

**VIRGINIA EVANGELISTA, ARSENIA EVANGELISTA, SALUD COSTUNA,
JOSE SERAPIO, ZOSIMO M. SERAPIO, ARTURO M. SERAPIO, SALUD M.
SERAPIO, FELIXBERTO M. SERAPIO AND APOLONIO SERAPIO,
PETIT...**

G.R. No. L-41229. January 13, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Private respondent Luzon Aggregates, Inc., a corporation engaged in the quarrying of construction aggregates, is the lessee of 186.5703 hectares of placer mineral lands in Barrio Matictic, Poblacion Lanag and Cananan, Norzagaray, Bulacan of which eighteen (18) hectares are privately owned by the petitioners.[1]

It appears from the records that at the instance of the private respondent and upon compliance with the procedure stated in Section 87 of the Mining Law (Commonwealth Act No. 137),[2] the Court of First Instance of Bulacan, Branch V (Sta. Maria) issued on February 21, 1974, a writ of preliminary and mandatory injunction against the petitioners which states:[3]

“IN VIEW WHEREOF, let a Writ of Preliminary and Mandatory injunction issue under Section 67 of the Mining Law as amended, allowing the plaintiff, Luzon Aggregates Inc. to enter the land of the defendants including the Payumos in Civil Case No. SM-314, except the Geners, and the said defendants and their representatives are hereby prohibited and restrained from preventing or molesting plaintiff from removing stones, boulders, basalt, andasite and other minerals from their said properties until further orders from this Court, upon deposit by plaintiff to the Clerk of Court, the amount of sixty thousand (P60,000) cash in favor of the defendants to answer for whatever damages the said defendants may suffer as a result of the mining operation of the plaintiff.”

On March 27, 1974, the trial court acting on the petitioners’ allegations that the private respondent indiscriminately hauled even sand and gravel not covered by the latter’s authority, issued an amended writ of preliminary injunction. Thus:[4]

“It is hereby ordered by the undersigned Judge of the Court of First Instance that, until further orders, you and all your attorneys, representatives, agents and any other person assisting you refrain from preventing or molesting the Luzon Aggregates, Inc. or its agents from removing and hauling stones, boulders, basalt and andasites and other minerals except sand and gravel measuring 2.5 inches in diameter, from the land covered by the Mining Lease Contract No. V-574 of the Luzon Aggregates, Inc. and owned by the Geners in Civil Case No. SM-564, and those controverted six (6) hectares between the Geners and the Serapios in Land Registration Case Nos. (SM) N-255 and (SM) N-257, Provided, However, that all ‘minerals extracted, removed or hauled from properties shall be receipted by plaintiff clearly indicating the quantity thus taken, removed, extracted or hauled.” (Emphasis supplied)

In the course of its operations, the private respondent failed to use gadgets or equipment such as “salandra or bistay” in removing or segregating stones and boulders more than 2 ½ inches in diameter resulting in the

extraction of plain gravel and sand which are not minerals contemplated in the awarded writ. Consequently, the petitioners moved for the forfeiture of the cash bond deposited by the private respondent.

Meanwhile, on May 17, 1974, then President Ferdinand Marcos issued Presidential Decree No. 463 which provided for a modernized system of administration and disposition of mineral lands in order to promote and encourage their development and exploitation.

In its order dated May 22, 1974, the trial court acted favorably on the petitioners' motion and allowed the latter to collect the cash deposit of P60,000 made by the private respondent. Furthermore, the lower court ordered the respondent to make an additional deposit of P60,000 in cash to answer for the balance of damages sustained by the petitioners as well as for future damages they might suffer by virtue of the injunction.[5]

On July 9, 1974, the petitioners sought the dissolution of the injunction for failure of the respondent to comply with the lower court's order of May 22, 1974. The respondent countered with an opposition stating that there was no need to file a cash deposit since this requirement under Section 67 of the Mining Law has been eliminated under Section 12 of PD No. 463.[6]

On January 6, 1975, the lower court brushed aside the private respondent's argument and reiterated its previous order dated May 22, 1974 requiring the posting of another P60,000 in cash deposit, otherwise the amended writ of preliminary injunction earlier granted would be lifted.[7]

Almost three months after or on April 1, 1975, the Bulacan trial court, in view of the continuous violation by the private respondent of the terms of the amended writ of preliminary injunction and after an ocular inspection conducted in the mining premises, ordered the private respondent to pay petitioners "Salud Costuna, et al. the additional amount of P55,090 and xxx Zosimo Serapio the additional amount of P67,900 as damages occasioned by the plaintiff's hauling of gravel and sand from their respective properties in violation of the injunction." [8]

After its motion for reconsideration was denied, the private respondent elevated to the Court of Appeals for review the trial court's order of January 6, 1975 ordering it to post an additional cash bond of P60,000 under pain of dissolution of the injunction. The appellate court, in granting the petition for certiorari, stated that the filing of a surety bond satisfies Section 12 of PD No. 463 because there was no need for immediate compensability as reflected by the lower court's use of the phrase, "for future damages," and added that in a certiorari proceeding, the court could not determine the value of the sand and gravel hauled. The appellate court opined, "that the preference for a bond is discernible from the difficulty of raising a big amount in cash." [9]

The issue in this case is whether the appellate court abused its discretion when it reversed the trial court's order requiring the posting of a cash bond in lieu of a surety bond. It is the argument of the private respondent that under Section 12 of PD No. 463, the posting of a cash deposit is no longer needed to answer for damages, and that the posting of a surety bond is sufficient.

We reverse the decision of the Court of Appeals and affirm the decision of the trial court. It was within the lower court's power to order the posting of an additional cash bond in view of the private respondent's continued violation of the amended writ of preliminary injunction. Moreover, it must be stressed that the discretion whether to require a cash or surety bond, as well as to ascertain its sufficiency, is a matter addressed to the sound discretion of the lower court.[10]

It must be noted that after the petitioners' withdrawal of the amount of P60,000 was allowed by the lower court in its order dated May 22, 1974, there still remained an unpaid balance of P34,430.[11] Likewise, notwithstanding the May 22, 1974 order, the private respondent, in defiance of the injunction, continued hauling sand and gravel from the subject mineral lands. Thus, the lower court in its order dated April 1, 1975 determined that as of July

18, 1974, the private respondent had already removed sand and gravel worth P122,990[12] and consequently directed the quarrying firm to indemnify Salud Costuna and Zosimo Serapio for the damages caused to them.

Just because the lower court used the phrase “for future damages” in its order dated May 22, 1974 is no reason for the appellate court to conclude that since there was no need for immediate compensability, the filing of a surety bond would satisfy the requirement under Section 12 of PD No. 463. This is because as of May 22, 1974 there was still an unpaid balance of P34,430 after the partial withdrawal of P60,000, not to mention the P122,990 worth of sand and gravel the private respondent had extracted since July 18, 1974 from the petitioners’ premises. In view of the substantial outstanding balance still unpaid by the private respondent, it was only proper for the lower court to require the filing of an increased cash bond to impress upon it the need to strictly follow the terms of the writ of preliminary injunction which prohibits the extraction of the aforesaid materials. Indeed the additional cash bond of P60,000 was not even half of the outstanding amount of sand and gravel the respondent had taken from the petitioners’ property. With a paid-up capital of P2,250,000, which in 1974 was already a substantial equity, the corporation's liquidity and its financial capacity to procure and source a cash bond should not be a problem.

Moreover, under the circumstance, a cash bond is more appropriate. It assures immediate compensation of the damages already sustained while in the case of a surety bond, the trial court has still to inquire into the sufficiency of the bond from the issuing bonding company, thus delaying payment to the prejudiced parties. To sustain the pretensions of private respondent would be to allow the company to have an undue advantage over the petitioners and thereby profit from its errant conduct.

It must be observed that the private respondent never objected to the cash bond imposed by the trial court prior to its entry into and quarrying operations in the mineral lands of petitioners. In fact, it readily complied with the order. But after benefiting from its indiscriminate hauling of sand and gravel to the detriment of the petitioners and in blatant violation of the terms of the writ it had earlier sought, the private respondent is less than sincere in its objection to the order for additional cash deposit to compensate the petitioners for the damages caused.

The Court of Appeals in relying on our decision in *Commissioner of Customs v. Alikpala*[13] chose a rather restrictive definition of a bond to the effect that when required by law, a bond can only mean “an undertaking that is sufficiently secured and not cash or currency.” But as enunciated in the recent case of *Yang v. Valdez*,[14] a bond can either be secured by cash or by personal or real property or surety. Stripped to its bare meaning, a bond is a written obligation or undertaking that is sufficiently secured.

The *Alikpala* case must be scrutinized closely. Under consideration was Section 2301 of the Tariff and Customs Code which stated that “upon making any seizure (of prohibited goods on no-dollar imports) the Collector of Customs shall issue a warrant of detention, but if the owner or importer desires to secure the release of the property, the Collector may surrender it upon the filing of a sufficient bond.” The central issue was not so much the meaning of a bond but rather whether the lower court gravely abused its discretion in restraining the Commissioner and Collector of Customs, from proceeding with the seizure and sale at public auction of the imported goods upon filing of sufficient bond. We upheld the lower court and dismissed the petition for certiorari filed by the Commissioner of Customs, ruling that the lower court was within its discretion in requiring the filing of a surety bond instead of a cash bond as subsequently ordered by the Collector of Customs because: 1) the latter did not even bother to inquire as to the sufficiency of the bonds nor investigated the solvency of the bonding company; 2) to require the owners to put up a cash bond in the amount of P513,865 was prohibitive and unrealistic and 3) the filing of a surety bond was already an established practice at the Bureau of Customs.

Verily, in *Alikpala*, the lower court should have required the filing of a cash bond instead, if the circumstances so warranted. But for the reasons aforementioned, it chose to require a surety bond, a course of action subsequently

upheld by the Court of Appeals on the principal ground that Section 2301 of the Tariff Code was liberal enough to permit the filing of a surety bond as reflected in the use of the words “sufficient bond.” Thus, in the instant case, the appellate court misconstrued the meaning of a bond. Oblivious to the nuances of the Alikpala case, it readily applied its restrictive concept of a bond.

Needless to say, contrary to the private respondent's argument that PD 463 disallows the filing of a cash bond, we hold that it is entirely upon the discretion of the lower court to require the filing of either a cash bond or a surety bond so long as the owner or possessor of the land is protected as to compensation for damage and rental. Both C.A. 137 and P.D. 463 are not wanting in these twin safeguards. The difference in phraseology is not substantive. While Section 67 of C.A. 137 states that in case of refusal of the owner to grant written authority, the same shall be granted by the court as soon as the applicant deposits the amount fixed as value of the land and as compensation for any resulting damage, or files a bond to be approved by the court sufficient to insure the payment of rental of the land, Section 12 of P.D. No. 463 also provides that pending the determination of the amount of compensation and/or rental due the owner or possessor, the court, upon recommendation of the Director (of Mines), shall permit the interested person to enter, prospect and/or undertake other mining operations on the disputed land upon the posting of a bond which the court shall consider adequate to answer for any damage caused to the owner or possessor of the land resulting by reason of such entry, prospecting, and any other mining operation.

WHEREFORE, the petition is granted and the decision of the Court of Appeals dated July 18, 1975 is hereby REVERSED and SET ASIDE. Private respondent Luzon Aggregates, Inc. is ordered to file the required cash bond equal to the balance of P34,430 plus P122,990 or the total of P157,420.00. Costs against the private respondent. This decision is immediately executory.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Rollo, p. 117.

[2] xxx In the case of an application to lease a mining claim located on private lands, the same shall be accompanied by a written authority of the owner of the land: Provided, however, That in case of refusal of the owner of the land to grant such written authority, the same shall be granted by the Court as soon as the applicant deposits the amount fixed as value of the land and as compensation for any resulting damage or files a bond to be approved by the court sufficient to insure the payment of the rental of the land as determined in accordance with section twenty-seven of this Act. xxx (Emphasis Supplied)

[3] Civil Case No. SM-564; Rollo p. 9.

[4] Ibid.

[5] Rollo, p. 34.

[6] "Sec. 12. Entry into Public and Private Lands. - xxx In the case of private lands, the written permission of the owner or possessor of the land must be obtained before entering such lands. In either case, if said permission is denied, the Director, at the request of the interested person may intercede with the owner or possessor of the land. If the intercession fails, the person may bring suit in the Court of First Instance of the province where the land is situated. If the court finds the request justified, it shall issue an order granting the permission after fixing the amount of compensation and/or rental due the owner or possessor: provided, that pending final recommendation

to the Director permit the interested person to enter, prospect and/or undertake other mining operations on the disputed land upon posting by such interested person of a bond with the court which the latter shall consider adequate to answer for any damage to the owner or possessor of the land resulting from such entry, prospecting or any other mining operations." (Emphasis supplied)

[7] Rollo, p. 17.

[8] Rollo, p. 40.

[9] Penned by Justice Crisolito Pascual and concurred in by Magno S. Gatmaitan and Francisco M. Chanco, JJ.

[10] Yang v. Valdez, G.R. No. 73317, August 31, 1989, 177 SCRA 141.

[11] 1,163 truckloads of sand and gravel valued at P40,705 from the property of Salud Costuna and 1,535 truckloads of the same materials valued at P53,725 hauled from the property of Zosimo Serapio for a total amount of P94,430 less the P60,000 previously deposited by private respondent and subsequently withdrawn by Salud Costuna and Zosimo Serapio. See Rollo, p. 34.

[12] 1,574 truckloads of sand and gravel from the property of Salud Costuna valued at P55,090 and 1,940 truckloads of sand and gravel valued at P67,900 for a total of P122,990. See Rollo, p. 39.

[13] No. L-32542, November 26, 1970, 36 SCRA 208.

[14] Supra, expounding on the meaning of a bond, the Court held in the case of Yang v. Valdez that, "it is not indispensably necessary, however, that the obligation of the bond be secured or supported by cash or personal property or real property or the obligation of a surety other than the person giving the bond."

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