APEX MINING CO., INC., PETITIONER, VS. SOUTHEAST MINDANAO GOLD MINING CORP., THE MINES ADJUDICATION BOARD, PROVINCIAL MINING REGULATORY BOARD (PMRB-DAVAO), MONKAYO INTEGRATED SM...

G.R. NO. 152613 & 152628. June 23, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

On 27 February 1931, Governor General Dwight F. Davis issued Proclamation No. 369, establishing the Agusan-Davao-Surigao Forest Reserve consisting of approximately 1,927,400 hectares.[1]

The disputed area, a rich tract of mineral land, is inside the forest reserve located at Monkayo, Davao del Norte, and Cateel, Davao Oriental, consisting of 4,941.6759 hectares.[2] This mineral land is encompassed by Mt. Diwata, which is situated in the municipalities of Monkayo and Cateel. It later became known as the "Diwalwal Gold Rush Area." It has since the early 1980's been stormed by conflicts brought about by the numerous mining claimants scrambling for gold that lies beneath its bosom.

On 21 November 1983, Camilo Banad and his group, who claimed to have first discovered traces of gold in Mount Diwata, filed a Declaration of Location (DOL) for six mining claims in the area.

Camilo Banad and some other natives pooled their skills and resources and organized the Balite Communal Portal Mining Cooperative (Balite).[3]

On 12 December 1983, Apex Mining Corporation (Apex) entered into operating agreements with Banad and his group.

From November 1983 to February 1984, several individual applications for mining locations over mineral land covering certain parts of the Diwalwal gold rush area were filed with the Bureau of Mines and Geo-Sciences (BMG).

On 2 February 1984, Marcopper Mining Corporation (MMC) filed 16 DOLs or mining claims for areas adjacent to the area covered by the DOL of Banad and his group. After realizing that the area encompassed by its mining claims is a forest reserve within the coverage of Proclamation No. 369 issued by Governor General Davis, MMC abandoned the same and instead applied for a prospecting permit with the Bureau of Forest Development (BFD).

On 1 July 1985, BFD issued a Prospecting Permit to MMC covering an area of 4,941.6759 hectares traversing the municipalities of Monkayo and Cateel, an area within the forest reserve under Proclamation No. 369. The permit embraced the areas claimed by Apex and the other individual mining claimants.

On 11 November 1985, MMC filed Exploration Permit Application No. 84-40 with the BMG. On 10 March 1986, the BMG issued to MCC Exploration Permit No. 133 (EP 133).

Discovering the existence of several mining claims and the proliferation of small-scale miners in the area covered by EP 133, MMC thus filed on 11 April 1986 before the BMG a Petition for the Cancellation of the Mining Claims of Apex and Small Scale Mining Permit Nos. (x-1)-04 and (x-1)-05 which was docketed as MAC No. 1061. MMC alleged that the areas covered by its EP 133 and the mining claims of Apex were within an established and existing forest reservation (Agusan-Davao-Surigao Forest Reserve) under Proclamation No. 369 and that pursuant to Presidential Decree No. 463,[4] acquisition of mining rights within a forest reserve is through the application for a permit to prospect with the BFD and not through registration of a DOL with the BMG.

On 23 September 1986, Apex filed a motion to dismiss MMC's petition alleging that its mining claims are not within any established or proclaimed forest reserve, and as such, the acquisition of mining rights thereto must be undertaken via registration of DOL with the BMG and not through the filing of application for permit to prospect with the BFD.

On 9 December 1986, BMG dismissed MMC's petition on the ground that the area covered by the Apex mining claims and MMC's permit to explore was not a forest reservation. It further declared null and void MMC's EP 133 and sustained the validity of Apex mining claims over the disputed area.

MMC appealed the adverse order of BMG to the Department of Environment and Natural Resources (DENR).

On 15 April 1987, after due hearing, the DENR reversed the 9 December 1996 order of BMG and declared MMC's EP 133 valid and subsisting.

Apex filed a Motion for Reconsideration with the DENR which was subsequently denied. Apex then filed an appeal before the Office of the President. On 27 July 1989, the Office of the President, through Assistant Executive Secretary for Legal Affairs, Cancio C. Garcia,[5] dismissed Apex's appeal and affirmed the DENR ruling.

Apex filed a Petition for Certiorari before this Court. The Petition was docketed as G.R. No. 92605 entitled, "Apex Mining Co., Inc. v. Garcia."[6] On 16 July 1991, this Court rendered a Decision against Apex holding that the disputed area is a forest reserve; hence, the proper procedure in acquiring mining rights therein is by initially applying for a permit to prospect with the BFD and not through a registration of DOL with the BMG.

On 27 December 1991, then DENR Secretary Fulgencio Factoran, Jr. issued Department Administrative Order No. 66 (DAO No. 66) declaring 729 hectares of the areas covered by the Agusan-Davao-Surigao Forest Reserve as non-forest lands and open to small-scale mining purposes.

As DAO No. 66 declared a portion of the contested area open to small scale miners, several mining entities filed applications for Mineral Production Sharing Agreement (MPSA).

On 25 August 1993, Monkayo Integrated Small Scale Miners Association (MISSMA) filed an MPSA application which was denied by the BMG on the grounds that the area applied for is within the area covered by MMC EP 133 and that the MISSMA was not qualified to apply for an MPSA under DAO No. 82,[7] Series of 1990.

On 5 January 1994, Rosendo Villaflor and his group filed before the BMG a Petition for Cancellation of EP 133 and for the admission of their MPSA Application. The Petition was docketed as RED Mines Case No. 8-8-94. Davao United Miners Cooperative (DUMC) and Balite intervened and likewise sought the cancellation of EP 133.

On 16 February 1994, MMC assigned EP 133 to Southeast Mindanao Gold Mining Corporation (SEM), a domestic corporation which is alleged to be a 100% -owned subsidiary of MMC.

On 14 June 1994, Balite filed with the BMG an MPSA application within the contested area that was later on rejected.

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On 23 June 1994, SEM filed an MPSA application for the entire 4,941.6759 hectares under EP 133, which was also denied by reason of the pendency of RED Mines Case No. 8-8-94. On 1 September 1995, SEM filed another MPSA application.

On 20 October 1995, BMG accepted and registered SEM's MPSA application and the Deed of Assignment over EP 133 executed in its favor by MMC. SEM's application was designated MPSA Application No. 128 (MPSAA 128). After publication of SEM's application, the following filed before the BMG their adverse claims or 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. (MISSMA);

e) MAC Case No. 008(XI) – Paper Industries Corporation of the Philippines;

f) MAC Case No. 009(XI) – Rosendo Villafor, 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;

k) MAC Case No. 97-01(XI) – Romeo Altamera, et al.[8]

To address the matter, the DENR constituted a Panel of Arbitrators (PA) to resolve the following:

(a) The adverse claims on MPSAA No. 128; and

(b) The Petition to Cancel EP 133 filed by Rosendo Villaflor docketed as RED Case No. 8-8-94.[9]

On 13 June 1997, the PA rendered a resolution in RED Mines Case No. 8-8-94. As to the Petition for Cancellation of EP 133 issued to MMC, the PA relied on the ruling in Apex Mining Co., Inc. v. Garcia,[10] and opined that EP 133 was valid and subsisting. It also declared that the BMG Director, under Section 99 of the Consolidated Mines Administrative Order implementing Presidential Decree No. 463, was authorized to issue exploration permits and to renew the same without limit.

With respect to the adverse claims on SEM's MPSAA No. 128, the PA ruled that adverse claimants' petitions were not filed in accordance with the existing rules and regulations governing adverse claims because the adverse claimants failed to submit the sketch plan containing the technical description of their respective claims, which was a mandatory requirement for an adverse claim that would allow the PA to determine if indeed there is an overlapping of the area occupied by them and the area applied for by SEM. It added that the adverse claimants were not claim owners but mere occupants conducting illegal mining activities at the contested area since only MMC or its assignee SEM had valid mining claims over the area as enunciated in Apex Mining Co., Inc. v. Garcia.[11] Also, it maintained that the adverse claimants were not qualified as small-scale miners under DENR Department Administrative Order No. 34 (DAO No. 34),[12] or the Implementing Rules and Regulation of Republic Act No. 7076 (otherwise known as the "People's Small-Scale Mining Act of 1991"), as they were not duly licensed by the DENR to engage in the extraction or removal of minerals from the ground, and that they

were large-scale miners. The decretal portion of the PA resolution pronounces:

> VIEWED IN THE LIGHT OF THE FOREGOING, the validity of Expoloration Permit No. 133 is hereby reiterated and all the adverse claims against MPSAA No. 128 are DISMISSED.[13]

Undaunted by the PA ruling, the adverse claimants appealed to the Mines Adjudication Board (MAB). In a Decision dated 6 January 1998, the MAB considered erroneous the dismissal by the PA of the adverse claims filed against MMC and SEM over a mere technicality of failure to submit a sketch plan. It argued that the rules of procedure are not meant to defeat substantial justice as the former are merely secondary in importance to the latter. Dealing with the question on EP 133's validity, the MAB opined that said issue was not crucial and was irrelevant in adjudicating the appealed case because EP 133 has long expired due to its non-renewal and that the holder of the same, MMC, was no longer a claimant of the Agusan-Davao-Surigao Forest Reserve having relinquished its right to SEM. After it brushed aside the issue of the validity of EP 133 for being irrelevant, the MAB proceeded to treat SEM's MPSA application over the disputed area as an entirely new and distinct application. It approved the MPSA application, excluding the area segregated by DAO No. 66, which declared 729 hectares within the Diwalwal area as non-forest lands open for small-scale mining. The MAB resolved:

> WHEREFORE, PREMISES CONSIDERED, the decision of the Panel of Arbitrators dated 13 June 1997 is hereby VACATED and a new one entered in the records of the case as follows:
>
> - SEM's MPSA application is hereby given due course subject to the full and strict compliance of the provisions of the Mining Act and its Implementing Rules and Regulations;
>
> - The area covered by DAO 66, series of 1991, actually occupied and actively mined by the small-scale miners on or before August 1, 1987 as determined by the Provincial Mining Regulatory Board (PMRB), is hereby excluded from the area applied for by SEM;
>
> - A moratorium on all mining and mining-related activities, is hereby imposed until such time that all necessary procedures, licenses, permits, and other requisites as provided for by RA 7076, the Mining Act and its Implementing Rules and Regulations and all other pertinent laws, rules and regulations are complied with, and the appropriate environmental protection measures and safeguards have been effectively put in place;
>
> - Consistent with the spirit of RA 7076, the Board encourages SEM and all small-scale miners to continue to negotiate in good faith and arrive at an agreement beneficial to all. In the event of SEM's strict and full compliance with all the requirements of the Mining Act and its Implementing Rules and Regulations, and the concurrence of the small-scale miners actually occupying and actively mining the area, SEM may apply for the inclusion of portions of the areas segregated under paragraph 2 hereof, to its MPSA application. In this light, subject to the preceding paragraph, the contract between JB [JB Management Mining Corporation] and SEM is hereby recognized.[14]

Dissatisfied, the Villaflor group and Balite appealed the decision to this Court. SEM, aggrieved by the exclusion of 729 hectares from its MPSA application, likewise appealed. Apex filed a Motion for Leave to Admit Petition for Intervention predicated on its right to stake its claim over the Diwalwal gold rush which was granted by the Court. These cases, however, were remanded to the Court of Appeals for proper disposition pursuant to Rule 43 of the 1997 Rules of Civil Procedure. The Court of Appeals consolidated the remanded cases as CA-G.R. SP No. 61215 and No. 61216.

In the assailed Decision[15] dated 13 March 2002, the Court of Appeals affirmed in toto the decision of the PA and declared null and void the MAB decision.

The Court of Appeals, banking on the premise that the SEM is the agent of MMC by virtue of its assignment of EP 133 in favor of SEM and the purported fact that SEM is a 100% subsidiary of MMC, ruled that the transfer of

EP 133 was valid. It argued that since SEM is an agent of MMC, the assignment of EP 133 did not violate the condition therein prohibiting its transfer except to MMC's duly designated agent. Thus, despite the non-renewal of EP 133 on 6 July 1994, the Court of Appeals deemed it relevant to declare EP 133 as valid since MMC's mining rights were validly transferred to SEM prior to its expiration.

The Court of Appeals also ruled that MMC's right to explore under EP 133 is a property right which the 1987 Constitution protects and which cannot be divested without the holder's consent. It stressed that MMC's failure to proceed with the extraction and utilization of minerals did not diminish its vested right to explore because its failure was not attributable to it.

Reading Proclamation No. 369, Section 11 of Commonwealth Act 137, and Sections 6, 7, and 8 of Presidential Decree No. 463, the Court of Appeals concluded that the issuance of DAO No. 66 was done by the DENR Secretary beyond his power for it is the President who has the sole power to withdraw from the forest reserve established under Proclamation No. 369 as non-forest land for mining purposes. Accordingly, the segregation of 729 hectares of mining areas from the coverage of EP 133 by the MAB was unfounded.

The Court of Appeals also faulted the DENR Secretary in implementing DAO No. 66 when he awarded the 729 hectares segregated from the coverage area of EP 133 to other corporations who were not qualified as small-scale miners under Republic Act No. 7076.

As to the petitions of Villaflor and company, the Court of Appeals argued that their failure to submit the sketch plan to the PA, which is a jurisdictional requirement, was fatal to their appeal. It likewise stated the Villaflor and company's mining claims, which were based on their alleged rights under DAO No. 66, cannot stand as DAO No. 66 was null and void. The dispositive portion of the Decision decreed:

> WHEREFORE, premises considered, the Petition of Southeast Mindanao Gold Mining Corporation is GRANTED while the Petition of Rosendo Villaflor, et al., is DENIED for lack of merit. The Decision of the Panel of Arbitrators dated 13 June 1997 is AFFIRMED in toto and the assailed MAB Decision is hereby SET ASIDE and declared as NULL and VOID.[16]

Hence, the instant Petitions for Review on Certiorari under Rule 45 of the Rules of Court filed by Apex, Balite and MAB.

During the pendency of these Petitions, President Gloria Macapagal-Arroyo issued Proclamation No. 297 dated 25 November 2002. This proclamation excluded an area of 8,100 hectares located in Monkayo, Compostela Valley, and proclaimed the same as mineral reservation and as environmentally critical area. Subsequently, DENR Administrative Order No. 2002-18 was issued declaring an emergency situation in the Diwalwal gold rush area and ordering the stoppage of all mining operations therein. Thereafter, Executive Order No. 217 dated 17 June 2003 was issued by the President creating the National Task Force Diwalwal which is tasked to address the situation in the Diwalwal Gold Rush Area.

In G.R. No. 152613 and No. 152628, Apex raises the following issues:

> I
>
> WHETHER OR NOT SOUTHEAST MINDANAO GOLD MINING'S [SEM] E.P. 133 IS NULL AND VOID DUE TO THE FAILURE OF MARCOPPER TO COMPLY WITH THE TERMS AND CONDITIONS PRESCRIBED IN EP 133.
>
> II
>
> WHETHER OR NOT APEX HAS A SUPERIOR AND PREFERENTIAL RIGHT TO STAKE IT'S CLAIM

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OVER THE ENTIRE 4,941 HECTARES AGAINST SEM AND THE OTHER CLAIMANTS PURSUANT TO THE TIME-HONORED PRINCIPLE IN MINING LAW THAT "PRIORITY IN TIME IS PRIORITY IN RIGHT."[17]

In G.R. No. 152619-20, Balite anchors its petition on the following grounds:

I

WHETHER OR NOT THE MPSA OF SEM WHICH WAS FILED NINE (9) DAYS LATE (JUNE 23, 1994) FROM THE FILING OF THE MPSA OF BALITE WHICH WAS FILED ON JUNE 14, 1994 HAS A PREFERENTIAL RIGHT OVER THAT OF BALITE.

II

WHETHER OR NOT THE DISMISSAL BY THE PANEL OF ARBITRATORS OF THE ADVERSE CLAIM OF BALITE ON THE GROUND THAT BALITE FAILED TO SUBMIT THE REQUIRED SKETCH PLAN DESPITE THE FACT THAT BALITE, HAD IN FACT SUBMITTED ON TIME WAS A VALID DISMISSAL OF BALITE'S ADVERSE CLAIM.

III

WHETHER OR NOT THE ACTUAL OCCUPATION AND SMALL-MINING OPERATIONS OF BALITE PURSUANT TO DAO 66 IN THE 729 HECTARES WHICH WAS PART OF THE 4,941.6759 HECTARES COVERED BY ITS MPSA WHICH WAS REJECTED BY THE BUREAU OF MINES AND GEOSCIENCES WAS ILLEGAL.[18]

In G.R. No. 152870-71, the MAB submits two issues, to wit:

I

WHETHER OR NOT EP NO. 133 IS STILL VALID AND SUBSISTING.

II

WHETHER OR NOT THE SUBSEQUENT ACTS OF THE GOVERNMENT SUCH AS THE ISSUANCE OF DAO NO. 66, PROCLAMATION NO. 297, AND EXECUTIVE ORDER 217 CAN OUTWEIGH EP NO. 133 AS WELL AS OTHER ADVERSE CLAIMS OVER THE DIWALWAL GOLD RUSH AREA.[19]

The common issues raised by petitioners may be summarized as follows:

- Whether or not the Court of Appeals erred in upholding the validity and continuous existence of EP 133 as well as its transfer to SEM;

- Whether or not the Court of Appeals erred in declaring that the DENR Secretary has no authority to issue DAO No. 66; and

- Whether or not the subsequent acts of the executive department such as the issuance of Proclamation No. 297, and DAO No. 2002-18 can outweigh Apex and Balite's claims over the Diwalwal Gold Rush Area.

On the first issue, Apex takes exception to the Court of Appeals' ruling upholding the validity of MMC's EP 133 and its subsequent transfer to SEM asserting that MMC failed to comply with the terms and conditions in its exploration permit, thus, MMC and its successor-in-interest SEM lost their rights in the Diwalwal Gold Rush Area. Apex pointed out that MMC violated four conditions in its permit. First, MMC failed to comply with the mandatory work program, to complete exploration work, and to declare a mining feasibility. Second, it reneged on its duty to submit an Environmental Compliance Certificate. Third, it failed to comply with the reportorial requirements. Fourth, it violated the terms of EP 133 when it assigned said permit to SEM despite the explicit

proscription against its transfer.

Apex likewise emphasizes that MMC failed to file its MPSA application required under DAO No. 82[20] which caused its exploration permit to lapse because DAO No. 82 mandates holders of exploration permits to file a Letter of Intent and a MPSA application not later than 17 July 1991. It said that because EP 133 expired prior to its assignment to SEM, SEM's MPSA application should have been evaluated on its own merit.

As regards the Court of Appeals recognition of SEM's vested right over the disputed area, Apex bewails the same to be lacking in statutory bases. According to Apex, Presidential Decree No. 463 and Republic Act No. 7942 impose upon the claimant the obligation of actually undertaking exploration work within the reserved lands in order to acquire priority right over the area. MMC, Apex claims, failed to conduct the necessary exploration work, thus, MMC and its successor-in-interest SEM lost any right over the area.

In its Memorandum, Balite maintains that EP 133 of MMC, predecessor-in-interest of SEM, is an expired and void permit which cannot be made the basis of SEM's MPSA application.

Similarly, the MAB underscores that SEM did not acquire any right from MMC by virtue of the transfer of EP 133 because the transfer directly violates the express condition of the exploration permit stating that "it shall be for the exclusive use and benefit of the permittee or his duly authorized agents." It added that while MMC is the permittee, SEM cannot be considered as MMC's duly designated agent as there is no proof on record authorizing SEM to represent MMC in its business dealings or undertakings, and neither did SEM pursue its interest in the permit as an agent of MMC. According to the MAB, the assignment by MMC of EP 133 in favor of SEM did not make the latter the duly authorized agent of MMC since the concept of an agent under EP 133 is not equivalent to the concept of assignee. It finds fault in the assignment of EP 133 which lacked the approval of the DENR Secretary in contravention of Section 25 of Republic Act No. 7942[21] requiring his approval for a valid assignment or transfer of exploration permit to be valid.

SEM, on the other hand, counters that the errors raised by petitioners Apex, Balite and the MAB relate to factual and evidentiary matters which this Court cannot inquire into in an appeal by certiorari.

The established rule is that in the exercise of the Supreme Court's power of review, the Court not being a trier of facts, does not normally embark on a re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the Court of Appeals are conclusive and binding on the Court.[22] This rule, however, admits of exceptions as recognized by jurisprudence, to wit:

> (1) [w]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[23]

Also, in the case of Manila Electric Company v. Benamira,[24] the Court in a Petition for Review on Certiorari, deemed it proper to look deeper into the factual circumstances of the case since the Court of Appeal's findings are at odds to those of the National Labor Relations Commission (NLRC). Just like in the foregoing case, it is this Court's considered view that a re-evaluation of the attendant facts surrounding the present case is appropriate

considering that the findings of the MAB are in conflict with that of the Court of Appeals.

I

At the threshold, it is an undisputed fact that MMC assigned to SEM all its rights under EP 133 pursuant to a Deed of Assignment dated 16 February 1994.[25]

EP 133 is subject to the following terms and conditions[26]:

> - That the permittee shall abide by the work program submitted with the application or statements made later in support thereof, and which shall be considered as conditions and essential parts of this permit;
>
> - That permittee shall maintain a complete record of all activities and accounting of all expenditures incurred therein subject to periodic inspection and verification at reasonable intervals by the Bureau of Mines at the expense of the applicant;
>
> - That the permittee shall submit to the Director of Mines within 15 days after the end of each calendar quarter a report under oath of a full and complete statement of the work done in the area covered by the permit;
>
> - That the term of this permit shall be for two (2) years to be effective from this date, renewable for the same period at the discretion of the Director of Mines and upon request of the applicant;
>
> - That the Director of Mines may at any time cancel this permit for violation of its provision or in case of trouble or breach of peace arising in the area subject hereof by reason of conflicting interests without any responsibility on the part of the government as to expenditures for exploration that might have been incurred, or as to other damages that might have been suffered by the permittee; and
>
> - That this permit shall be for the exclusive use and benefit of the permittee or his duly authorized agents and shall be used for mineral exploration purposes only and for no other purpose.

Under Section 90[27] of Presidential Decree No. 463, the applicable statute during the issuance of EP 133, the DENR Secretary, through Director of BMG, is charged with carrying out the said law. Also, under Commonwealth Act No. 136, also known as "An Act Creating The Bureau of Mines," which was approved on 7 November 1936, the Director of Mines has the direct charge of the administration of the mineral lands and minerals, and of the survey, classification, lease or any other form of concession or disposition thereof under the Mining Act.[28] This power of administration includes the power to prescribe terms and conditions in granting exploration permits to qualified entities. Thus, in the grant of EP 133 in favor of the MMC, the Director of the BMG acted within his power in laying down the terms and conditions attendant thereto.

Condition number 6 categorically states that the permit shall be for the exclusive use and benefit of MMC or its duly authorized agents. While it may be true that SEM, the assignee of EP 133, is a 100% subsidiary corporation of MMC, records are bereft of any evidence showing that the former is the duly authorized agent of the latter. For a contract of agency to exist, it is essential that the principal consents that the other party, the agent, shall act on its behalf, and the agent consents so as to act.[29] In the case of Yu Eng Cho v. Pan American World Airways, Inc.,[30] this Court had the occasion to set forth the elements of agency, viz:

> (1) consent, express or implied, of the parties to establish the relationship;
>
> (2) the object is the execution of a juridical act in relation to a third person;
>
> (3) the agent acts as a representative and not for himself;
>
> (4) the agent acts within the scope of his authority.

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The existence of the elements of agency is a factual matter that needs to be established or proven by evidence. The burden of proving that agency is extant in a certain case rests in the party who sets forth such allegation. This is based on the principle that he who alleges a fact has the burden of proving it.[31] It must likewise be emphasized that the evidence to prove this fact must be clear, positive and convincing.[32]

In the instant Petitions, it is incumbent upon either MMC or SEM to prove that a contract of agency actually exists between them so as to allow SEM to use and benefit from EP 133 as the agent of MMC. SEM did not claim nor submit proof that it is the designated agent of MMC to represent the latter in its business dealings or undertakings. SEM cannot, therefore, be considered as an agent of MMC which can use EP 133 and benefit from it. Since SEM is not an authorized agent of MMC, it goes without saying that the assignment or transfer of the permit in favor of SEM is null and void as it directly contravenes the terms and conditions of the grant of EP 133.

Furthermore, the concept of agency is distinct from assignment. In agency, the agent acts not on his own behalf but on behalf of his principal.[33] While in assignment, there is total transfer or relinquishment of right by the assignor to the assignee.[34] The assignee takes the place of the assignor and is no longer bound to the latter. The deed of assignment clearly stipulates:

> - That for ONE PESO (P1.00) and other valuable consideration received by the ASSIGNOR from the ASSIGNEE, the ASSIGNOR hereby ASSIGNS, TRANSFERS and CONVEYS unto the ASSIGNEE whatever rights or interest the ASSIGNOR may have in the area situated in Monkayo, Davao del Norte and Cateel, Davao Oriental, identified as Exploration Permit No. 133 and Application for a Permit to Prospect in Bunawan, Agusan del Sur respectively.[35]

Bearing in mind the just articulated distinctions and the language of the Deed of Assignment, it is readily obvious that the assignment by MMC of EP 133 in favor of SEM did not make the latter the former's agent. Such assignment involved actual transfer of all rights and obligations MMC have under the permit in favor of SEM, thus, making SEM the permittee. It is not a mere grant of authority to SEM, as an agent of MMC, to use the permit. It is a total abdication of MMC's rights over the permit. Hence, the assignment in question did not make SEM the authorized agent of MMC to make use and benefit from EP 133.

The condition stipulating that the permit is for the exclusive use of the permittee or its duly authorized agent is not without any reason. Exploration permits are strictly granted to entities or individuals possessing the resources and capability to undertake mining operations. Without such a condition, non-qualified entities or individuals could circumvent the strict requirements under the law by the simple expediency acquiring the permit from the original permittee.

We cannot lend recognition to the Court of Appeals' theory that SEM, being a 100% subsidiary of MMC, is automatically an agent of MMC.

A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incident to its existence.[36] It is an artificial being invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.[37] Resultantly, absent any clear proof to the contrary, SEM is a separate and distinct entity from MMC.

The Court of Appeals pathetically invokes the doctrine of piercing the corporate veil to legitimize the prohibited transfer or assignment of EP 133. It stresses that SEM is just a business conduit of MMC, hence, the distinct legal personalities of the two entities should not be recognized. True, the corporate mask may be removed when the corporation is just an alter ego or a mere conduit of a person or of another corporation.[38] For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield

for fraud, illegality or inequity committed against a third person.[39] However, this Court has made a caveat in the application of the doctrine of piercing the corporate veil. Courts should be mindful of the milieu where it is to be applied. Only in cases where the corporate fiction was misused to such an extent that injustice, fraud or crime was committed against another, in disregard of its rights may the veil be pierced and removed. Thus, a subsidiary corporation may be made to answer for the liabilities and/or illegalities done by the parent corporation if the former was organized for the purpose of evading obligations that the latter may have entered into. In other words, this doctrine is in place in order to expose and hold liable a corporation which commits illegal acts and use the corporate fiction to avoid liability from the said acts. The doctrine of piercing the corporate veil cannot therefore be used as a vehicle to commit prohibited acts because these acts are the ones which the doctrine seeks to prevent.

To our mind, the application of the foregoing doctrine is unwarranted. The assignment of the permit in favor of SEM is utilized to circumvent the condition of non-transferability of the exploration permit. To allow SEM to avail itself of this doctrine and to approve the validity of the assignment is tantamount to sanctioning illegal act which is what the doctrine precisely seeks to forestall.

Quite apart from the above, a cursory consideration of the mining law pertinent to the case, will, indeed, demonstrate the infraction committed by MMC in its assignment of EP 133 to SEM.

Presidential Decree No. 463, enacted on 17 May 1974, otherwise known as the Mineral Resources Development Decree, which governed the old system of exploration, development, and utilization of mineral resources through "license, concession or lease" prescribed:

> SEC. 97. Assignment of Mining Rights. – A mining lease contract or any interest therein shall not be transferred, assigned, or subleased without the prior approval of the Secretary: Provided, That such transfer, assignment or sublease may be made only to a qualified person possessing the resources and capability to continue the mining operations of the lessee and that the assignor has complied with all the obligations of the lease: Provided, further, That such transfer or assignment shall be duly registered with the office of the mining recorder concerned. (Emphasis supplied.)

The same provision is reflected in Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995, which is the new law governing the exploration, development and utilization of the natural resources, which provides:

> SEC. 25. Transfer or Assignment. - An exploration permit may be transferred or assigned to a qualified person subject to the approval of the Secretary upon the recommendation of the Director.

The records are bereft of any indication that the assignment bears the imprimatur of the Secretary of the DENR. Presidential Decree No. 463, which is the governing law when the assignment was executed, explicitly requires that the transfer or assignment of mining rights, including the right to explore a mining area, must be with the prior approval of the Secretary of DENR. Quite conspicuously, SEM did not dispute the allegation that the Deed of Assignment was made without the prior approval of the Secretary of DENR. Absent the prior approval of the Secretary of DENR, the assignment of EP 133, was, therefore, without legal effect for violating the mandatory provision of Presidential Decree No. 463.

An added significant omission proved fatal to MMC/SEM's cause. While it is true that the case of Apex Mining Co., Inc. v. Garcia[40] settled the issue of which between Apex and MMC validly acquired mining rights over the disputed area, such rights, though, had been extinguished by subsequent events. Records indicate that on 6 July 1993, EP 133 was extended for 12 months or until 6 July 1994.[41] MMC never renewed its permit prior and after its expiration. Thus, EP 133 expired by non-renewal.

With the expiration of EP 133 on 6 July 1994, MMC lost any right to the Diwalwal Gold Rush Area. SEM, on the

other hand, has not acquired any right to the said area because the transfer of EP 133 in its favor is invalid. Hence, both MMC and SEM have not acquired any vested right over the 4,941.6759 hectares which used to be covered by EP 133.

II

The Court of Appeals theorizes that DAO No. 66 was issued beyond the power of the DENR Secretary since the power to withdraw lands from forest reserves and to declare the same as an area open for mining operation resides in the President.

Under Proclamation No. 369 dated 27 February 1931, the power to convert forest reserves as non-forest reserves is vested with the DENR Secretary. Proclamation No. 369 partly states:

> From this reserve shall be considered automatically excluded all areas which had already been certified and which in the future may be proclaimed as classified and certified lands and approved by the Secretary of Agriculture and Natural Resources.[42]

However, a subsequent law, Commonwealth Act No. 137, otherwise known as "The Mining Act" which was approved on 7 November 1936 provides:

> Sec. 14. Lands within reservations for purposes other than mining, which, after such reservation is made, are found to be more valuable for their mineral contents than for the purpose for which the reservation was made, may be withdrawn from such reservations by the President with the concurrence of the National Assembly, and thereupon such lands shall revert to the public domain and be subject to disposition under the provisions of this Act.

Unlike Proclamation No. 369, Commonwealth Act No. 137 vests solely in the President, with the concurrence of the National Assembly, the power to withdraw forest reserves found to be more valuable for their mineral contents than for the purpose for which the reservation was made and convert the same into non-forest reserves. A similar provision can also be found in Presidential Decree No. 463 dated 17 May 1974, with the modifications that (1) the declaration by the President no longer requires the concurrence of the National Assembly and (2) the DENR Secretary merely exercises the power to recommend to the President which forest reservations are to be withdrawn from the coverage thereof. Section 8 of Presidential Decree No. 463 reads:

> SEC. 8. Exploration and Exploitation of Reserved Lands. – When lands within reservations, which have been established for purposes other than mining, are found to be more valuable for their mineral contents, they may, upon recommendation of the Secretary be withdrawn from such reservation by the President and established as a mineral reservation.

Against the backdrop of the applicable statutes which govern the issuance of DAO No. 66, this Court is constrained to rule that said administrative order was issued not in accordance with the laws. Inescapably, DAO No. 66, declaring 729 hectares of the areas covered by the Agusan-Davao-Surigao Forest Reserve as non-forest land open to small-scale mining operations, is null and void as, verily, the DENR Secretary has no power to convert forest reserves into non-forest reserves.

III

It is the contention of Apex that its right over the Diwalwal gold rush area is superior to that of MMC or that of SEM because it was the first one to occupy and take possession of the area and the first to record its mining claims over the area.

For its part, Balite argues that with the issuance of DAO No. 66, its occupation in the contested area, particularly

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in the 729 hectares small-scale mining area, has entitled it to file its MPSA. Balite claims that its MPSA application should have been given preference over that of SEM because it was filed ahead.

The MAB, on the other hand, insists that the issue on who has superior right over the disputed area has become moot and academic by the supervening events. By virtue of Proclamation No. 297 dated 25 November 2002, the disputed area was declared a mineral reservation.

Proclamation No. 297 excluded an area of 8,100 hectares located in Monkayo, Compostela Valley, and proclaimed the same as mineral reservation and as environmentally critical area, viz:

> WHEREAS, by virtue of Proclamation No. 369, series of 1931, certain tracts of public land situated in the then provinces of Davao, Agusan and Surigao, with an area of approximately 1,927,400 hectares, were withdrawn from settlement and disposition, excluding, however, those portions which had been certified and/or shall be classified and certified as non-forest lands;
>
> WHEREAS, gold deposits have been found within the area covered by Proclamation No. 369, in the Municipality of Monkayo, Compostela Valley Province, and unregulated small to medium-scale mining operations have, since 1983, been undertaken therein, causing in the process serious environmental, health, and peace and order problems in the area;
>
> WHEREAS, it is in the national interest to prevent the further degradation of the environment and to resolve the health and peace and order problems spawned by the unregulated mining operations in the said area;
>
> WHEREAS, these problems may be effectively addressed by rationalizing mining operations in the area through the establishment of a mineral reservation;
>
> WHEREAS, after giving due notice, the Director of Mines and Geoxciences conducted public hearings on September 6, 9 and 11, 2002 to allow the concerned sectors and communities to air their views regarding the establishment of a mineral reservation in the place in question;
>
> WHEREAS, pursuant to the Philippine Mining Act of 1995 (RA 7942), the President may, upon the recommendation of the Director of Mines and Geosciences, through the Secretary of Environment and Natural Resources, and when the national interest so requires, establish mineral reservations where mining operations shall be undertaken by the Department directly or thru a contractor;
>
> WHEREAS, as a measure to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection, the President may, pursuant to Presidential Decree No. 1586, as amended, proclaim and declare certain areas in the country as environmentally critical;
>
> NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, upon recommendation of the Secretary of the Department of Environment and Natural Resources (DENR), and by virtue of the powers vested in me by law, do hereby exclude certain parcel of land located in Monkayo, Compostela Valley, and proclaim the same as mineral reservation and as environmentally critical area, with metes and bound as defined by the following geographical coordinates;
>
> x x x x
>
> with an area of Eight Thousand One Hundred (8,100) hectares, more or less. Mining operations in the area may be undertaken either by the DENR directly, subject to payment of just compensation that may be due to legitimate and existing claimants, or thru a qualified contractor, subject to existing rights, if any.
>
> The DENR shall formulate and issue the appropriate guidelines, including the establishment of an environmental and social fund, to implement the intent and provisions of this Proclamation.

Upon the effectivity of the 1987 Constitution, the State assumed a more dynamic role in the exploration,

development and utilization of the natural resources of the country.[43] With this policy, the State may pursue full control and supervision of the exploration, development and utilization of the country's natural mineral resources. The options open to the State are through direct undertaking or by entering into co-production, joint venture, or production-sharing agreements, or by entering into agreement with foreign-owned corporations for large-scale exploration, development and utilization.[44]

Thus, Article XII, Section 2, of the 1987 Constitution, specifically states:

> SEC. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. x x x
>
> x x x x
>
> The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. x x x (Underscoring supplied.)

Recognizing the importance of the country's natural resources, not only for national economic development, but also for its security and national defense, Section 5 of Republic Act No. 7942 empowers the President, when the national interest so requires, to establish mineral reservations where mining operations shall be undertaken directly by the State or through a contractor.

To implement the intent and provisions of Proclamation No. 297, the DENR Secretary issued DAO No. 2002-18 dated 12 August 2002 declaring an emergency situation in the Diwalwal Gold Rush Area and ordering the stoppage of all mining operations therein.

The issue on who has priority right over the disputed area is deemed overtaken by the above subsequent developments particularly with the issuance of Proclamation 297 and DAO No. 2002-18, both being constitutionally-sanctioned acts of the Executive Branch. Mining operations in the Diwalwal Mineral Reservation are now, therefore, within the full control of the State through the executive branch. Pursuant to Section 5 of Republic Act No. 7942, the State can either directly undertake the exploration, development and utilization of the area or it can enter into agreements with qualified entities, viz:

> SEC 5. Mineral Reservations. – When the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value, the President may establish mineral reservations upon the recommendation of the Director through the Secretary. Mining operations in existing mineral reservations and such other reservations as may thereafter be established, shall be undertaken by the Department or through a contractor x x x .

It is now up to the Executive Department whether to take the first option, i.e., to undertake directly the mining operations of the Diwalwal Gold Rush Area. As already ruled, the State may not be precluded from considering a direct takeover of the mines, if it is the only plausible remedy in sight to the gnawing complexities generated by the gold rush. The State need be guided only by the demands of public interest in settling on this option, as well as

its material and logistic feasibility.[45] The State can also opt to award mining operations in the mineral reservation to private entities including petitioners Apex and Balite, if it wishes. The exercise of this prerogative lies with the Executive Department over which courts will not interfere.

WHEREFORE, premises considered, the Petitions of Apex, Balite and the MAB are PARTIALLY GRANTED, thus:

- We hereby REVERSE and SET ASIDE the Decision of the Court of Appeals, dated 13 March 2002, and hereby declare that EP 133 of MMC has EXPIRED on 7 July 1994 and that its subsequent transfer to SEM on 16 February 1994 is VOID.

- We AFFIRM the finding of the Court of Appeals in the same Decision declaring DAO No. 66 illegal for having been issued in excess of the DENR Secretary's authority.

Consequently, the State, should it so desire, may now award mining operations in the disputed area to any qualified entity it may determine. No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Records, Vol. 2, pp. 7-11.

[2] Id., Vol.1, p. 90.

[3] Rollo of G.R. No. 152619-20, p. 68.

[4] Sec. 13. Areas Closed to Mining Location. - No prospecting and exploration shall be allowed:

> a) In military, or other Government reservations except when authorized by the proper Government agency concerned; x x x. (Apex Mining Co., Inc. v. Garcia, G.R. No. 92605, 16 July 1991, 199 SCRA 278, 284.)

[5] Now Associate Justice of the Supreme Court.

[6] Supra note 4.

[7] It provides for the procedural guidelines on the award of MPSA through negotiation. It further sets forth the requirements that applicants for MPSA applications shall comply and submit before the proper authority.

[8] Rollo of G.R. No. 152870-71, pp. 144-146.

[9] Id. at 76.

[10] Supra note 4.

[11] Id.

[12] DAO No. 34 defines small-scale miners as "Filipino citizens who individually or in the company of other Filipino citizens, voluntarily form a cooperative duly licensed by the DENR to engage, under the terms and conditions of a contract/license in the extraction or removal of minerals or ore-bearing materials from the ground."

[13] Rollo of G.R. No. 152870-71, p. 161.

[14] Rollo of G.R. No. 152870-71, pp. 141-142.

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[15] Penned by Associate Justice Alicia L. Santos with Associate Justices Cancio C. Garcia and Marina L. Buzon, concurring.

[16] Rollo of G.R. No. 152619-20, p. 55.

[17] Rollo of G.R. No. 152613 and No. 152628, p. 731.

[18] Id. at 703-704.

[19] Rollo of G.R. No. 152870-71, p. 916.

[20] Otherwise known as the Procedural Guidelines On the Award Of Mineral Production Sharing Agreement (MPSA) Through Negotiation provides:

Section 3. Submission of Letter of Intent (LOIs) and MPSAs.

The following shall submit their LOIs and MPSAs within two (2) years from the effectivity of DENR A.O. 57 or until July 17, 1991.

- Declaration of Location (DOL) holders, mining lease applicants, exploration permitees, quarry applicants and other mining applicants whose mining/quarry applications have not been perfected prior to the effectivity of DENR Administrative Order No. 57.

- All holders of DOL acquired after the effectivity of DENR A.O. No. 57.

x x x x

Failure to submit letters of intent and MPSA applications/proposals within the prescribed period shall cause the abandonment of mining, quarry and sand and gravel claims.

[21] Republic Act No. 7942 is also known as the "Philippine Mining Act of 1995."

[22] New City Builders, Inc. v. National Labor Relations Commission, G.R. No. 149281, 15 June 2005, 460 SCRA 220, 227.

[23] The Insular Life Assurance Company, Ltd. v. Court of Appeals, G.R. No. 126850, 28 April 2004, 428 SCRA 79, 86; Manila Electric Company v. Benamira, G.R. No. 145271, 14 July 2005, 463 SCRA 331, 347-348; Aguirre v. Court of Appeals, G.R. No. 122249, 29 January 2004, 421 SCRA 310, 319.

[24] Manila Electric Company v. Benamira, id.

[25] Records, Vol. 2, pp. 351-353.

[26] Id. at 84-85.

[27] Executive Officer.- The Secretary, through the Director, shall be the Executive Officer charged with carrying out the provisions of this Decree. x x x.

[28] COMMONWEALTH ACT No. 136, Section 3.

[29] People v. Yabut, G.R. No. L-42902, 29 April 1977, 76 SCRA 624, 630.

[30] G.R. No. 123560, 27 March 2000, 328 SCRA717, 728.

[31] Asia Traders Insurance Corporation v. Court of Appeals, G.R. No. 152537, 16 February 2004, 423 SCRA 114, 120.

[32] Id.

[33] Yu Eng Cho v. Pan American World Airways, Inc., supra note 30.

[34] Philippine National Bank v. Court of Appeals, 338 Phil. 795, 817-818 (1997).

[35] Records, Vol. 2, p. 352.

[36] CORPORATION CODE, Section 2.

[37] Yu v. National Labor Relations Commission, 315 Phil. 107, 123 (1995).

[38] Lim v. Court of Appeals, 380 Phil. 60, 76 (2000).

[39] Philippine National Bank v. Andrada Electric & Engineering Company, 430 Phil. 882, 894 (2002).

[40] Supra note 4.

[41] Records, Vol. 2, p. 255.

[42] Id. at 7.

[43] Miners Association of the Philippines, Inc. v. Hon. Factoran, Jr., 310 Phil. 113, 130-131 (1995).

[44] Id.; Southeast Mindanao Gold Mining Corporation v. Balite Portal Mining Cooperative, 429 Phil. 668, 683 (2002).

[45] Id.

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