thereafter, on 21 September 1999, pursuant to the terms of the MOA, Philnico and the City of Surigao, represented by Mayor Roland A. Sering, entered into a Lease Contract^[9] for the lease of the 106-hectare parcel of land in favor of Philnico for a period of not less than twenty-five (25) years but not more than fifty (5) years, renewable for another twenty-five (25) years at the option of Philnico. The effectivity of the Lease Contract was conditioned on the occurrence of certain events including the acquisition of the subject property by the City of Surigao and the proclamation of the same as an Ecozone.^[10]

On 6 October 1999, President Joseph E. Estrada issued Presidential Proclamation No. 192^[11] which created and designated the 106-hectare land as a special economic zone.

Subsequently, through a Deed of Donation^[12] dated 10 December 1999, the Republic of the Philippines, represented by then Executive Secretary Ronaldo B. Zamora, ceded, transferred, and conveyed the subject 106-hectare parcel of land in favor of the City of Surigao, represented by then Mayor Alfonso S. Casurra.

By virtue of the issuance of Presidential Proclamation No. 192 and the execution of the Deed of Donation on 10 December 1999, the Lease Contract entered into between the City of Surigao and Philnico thus took effect.

Several years later, on 23 June 2009, then President of the Republic of the Philippines Gloria Macapagal-Arroyo issued Special Patent No. 3745^[13] which granted and conveyed the subject 106-hectare tract of land including the appurtenances thereto, in favor of the City of Surigao.

Then, on 20 May 2011, herein respondent, Hon. Mayor Ernesto T. Matugas, wrote a Letter^[14] addressed to petitioner Philnico informing the latter of the City Government's decision to set aside the 21 September 1999 Lease Contract on the ground that it is not in accord with law and that some provisions therein appear to be disadvantageous to the interest of the city government.

On 30 May 2011, the respondent wrote another Letter^[15] addressed to petitioner Philnico declaring that the City Government of Surigao will fully assume the supervision and control over the 106-hectare lot in Nonoc Island and take physical custody of the structures and facilities therein.

In another Letter,^[16] dated 25 June 2012, the respondent declared that due to petitioner Philnico's refusal to vacate and surrender possession of the subject property, the City Government of Surigao was left with no other recourse than to assume possession and physical take over of the 106-hectares Special Economic Zone in Nonoc Island.

In response to the 25 June 2012 Letter, petitioner Philnico wrote a Letter,^[17] dated 13 July 2012, to the Office of the respondent Mayor raising its objection to respondent's position as well as the City Government's move to take over the 106-hectare Special Economic Zone.

Thereafter, the respondent sent a Letter,^[18] dated 7 February 2013, addressed to Atty. Michael G. Aguinaldo, the Deputy Executive Secretary for Legal Affairs of the Office of the President, requesting for clarification as to the word "appurtenances" as contained in the provisions of Special Patent No. 3745. In a Letter,^[19] dated 25 March 2013, Atty. Michael G. Aguinaldo clarified that the term "appurtenances" as used in Special Patent No. 3745 includes tangible things like improvements made on the property as well as intangible things like rights of way and similar easements.^[20] In the same letter, Atty. Aguinaldo stressed that the special patent made the transfer of the subject property and all its appurtenances subject to any existing private rights.^[21] Atty. Aguinaldo then advised the City Government of Surigao to verify if any such improvements on the subject property are covered by private rights before utilizing such improvements.^[22]

On 1 July 2013, the respondent issued the challenged Advisory^[23] which states as follows:

Please be informed that by virtue of a Special Patent granted unto the City Government of Surigao pursuant to a Presidential Proclamation which legally vests ownership therewith and concomitant to the local police power, the City Government has therefore the full authority to exercise its powers necessary and appropriate for the efficient and effective governance essential to the promotion of general welfare of its constituents in relation to the optimal utilization of the 106.746 hectares (sic) lot.

All concerned are hereby advised that the premises within the 106.746 hectares (sic) lot will be secured by the City Government as security forces will be deployed over the area to assure that all undertakings thereon including physical custody of the structures and facilities will not be hampered or jeopardized.^[24]

Thus, on 4 July 2013, the petitioners filed the instant Petition for Certiorari and Prohibition with application for the issuance of a TRO and/or WPI.

On 7 October 2013, the petitioners filed a Manifestation and Urgent Motion^[25] (to resolve petitioners' application for temporary restraining order and/or writ of preliminary injunction). In the said Motion, the petitioners alleged, among others, that on 2 October 2013, they were furnished a "Notice to Vacate"^[26] dated 25 September 2013 signed by the City Legal Officer and Concurrent City Administrator of Surigao City.

In a Resolution^[27] dated 30 October 2013, this Court directed the parties to submit their respective memoranda in amplification of their positions within fifteen (15) days from receipt of notice. In the same Resolution, this Court granted the petitioners' application for the issuance of a TRO.

Accordingly, this Court issued a Temporary Restraining Order, effective for sixty (60) days unless sooner revoked, enjoining the respondent Mayor, and all other persons acting in his behalf, from taking over possession, custody and assuming control over the subject 106-hectare parcel of land including the improvements thereon. This Court then set the petitioners' application for a Writ of Preliminary Injunction for hearing on 4 December 2013.

The hearing on the Petition for the issuance of a Writ of Preliminary Injunction was conducted on 4 December 2013, after which this Court issued an Order,^[28] dated 9 December 2013, stating as follows:

In today's proceedings, the parties have exhaustively discussed the merits of their own claims and defenses. It appears that there is no material factual issue involved and upon motion by the parties, petitioners as well as the respondents are given twenty (20) days from today within which to file their respective memorandum and after the lapse of the period given, the issue on the issuance of Writ of Preliminary Injunction shall be considered submitted for resolution with or without memoranda.

Considering the manifestations of petitioners as well as respondents' counsel, the memorandum shall likewise dwell on the merits of the case

and on their motion, the petition shall be considered submitted for decision.^[29]

The petitioners raise the following as grounds for the allowance of their petition:

I.

UNDER THE EXPANDED EXTRAORDINARY CERTIORARI JURISDICTION OF COURTS, IN ACCORDANCE WITH ARTICLE VIII, SECTION 1 OF THE 1987 PHILIPPINE CONSTITUTION, THIS HONORABLE COURT HAS THE POWER TO DETERMINE IF THERE IS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF RESPONDENT MAYOR OF SURIGAO CITY.

II.

THE WRITS OF CERTIORARI AND PROHIBITION LIE IN THE PRESENT CASE BECAUSE THE CHALLENGED ISSUANCE/ORDER OF RESPONDENT MAYOR AS CONTAINED IN HIS ADVISORY DATED 1 JULY 2013 IS:

(i) TAINTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;

(ii) AN INVALID EXERCISE OF POLICE POWER;

(iii) IN PATENT VIOLATION OF PETITIONERS CONSTITUTIONAL AND OTHER LEGAL RIGHTS;

(iv) ARBITRARY, UNREASONABLE, OPPRESSIVE, AS WELL AS TAINTED BY PASSION AND HOSTILITY OF RESPONDENT TOWARDS HEREIN PETITIONERS;

(v) GRAVELY PREJUDICIAL TO THE ECONOMIC INTEREST OF THE REPUBLIC AND OF THE AFFECTED LOCAL GOVERNMENT UNITS.

III.

THE PRESENT CASE FALLS AMONG THE EXCEPTIONS TO THE RULE ON HIERARCHY OF COURTS DUE TO THE FOREGOING GROUNDS WHICH CONSTITUTE SPECIAL AND COMPELLING REASONS.

IV.

DUE TO THE GRAVE URGENCY OF THE NEED TO IMMEDIATELY PREVENT RESPONDENT FROM CARRYING OUT AND IMPLEMENTING HIS CHALLENGED ISSUANCE/ORDER, PETITIONERS ARE ENTITLED TO THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION ENJOINING SUCH ACTS.^[30]

Our Ruling.

We shall first deal with the propriety of this present petition for certiorari and prohibition.