

PAULINO M. ALECHA, FELIX B. UNABIA, RICARDO A. TOLINO AND MARIO A. CATANES, PETITIONERS, VS. JOSE L. ATIENZA JR., THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), MIC...

G.R. No. 191537. September 14, 2016

Ponente: BRION, J.

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BRION, J.:

Before us is the petition for certiorari filed by Paulino M. Alecha, Felix B. Unabia, Ricardo A. Tolino, and Mario A. Catanes (petitioners) under Rule 65 of the Rules of Court, assailing the Department of Environment and Natural Resources (DENR) resolution[1] dated December 16, 2009, in DENR Case No. 8714.

The DENR resolution dismissed the petitioners' petition for cancellation of Mining Production and Sharing Agreement No. 267-2008-BC previously granted in 168 Ferrum Pacific Mining Corporation's (168 FPMC) favor.

The Factual Antecedents

On December 22, 2003, Cebu Ore and Mineral Resources Corporation (Cebu Ore) filed an application for the approval of the Mineral Production Sharing Agreement (subject mining agreement), denominated as ASPA-101-IX, covering an area of about 8,100 hectares located in the municipalities of Midsalip and Bayog, Zamboanga del Sur.[2] Cebu Ore later on assigned to 168 FPMC its rights over the mining agreement.[3] On August 21, 2008, public respondent Jose L. Atienza, Jr., then DENR Secretary, granted the mining agreement to 168 FPMC.[4]

Eight (8) months after, the petitioners filed a petition[5] for cancellation of the subject mining agreement with the DENR. In their petition,[6] they alleged that 168 FPMC failed to secure the Free and Prior Informed Consent (FPIC) of the Indigenous Peoples (IP) concerned for the approval of the mining agreement. They also alleged that the contract area under the mining agreement was located in the volcanic cones of Mt. Sugarloaf Complex, a known key biodiversity area and forest reserve, thus rendering it exempt from any mining application. Lastly, they submitted that the proposed operation would destroy the lives of the Zamboanga Peninsula residents.

In its comment,[7] 168 FPMC vehemently denied the allegations and insisted that it had observed the FPIC process. It submitted the National Commission on Indigenous Peoples (NCIP) Compliance Certificate Control No. CCRIX-08-09-161(Certification Precondition) as proof of its compliance with the FPIC process. The certificate provided:

THIS IS TO CERTIFY, that 168 [FPMC], a private corporation created and existing by virtue of the laws of the Republic of the Philippines, with office address at R2 Building 136 Malakas T., Diliman, Quezon City, Philippines, has, in connection with its Mineral Production Sharing Agreement (MPSA) Application denominated as APS A 101-IX, located at Barangay Datagan, Bantal, Canoayan, Liba, and Mitin-ao, Bayog, Zamboanga Del Sur, satisfactorily complied with the procedures and process requirements for the issuance of

Certificate Precondition and the Free and Prior Informed Consent, as prescribed under NCIP Administrative Order No. 01, Series of 2006.

THIS IS TO CERTIFY FURTHER, that under NCIP En Bane Resolution No. 303 Series of 2008, dated September 30, 2008, the Commission approved the issuance of a Certification as precondition to the aforementioned project of the proponent, subject to the following terms and conditions embodied in the Memorandum of Agreement entered into and executed by and between the IPs/ICCs of Barangay Dataga, Bantal, Canoayan, Liba, and Matin-ao, Bayog, Zamboanga Dei Sur, the 168 FERRUM PACIFIC MINING CORPORATION and the NCIP, hereto attached as Annex "A" and made an integral part hereof. (emphases supplied)

The 168 FPMC also claimed that the nearest volcanic cones of Mt. Sugarloaf Complex cones are located 9 kilometers away from the contract area.[8] As proof, it submitted an illustration[9] of the contract area vis-a-vis the location of the Mt. Sugarloaf Volcanic cones.

On December 16, 2009, the DENR Secretary dismissed the petition for cancellation of the mining agreement.[10] In dismissing the petition, the DENR Secretary considered the records that the DENR had previously received for 168 FPMC's application for the mining agreement.[11] Among the documents submitted for the mining agreement application are the following:

- Approved Area Status and Clearance dated May 18, 2004, and issued by the One-Stop-Shop Committee, DENR Region IX;
- Posting, publication, and radio announcement of the Notice of Application for MPSA (Notice):
- Posting for two (2) consecutive weeks-
- Certification dated July 10, 2007, by MGB R.O. No. IX attesting that the Notice was posted for two consecutive weeks (May 28 to June 28, 2007).
- Certification dated July 19, 2004, by the DENR PENRO in Pagadian City attesting that the Notice was posted for two (2) consecutive weeks.
- Copy of the Registry Return Receipt dated June 6, 2007, showing the Notice was received by the Office of the Governor, Province of Zamboanga del Sur.
- Certification dated July 5, 2007, by the Mayor, Municipality of Bayog, attesting that the Notice was posted for two (2) consecutive weeks.
- Affidavit dated June 12, 2008, by the former Mayor of the Municipality of Midsalip, attesting that the Notice was posted for two (2) consecutive weeks from June 11 to 30, 2004.
- Publication in newspapers, one of general circulation and the other of local circulation (once a week for two [2] consecutive weeks)
- Affidavit dated June 22, 2007, by the Mindanao BiozNEWS attesting that the Notice was published in its issues of June 7, 14, and 21, 2007.
- Affidavit dated June 22, 2007, by the Publisher of Taliba attesting that the Notice as published in its issues of June 14 and 21, 2007.
- Radio announcement in a local radio program (daily for two [2] consecutive weeks) in the form of an undated Certificate of Performance issued by the Manila Broadcasting Company "Radyo Natin Fm 91.9 Mhz" attesting that the Notice was aired for the period of June 14 to 18, 2007.
- Certification dated September 28, 2007, by the Panel of Arbitrators concerned attesting that "no adverse

claim protest or opposition has affected the mining rights application xxx."

- National Commission on Indigenous People (NCIP) Certification Precondition or Memorandum of Agreement by and among the applicant, Indigenous Cultural Communities (ICCs)/ Indigenous Peoples (IPs) concerned and the NCIP, or Report on the Field Based Investigation (FBI). xxx[12]

The DENR Secretary concluded that 168 FPMC followed the legal process for the approval of the assailed mining agreement and secured the free and prior consent of the IPs concerned based on the available records.[13]

The DENR Secretary also held that the Certification Precondition was the best evidence that 168 FPMC complied with the FPIC process.[14] He stressed that before any application was approved, time and effort were exerted to ensure that the contract area did not fall within any reservation or protected area where mining activities are disallowed.[15] Undeterred, the petitioners sought the intervention of the Court through the present petition.

The Petition and Comment

The present petition is based on the following grounds:

- That the DENR Secretary gravely abused his discretion in deciding the petition based on the evidence which were not presented at the hearing, or contained in the record and disclosed to the parties affected;
- That the DENR Secretary gravely abused his discretion in approving the mining agreement despite the failure to observe the FPIC process;
- That the DENR Secretary gravely abused his discretion in approving the mining agreement covering an area previously declared as a forest reserve;
- That the DENR Secretary gravely abused his discretion in approving the mining agreement since Mt. Sugarloaf Complex has been previously declared as a Key Biodiversity Area;
- That the DENR Secretary gravely abused his discretion in approving the mining agreement because mining operations would activate the dormant volcanoes; and
- That the proposed open pit mine would surely destroy the livelihood of several hundred thousand residents of the entire Zamboanga peninsula.

In its comment,[16] 168 FPMC raises procedural arguments to support the dismissal of the present petition. 168 FPMC points out that the present petition is not the plain, speedy, and adequate remedy in the ordinary course of law and the petitioner should have moved for reconsideration of the assailed decision or filed an appeal with the Office of the President.

168 FPMC also stresses that it had secured the FPIC of the IPs concerned. As added proof, it attached the Memorandum of Agreement (MOA) it executed with the concerned IPs.[17] Lastly, it insists that by filing the present petition, 168 FPMC effectively violated the doctrine of hierarchy of courts.

The Office of the Solicitor General (OSG) filed a comment[18] on behalf of the DENR Secretary. Like 168 FPMC, the OSG argues that the present petition should be dismissed for the petitioners' failure to exhaust the administrative remedies. It also argues that the DENR Secretary did not gravely abuse his discretion in dismissing the petition to cancel 168 FPMC's mining agreement since it had complied with all the requirements of the law.

Subsequently, the OSG filed a manifestation[19] stating that the petitioners engaged in forum shopping since they also filed with this Court a petition for the issuance of a writ of kalikasan, docketed as G.R. No. 197754. The writ of kalikasan petition and the present petition pray for the same relief - the cancellation and revocation of the mineral agreement to prevent irreparable damage and injury to the petitioners and the residents of Midsalip,

Zamboanga Del Sur, and the entire Zamboanga Peninsula.[20]

THE ISSUE

The core issue in the present petition is whether the DENR Secretary gravely abused his discretion when he dismissed the petition for cancellation of the 168 FPMC mining agreement.

THE COURT'S RULING

We dismiss the petition.

Before discussing the substantive issues of the petition, we first resolve the issue on forum shopping.

The petitioners did not commit forum shopping.

We do not find meritorious the OSG's position that the petitioners committed forum shopping.

First, the petitions involved different causes of action. In particular, a petition for the issuance of a writ *kalikasan* is initiated on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation, and involves environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.[21] On the other hand, the present petition for certiorari involves the issues in wanton disregard of due process and in the incidental violation of IP rights.

Second, Rule 7, Section 17 of the Rules of Procedure for Environmental Cases expressly provides that the filing of a petition for the issuance of the writ of *kalikasan* shall not preclude the filing of separate civil, criminal, or administrative actions.

We now proceed to the substantive issues of the petition.

The petitioner had available administrative remedies to question the DENR decision.

It is a settled rule that the special civil action of certiorari under Rule 65 of the Rules of Court is available to an aggrieved party only when there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.[22] Otherwise, the petition will not prosper even if the alleged ground is grave abuse of discretion.[23]

In the present case, it would appear that the petitioners failed to exhaust all the remedies available to it before resorting to the present certiorari petition.

First, the petitioners did not file a motion for reconsideration on the resolution of the DENR Secretary dismissing the petition for cancellation of the mining agreement. The Administrative Code of 1987[24] that embodies the general administrative procedures provides that one (1) motion for reconsideration may be filed from the decision of the administrative agency concerned,[25] i.e., the DENR.

Second, the petitioners did not appeal the DENR resolution to the Office of the President within the 30-day reglementary period, pursuant to Section 1[26] of Administrative Order No. 18,[27] series of 1987.

We have consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system.[28] The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.[29] The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[30]

If a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before the court's judicial power can be sought.[31] The non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[32]

The principle of exhaustion of administrative remedies, however, is not an iron-clad rule and is disregarded when any of the following exceptions are present: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; and (11) when there are circumstances indicating the urgency of judicial intervention.[33]

The petitioners failed to show that the present case falls under any of the above-enumerated exceptions. The petitioners' mere allegations that the DENR Secretary gravely abused his discretion in granting the mining agreement to 168 FPMC and in issuing the assailed resolution will not suffice to vest in the Court the power that has been specifically granted by law to special government agencies. Further, the issues on the grant of the mining agreement and whether the FPIC process was observed involve a determination of factual matters which is within the DENR's competence.

The petitioners' failure to exhaust all the available administrative remedies prevents them from filing the present petition for certiorari. Even assuming *arguendo* that petitioners' direct resort to the Court was permissible, the petition must still be dismissed.

The DENR Secretary did not gravely abuse his discretion in dismissing the petition for cancellation based on the records that the DENR had previously received for 168 EPMC's application for the mining agreement.

"Grave abuse of discretion" defies exact definition; generally, it refers to the "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction;" the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[34] Mere abuse of discretion is not enough; it must be grave.[35]

Closely related with the limited focus of the present petition is the doctrine that administrative decisions on matters within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law.[36] Unless it is shown that the then DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration and similar reasons, this Court cannot look into or review the wisdom of the exercise of such discretion.[37]

We find that the DENR Secretary did not gravely abuse his discretion in taking judicial notice of the documents submitted for 168 FPMC's application for the mining agreement that showed compliance with the FPIC process and all the legal requirements for the approval of the mining agreement.

In quasi-judicial proceedings, an agency may take notice of judicially cognizable facts and of generally cognizable technical or scientific facts within its specialized knowledge. The parties shall be notified and afforded an opportunity to contest the facts so noticed. (Section 12[4], Chapter 3, Book VII, The Administrative Code of

1987).

In the present case, the DENR Secretary took judicial notice of the documents submitted for the approval of the subject mining agreement which were already in his possession by reason of his office and were either posted in a conspicuous place, published in a newspaper of general circulation, or its contents announced through the radio. The DENR Secretary merely confirmed the 168 FPMC's allegation in its Answer[38] that it had complied with the legal process laid down by law and obtained the consent of the IPs concerned for the approval of the mining agreement.

Particularly, the DENR Secretary was able to confirm that the DENR-MGB endorsed the subject mining agreement to the NCIP; field-based investigations were conducted; a detailed presentation of the project was done and the necessary information regarding the mining application was given to all the tribal leaders of the affected barangays and the ancestral domain representatives; community consultative assemblies were conducted on various dates; a memorandum of agreement was executed between 168 FPMC and the IPs concerned; the NCIP Compliance Certificate was issued to 168 FPMC as proof that there was free and prior consent from the indigenous cultural communities affected; the One Stop Shop Committee of the DENR-MGB-RIX screened the subject mining application to ensure that the covered areas do not fall within any reservation or declared protected area.[39]

Factual considerations relating to mining applications properly rest within the administrative competence of the DENR. Its factual findings are accorded great respect and even finality by the appellate courts because it possesses the specialized knowledge and expertise in its field.[40] As such, the DENR's factual findings are binding upon this Court without showing of any grave abuse of discretion, or that the factual findings were arrived at arbitrarily or in disregard of the evidence on record.[41]

While the DENR Secretary should have notified that petitioners of the documents that it had considered to allow the rebuttal of the documents,[42] we find that his failure to notify does not amount to grave abuse of discretion since the circumstances of the present case afforded the petitioner sufficient notice and the opportunity to contest the documents even before the filing of the petition for cancellation. As earlier stated, the documents submitted and considered by the DENR were either posted in a conspicuous place, published in a newspaper of general circulation, or its contents announced through the radio in order to notify the general public, including the petitioners, of the legal processes observed by 168 FPMC to secure the grant of the mining application. Hence, the petitioners are deemed to be fully aware of the existence of such documents or its contents even before the grant of the mining application. Notably, the petitioners belatedly questioned the subject mining application more than eight months after its grant.

The petitioners failed to show that the DENR Secretary's failure to notify the petitioners was done in "wanton, whimsical, or oppressive manner" or for the purpose of giving "undue advantage to a party or for an illegal consideration and similar reasons" that will amount to grave abuse of discretion.

Further, it is well-settled that the rules of evidence are not strictly applied in proceedings before administrative bodies.[43] Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency.[44] Administrative agencies are given wide latitude in the evaluation of evidence and in the exercise of their adjudicative functions, latitude which includes the authority to take judicial notice of facts within their special competence.[45]

The petitioners lost their chance to question the documents considered when they failed to file a motion for reconsideration or an appeal of the DENR resolution through their own fault.

With respect to the other grounds raised by the petitioners to cancel the subject mining agreement, the petitioners failed to adduce sufficient evidence to prove their arguments. Moreover, there is the legal presumption that the DENR officials regularly performed their official duties, particularly with respect to the approval of the mining agreement in the present case.

The presumption of regularity in the performance of official duties is strong with respect to administrative agencies like the DENR which are vested with quasi-judicial powers in enforcing the laws affecting their respective fields of activity, the proper regulation of which requires of them such technical mastery of all relevant conditions obtaining in the nation.[46] Unless the presumption is rebutted by clear and convincing evidence to the contrary, it becomes conclusive.[47]

WHEREFORE, premises considered, we hereby DISMISS the petition. The DENR resolution dated December 16, 2009, in DENR Case No. 8714 is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Mendoza, and Leonen, JJ., concur.

[1] Rollo, pp. 121-129.

[2] Id. at 124-125.

[3] Id. at 125.

[4] Id. at 127.

[5] Docketed as DENR case No. 8714. Id. at 123-129.

[6] Id. at 17-32.

[7] Id. at 108-111.

[8] Id. at 109.

[9] Id. at 114.

[10] Id. at 121-129.

[11] Id. at 127.

[12] Id. at 125-127.

[13] Id. at 127.

[14] Id. at 128.

[15] Id. at 128.

[16] Id. at 159-211.

[17] Id. at 195-211.

[18] Id. at 248-266.

[19] Id. at 306-312.

[20] Id. at 308.

[21] Rule 7, Section 1, Rules of Procedure for Environmental Cases.

[22] Bethel Realty and Development Corporation v. HLURB, G.R. No. 184482, July 4, 2012, sc.judiciary.gov.ph.

[23] Id.

[24] Executive Order No. 292, The Administrative Code of 1987, July 25, 1987.

[25] The Administrative Code of 1987, Book VII, Chapter 3 (Adjudication), Section 15 provides:

SECTION 15. Finality of Order.—The decision of the agency shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected. One motion for reconsideration may be filed, which shall suspend the running of the said period.

[26] SECTION 1. Unless otherwise governed by special laws, an appeal to the Office of the President shall be taken within thirty (30) days from receipt by the aggrieved party of the decision/resolution/order complained of or appealed from. Said appeal shall be filed with the Office of the President, or with the Ministry/agency concerned, with copies furnished to the affected parties and, if the appeal is filed with the Office of the President, to the Ministry/agency concerned. If the appeal is directly filed with the Ministry/agency concerned, such Ministry/agency shall, within five (5) days from receipt thereof, transmit the appeal to the Office of the President, together with the records of the case.

The time during which a motion for reconsideration has been pending with the Ministry/agency concerned shall be deducted from the period for appeal. But where such a motion for reconsideration has been filed during office hours of the last day of the period herein provided, the appeal must be made within the day following receipt of the denial of said motion by the appealing party.

[27] PRESCRIBING RULES AND REGULATIONS GOVERNING APPEALS TO THE OFFICE OF THE PRESIDENT OF THE PHILIPPINES, February 12, 1987.

[28] Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc., G.R. No. 175039, April 18, 2012, 670 SCRA 83.

[29] Id. at 84.

[30] Id.

[31] Id.

[32] Id.

[33] Paat v. Court of Appeals, G.R. No. 111107, January 10, 1997, sc.judiciary.gov.ph.

[34] Intestate Estate of Carmen de Luna v. Intermediate Appellate Court, G.R. No. 72424, February 13, 1989, 170 SCRA 246.

[35] Cabrera v. Lapid, G.R. No. 129098, 539 Phil. 114, 124 (2006).

[36] Celestial Mining v. Macroasia, G.R. No. 169080, December 19, 2007, 541 SCRA 166, 172-173, 195.

[37] Id.

[38] Rollo, pp. 108-109.

[39] Id. at 127-129.

[40] Cf. Japson v. Civil Service Commission, G.R. No. 189479, April 12, 2011, 648 SCRA 532-533.

[41] Id.

[42] Cf. Al-Amanah Islamic Investment Bank of the Philippines v. Civil Service Commission, G.R. No. 100599, April 8, 1992, 207 SCRA 801-803.

[43] Geronimo v. Sps. Calderon, G.R. No. 201781, December 10, 2014, sc.judiciary.gov.ph.

[44] Id.

[45] Id.

[46] Factoran, Jr. v. Court of Appeals, G.R. No. 93540, December 13, 1999, 320 SCRA 531, 545.

[47] Bustillo v. People, G.R. No. 160718, May 12, 2010, 620 SCRA 483.

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