

NAREDICO, INC., PETITIONER, V. KROMINCO, INC., RESPONDENT.

G.R. No. 196892. December 05, 2018

Ponente: LEONEN, J.

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LEONEN, J.:

In deference to its technical knowledge and expertise on matters falling within its jurisdiction, the findings of fact of the Mines Adjudication Board, when supported by substantial evidence, are binding on the Court of Appeals and on this Court.

This resolves the Petition for Review on Certiorari[1] filed by Naredico, Inc. (Naredico), assailing the Court of Appeals November 26, 2010 Decision[2] and May 10, 2011 Resolution[3] in CA-G.R. SP No. 99372, which reversed the May 25, 2007 Decision[4] of the Mines Adjudication Board in MAB Case No. 0118-00 and reinstated the October 4, 2001 Decision[5] of the Mines and Geosciences Bureau Panel of Arbitrators in Mines Special Case Nos. POA- XIII-36 and 37.

On February 27, 1977, Krominco, Inc. (Krominco), then called Malayan Wood Products, Inc., entered into an Operating Contract with the Government, through the Department of Environment and Natural Resources. They aimed to explore, develop, exploit, and use the chromite deposits over a 50,600.38-hectare area within Parcel III of the Surigao Mineral Reservation. The contract had a lifespan of 25 years, renewable for another 25 years.[6]

On April 27, 1978, Krominco and the Government entered into a second Operating Contract for a portion of Parcel II within the Surigao Mineral Reservation.[7]

On May 30, 1986, then Minister of Natural Resources Ernesto Maceda canceled both contracts due to violations of their terms and conditions.[8]

Krominco moved for reconsideration of the cancellation. However, while its motion was pending, it negotiated a new agreement to replace the canceled Operating Contracts.[9]

On December 8, 1988, Romarico G. Vitug (Vitug), Naredico's president, applied[10] for an Exploration Contract with the Mines and Geosciences Bureau. The application covered approximately 500 hectares of mineral reservation land in Barangay San Ramon, Municipality of Loreto, Dinagat Island, and the Province of Surigao Del Norte.

On February 21, 1989, Krominco and the Government signed a new Operating Contract[11] that had a lifespan of 16 years, renewable for another 25 years.[12] It covered an area of approximately 729 hectares within Parcel III of the Surigao Mineral Reservation.[13] The boundaries and locations of its final operating area were still "subject to actual survey and verification by deputized geodetic engineers acceptable to both parties[.]"[14]

Krominco also hired Certeza Surveying & Aerophoto Systems, Inc. (Certeza) to survey its mining claim.[15]

On August 13, 1990,[16] Vitug wrote the Mines and Geosciences Bureau to request for the revision of Naredico's earlier application. He asked for a conversion of the pending application for an Exploration Contract into a

mineral production sharing agreement. He also asked that the area originally applied for be increased to 1,620 hectares.[17]

On September 19, 1990,[18] Mines and Geosciences Bureau Director Joel D. Muyco (Director Muyco) granted Certeza's request to survey Krominco's mining claim subject to the following conditions:

1. Be guided by the Manual for the Philippine Land Surveyor, laws, rules[,] and regulations governing mineral land surveys in the Philippines in the execution of the survey;
2. The terms and conditions of the Operating Contract entered into between KROMINCO, INC as represented by its President, Mr. Eric L. Lee and the Government as represented by the Secretary of the Department of Environment and Natural Resources, Fulgencio S. Factoran, Jr.[,] acknowledged by Notary Public Miguel C. Manalo on February 27, 1989[,], done in Quezon City[,], should be strictly complied with;
3. Representative of the government [through] the Regional Executive Director of the DENR Region X or his authorized representative shall witness the faithful execution of the survey who (sic) will submit his report as to his observations and comments/recommendations thereof.

Please be guided accordingly.[19]

On August 28, 1991, Director Muyco approved Krominco's Amended Survey Plan for the final operating area or contract area of its Operating Contract.[20]

On January 28, 1992,[21] Director Muyco informed Vitug that the area sought to be covered by Naredico's proposed mineral production sharing agreement overlapped with a portion of Krominco's final operating area. He suggested including a colatilla, which read: "This contract area shall further exclude those covered by valid and subsisting mining rights. Provided, however, that in the event that such area is eventually abandoned or relinquished by the former grantee of mining rights or operator, the same shall be deemed part of the herein CONTRACT AREA." [22]

Vitug agreed[23] to the proposed colatilla. On February 21, 1992, the Government and Naredico executed a Mineral Production Sharing Agreement (Agreement)[24] that spans a period of 25 years and is renewable for another 25 years.[25] The colatilla was incorporated as Section IV[26] of the Agreement.

On May 15, 1992,[27] the Office of the President approved the Agreement.

On March 29, 1993, Naredico applied for an Order of Survey, which Director Muyco granted on April 7, 1993. Director Muyco then directed Engineer Felix M. Illana (Engineer Illana) to execute Naredico's boundary survey.[28]

On January 19, 1994, Engineer Illana submitted a Technical Report[29] comparing Naredico's Agreement with Krominco's Operating Contract and approved Amended Survey Plan. He concluded that there was no overlapping areas between the Agreement and Operating Contract.[30] However, he noted that Krominco's Amended Survey Plan pertained to an area different from what was described in its Operating Contract, with several portions going outside the Operating Contract and encroaching the contract area of Naredico's Agreement. He observed that the overlap was around 445.50 hectares.[31]

Naredico filed a Petition[32] before the Department of Environment and Natural Resources to cancel Krominco's Operating Contract and declare its Amended Survey Plan as null.[33]

In his January 31, 1995 Decision,[34] then Environment and Natural Resources Secretary Angel C. Alcala (Secretary Alcala) declared the Amended Survey Plan as null. He found no conflict in the contract areas of Naredico's Agreement and Krominco's Operating Contract, as the overlap only arose with the Amended Survey

Plan.[35] Secretary Alcala found that Certeza, which was neither authorized nor deputized to conduct the survey, even delegated it to another surveyor[36] without any Government representative.[37] Moreover, he pointed out that Krominco failed to file an adverse claim to Naredico's application for a mineral production sharing agreement.[38]

The dispositive portion of Secretary Alcala's Decision read:

WHEREFORE, in view of the foregoing disquisitions, the amended survey of herein respondent KROMINCO, INC. (KROMINCO) is hereby declared NULL AND VOID and its contract area defined in Section 1.1 of its Operating Contract (OC) is hereby declared as its final contract area with the caveat that it confines its operations within the same.

The Regional Executive Director (RED) concerned is hereby directed to conduct a field verification/ocular inspection of the area in contention to determine once and for all whether or not KROMINCO, Inc. (KROMINCO), the herein respondent, is operating inside the Mineral Production Sharing Agreement (MPSA) area of the herein petitioner NAREDICO, Inc. (NAREDICO) and to evaluate the amount of ores extracted from therein which shall thereby become the basis for reimbursement and/or payment by KROMINCO, Inc. (KROMINCO) to NAREDICO, Inc. (NAREDICO), if warranted.

SO ORDERED.[39]

Naredico moved for the execution of Secretary Alcala's Order, which Krominco opposed.[40]

In his November 21, 1996 Order,[41] then Environment and Natural Resources Secretary Victor O. Ramos (Secretary Ramos) granted the Motion for Execution and directed the Regional Executive Director to conduct an ocular inspection over the disputed area. Secretary Ramos emphasized that jurisdiction over the controversy lay with the Department of Environment and Natural Resources, not with the Mines and Geosciences Bureau Panel of Arbitrators.[42]

The dispositive portion of his November 21, 1996 Order read:

WHEREFORE, the motion for execution is hereby GRANTED. Accordingly, the Regional Executive Director (now the Regional Director), Mines and Geo-Sciences Bureau, DENR-CARAGA Region, is hereby directed to execute the Decision, dated January 31, 1995, as directed in the second paragraph of the dispositive portion thereof.

SO ORDERED.[43] (Emphasis in the original)

On April 14, 1999, Krominco filed before the Mines and Geosciences Bureau Panel of Arbitrators a Petition against Naredico. It prayed that the overlap area be excluded from Naredico's Agreement, and that its exclusive rights over the overlap area be recognized.[44]

On April 16, 1999, Naredico filed its own Petition before the Panel of Arbitrators. It asserted its right over the overlap, which it claimed was erroneously included in Krominco's Operating Contract.[45]

In its October 4, 2001 Decision,[46] the Panel of Arbitrators ruled that Krominco had a better right than Naredico over the overlap area. It found that Naredico had known that its proposed contract area overlapped with Krominco's final operating area, and agreed to exclude it from its own final contract area.[47]

The dispositive portion of the Panel of Arbitrators' October 4, 2001 Decision read:

WHEREFORE, it is hereby declared that KROMINCO has the exclusive, valid[,] and subsisting rights over the area claimed by NAREDICO.

SO ORDERED.[48]

On November 19, 2001, Naredico appealed[49] the Panel of Arbitrators' Decision before the Mines Adjudication Board. In its December 7, 2006 Order, the Mines Adjudication Board directed the Regional Director of the Mines and Geosciences Bureau to conduct a Joint Relocation Survey of the common boundaries between the mining claims of Naredico and Krominco.[50]

On February 2, 2007, Officer-in-Charge Regional Director Alilo C. Ensomo, Jr. submitted his Joint Relocation Survey Report,[51] writing that Krominco's "mill plant, administrative building, staffhouse, assay laboratory, refilling station, dynamite and [ammo] magazines, motorpool and mill waste dump sites"[52] lay outside of its contract area and within the contested area.

In its May 25, 2007 Decision,[53] the Mines Adjudication Board modified the Panel of Arbitrators' October 4, 2001 Decision. Recognizing the validity of the contracts entered into by the parties, it awarded the area occupied with Krominco's structures to Krominco, and the free area to Naredico.[54] The dispositive portion of its Decision read:

WHEREFORE, in view of the foregoing, the appealed Decision of the Panel of Arbitrators is accordingly MODIFIED and it is hereby declared and ordered that:

(1)

Naredico has the exclusive right over the disputed area and is entitled to the possession thereof EXCEPT for the areas over which [Krominco's] mill plant, administrative building, staff house, assay laboratory, refilling station, dynamite and ammo magazines, motorpool and mill waste dump sites are situated which will be determined through a survey to be conducted by a surveyor authorized by the Regional Office of the DENR (Region XIII, Surigao City[]), the cost of which to be equally shared by Naredico and Krominco;

(2)

Krominco is ordered to immediately surrender to Naredico those areas over which the structures above are not situated and correspondingly Naredico is ordered to allow Krominco and the public to enter and use the road within said areas;

(3)

The Contract Areas in both the Operating Agreement between Krominco and the government and the MPSA between Naredico and the government be accordingly amended.

SO ORDERED.[55]

Acting on Krominco's Appeal, the Court of Appeals in its November 26, 2010 Decision[56] reversed the Mines Adjudication Board May 25, 2007 Decision and reinstated the Panel of Arbitrators' October 4, 2001 Decision. It brushed aside Naredico's contention that the disputed area was not included in Section 1.1 or the Operating Area of Krominco's Operating Contract. It held that the provision only defined the initial geographical coordinates of Krominco's operating area, with the final operating area still "subject to actual survey and verification by deputized geodetic engineers[.]"[57]

It also ruled that the clear intention of the contracting parties, namely Krominco and the Government, was to include in its final operating area the actual area where Krominco's structures, equipment, and main ore body were

located.[58]

The Court of Appeals likewise found that despite not having a representative, the Government accepted Krominco's final contract area, as shown in Director Muyco's letter to Vitug.[59] It further pointed out that Naredico agreed to Director Muyco's suggestion to exclude from its Agreement the areas covered by Krominco's subsisting mining rights.[60]

Finally, the Court of Appeals upheld the "first-in-time, first-in-right" principle in mining claims. Thus, it proclaimed that Krominco had a superior right over Naredico since it registered its mining claims first.[61]

The dispositive portion of the Court of Appeals November 26, 2010 Decision read:

WHEREFORE, premises considered, the assailed Decision of the Mines Adjudication Board in MAB Case No. 070-98 is hereby REVERSED and SET ASIDE for lack of legal basis and the Decision of the Panel of Arbitrators is hereby REINSTATED.

SO ORDERED.[62] (Emphasis in the original)

Naredico moved for reconsideration,[63] but its motion was denied in the Court of Appeals May 10, 2011 Resolution.[64] The Court of Appeals emphasized that Krominco's final contract area was approved earlier than Naredico's application for a mineral production sharing agreement. More importantly, Naredico was aware that its proposed contract area overlapped with Krominco's final contract area, and expressly agreed to waive it from its application.[65]

Thus, Naredico filed before this Court a Petition for Review on Certiorari.[66] It claims that respondent Krominco failed to renew its Operating Contract, which expired on February 27, 2005, while its own Agreement would only expire in 2017. It further opines that since its Agreement allows it to occupy an area with a subsisting mining right that was abandoned or relinquished by the grantee, respondent's Petition for Review before the Court of Appeals had become moot.[67] It insists that the May 25, 2007 Decision of the Mines Adjudication Board had long been final and executory.[68]

Petitioner asserts that the Court of Appeals erred in failing to take judicial notice of Secretary Alcala's factual findings in his January 31, 1995 Decision.[69] In the same vein, it faults the Court of Appeals for not adopting the findings of the Mines Adjudication Board and the results of the Joint Relocation Survey.[70]

Petitioner likewise posits that the first-in-time, first-in-right principle did not apply because the conflict was a boundary dispute, not a mining claim.[71]

On August 31, 2011,[72] this Court directed respondent to comment on the Petition.

In its Comment,[73] respondent stresses that petitioner never raised the issue of its Operating Contract's expiration before the Court of Appeals, and only did so for the first time before this Court.[74]

Nonetheless, respondent emphasizes that before its Operating Contract expired in February 2005, it was granted a four (4)-year extension by the Department of Environment and Natural Resources. Before this four (4)-year extension expired on February 27, 2009, it was granted a one (1)-year Special Mines Permit. Subsequently, it entered into a Mineral Production Sharing Agreement[75] with the Government for a 25-year period, from September 28, 2009 to September 28, 2034. Respondent's present Mineral Production Sharing Agreement temporarily excluded the overlap area pending resolution of the present dispute.[76]

Respondent opines that the Court of Appeals correctly applied the first-in-time, first-in-right principle since a dispute on overlapping contract areas involves a mining claim.[77] It states, "Even Naredico would admit that the

right to explore, develop[,] and utilize a mineral area is rendered nugatory if the area to which such right adheres to is subject to multiple claims." [78]

Respondent likewise posits that the Court of Appeals was not bound by Secretary Alcala's factual findings that the Amended Survey Plan was void, since these were not supported by substantial evidence. It contends that the law at that time authorized the Mines and Geosciences Bureau, not the Environment and Natural Resources Secretary, to approve survey plans. In this case, the Mines and Geosciences Bureau approved its Amended Survey Plan. [79]

Respondent also points out that even if its Amended Survey Plan was indeed void, the overlap area would still not be conveyed to petitioner as part of petitioner's contract area under its Agreement, since the overlap area was not "abandoned or relinquished by the former grantee of mining rights or operator." [80]

Respondent highlights that petitioner, having always known of an overlap between their mining claims, agreed to exclude the areas with mining rights in its final contract area. [81] It declares that petitioner was estopped from claiming rights over the overlap area:

Here, Naredico may not renege on its own acts and representations to the prejudice of the Government and Krominco, both of whom relied on Naredico's representation. Since Naredico voluntarily acquiesced to the exclusion of those areas already covered by the valid and subsisting mining rights of Krominco, it is now therefore estopped from questioning such exclusion. [82]

Respondent further claims that the Joint Relocation Survey conducted by the Mines Adjudication Board was invalid as it was procedurally infirm and violated respondent's right to due process. Respondent points out that it was neither allowed to participate in the actual survey nor was it given a copy of the resulting Joint Relocation Survey Report. [83]

Finally, respondent claims that the Court of Appeals did not err in reversing the Mines Adjudication Board Decision, since the latter effectively created new contracts for petitioner and respondent without their consent. [84]

On April 16, 2012, [85] this Court directed petitioner to reply to the Comment.

In its Reply, [86] petitioner points out that respondent already admitted that its own Mineral Production Sharing Agreement did not include the overlap area. [87]

Petitioner claims that following the first-in-time, first-in-right principle, it has a superior right over the overlap area as it was the first to discover the mineral deposits within it. This overlap area was included in its application, while respondent's Operating Contract did not include the overlap area, which respondent only included in its Amended Survey Plan. [88]

On January 30, 2013, [89] this Court required the parties to submit their respective memoranda.

In its Memorandum, [90] petitioner asserts that while its Petition is not limited to questions of law, it falls under the recognized exceptions to petitions for review on certiorari. [91]

Petitioner reiterates that since respondent's Operating Contract was not renewed upon its expiration on February 27, 2005, its Petition before the Court of Appeals had become moot. [92] Petitioner likewise avers that the supposed extension and conversion of respondent's Operating Contract was invalid. [93]

Finally, petitioner repeats its claim that the Court of Appeals erred in applying the first-in-time, first-in-right principle since the controversy involved a boundary dispute, not a mining claim. Nonetheless, it maintains that as the first to discover and register the overlap area, it should benefit from the first-in-time, first-in-right principle, not respondent. [94]

In its Memorandum,[95] respondent reiterates that its mining rights over the final contract area subject of its Operating Contract subsists and that it continues to possess and operate the same area. This time, it uses its mining claim through the Mineral Production Sharing Agreement it entered into with the Government on September 28, 2009.[96]

The issues for this Court's resolution are:

First, whether or not respondent's Petition before the Court of Appeals had become moot; and

Second, whether or not the Court of Appeals erred in reversing the findings of the Mines Adjudication Board.

I

The power of judicial review is limited to actual cases and controversies.[97] An actual case or controversy exists "when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding." [98]

A case is deemed moot and academic when it ceases to present a justiciable controversy due to a supervening event. The lack of an actual or justiciable issue means that there is nothing for the court to resolve and will be in effect only rendering an advisory opinion.[99]

Petitioner claims that respondent's supposed failure to renew its Operating Contract, which expired on February 27, 2005, erased the existing controversy and automatically gave it mining rights over the overlap area, under its Agreement.[100] It likewise asserts that the extension of respondent's Operating Contract was void since it was not provided for in the Term of Contract.[101]

Petitioner is mistaken.

Petitioner anchors its claim on an erroneous reading of the Term of Contract in respondent's Operating Contract, which states:

VII

TERM OF CONTRACT

The term of this Operating Contract shall be 16 years from the date of effectivity hereof renewable for another 25 years, upon compliance by [Krominco] with the terms and conditions of this Operating Contract; provided, however, that if during the term of this Operating Contract, the operation is suspended due to fortuitous events or causes beyond the control of [Krominco], the period of such suspension shall not be counted as part of the original or renewed terms therefore and such term shall be extended for the same period of suspension

For purposes hereof, "fortuitous events" shall mean events beyond the control and affecting either [Krominco] or the GOVERNMENT which cannot be foreseen[,] or if foreseeable[,] cannot be either prevented or avoided by the exercise of due diligence, such as but not limited to revolution, rebellion or insurrection, state intervention, act of war (declared or undeclared), hostilities, riot or civil commotion, shipwreck, earthquake, typhoon, flood, fire or other natural physical disaster, strikes, work stoppage of labor, facilities, equipment or machinery, and a change in market conditions which would make it uneconomical for [Krominco] to mine, extract, process, utilize[,] or dispose of the minerals from the OPERATING AREA.[102] (Emphasis supplied)

Petitioner claims that the extension granted to respondent was void because the reason for it did not come from a suspension of operation due to a fortuitous event; rather, it was caused by the impending expiration of the Operating Contract's 16-year term.[103]

There is nothing in the Term of Contract that limits the term extension only to instances when operations are

suspended due to a fortuitous event. Thus, the Department of Environment and Natural Resources did not err in granting respondent a four (4)-year extension.

It is a cardinal rule in statutory construction that when the law is clear, "there is no room for construction or interpretation. There is only room for application." [104]

As the facts show, respondent's mining rights subsist; hence, a justiciable controversy still exists over the overlap area:

Indeed, even before the expiration of the Contract in February 2005, Krominco sought to protect these investments and to continue its operations. It applied for and was granted a four (4)-year [e]xtension of its Contract through an Order issued by the [Environment and Natural Resources] Secretary dated December 23, 2004, effectively extending the validity of the Contract to February 27, 2009. Prior to the expiration of this extended term, Krominco was also granted a Special Mines Permit on February 27, 2009, valid up to February 27, 2010, which allowed it to continue its mining operations in the same area. Subsequently, Krominco was further granted [a Mineral Production Sharing Agreement], with a period of validity of twenty-five (25) years (effective from September 28, 2009 to September 28, 2034), temporarily excluding therefrom the area subject of the present dispute. Krominco continues to be in exclusive possession and utilization of the same operating area to this day. [105]

II

In deference to its technical knowledge and expertise on matters falling within its jurisdiction, the findings of fact of the Mines Adjudication Board, when supported by substantial evidence, are binding on the Court of Appeals and on this Court.

In this case, petitioner submitted an application for an Exploration Contract on December 8, 1988. [106] About two (2) years later, on August 13, 1990, [107] petitioner requested for a revision of its earlier application, converting the Exploration Contract to a mineral production sharing agreement and for an increase of its proposed operating area.

On the other hand, respondent and the Government executed an Operating Contract [108] on February 21, 1989, which renegotiated or revived its 1977 Operation Contract.

In modifying the Panel of Arbitrators' Decision, the Mines Adjudication Board acknowledged that petitioner's and respondent's mining contracts were perfected, [109] and ruled that there was a need to harmonize [110] their stipulations.

It ordered a Joint Relocation Survey, which confirmed that while respondent's mine pit and ore body were within its contract area, some of its structures lay outside its contract area and within the contested area. [111]

Taking both contracts' validity into account, the Mines Adjudication Board modified the Panel of Arbitrators' Decision by identifying the actual areas occupied by respondent's structures and dividing the contested area between the parties:

All considered, this Board recognizes the validity and existence of the two (2) contracts and faithful compliance to the contractual right and obligation of the parties. Hence, the Board rules that the contested area minus that portion occupied by Krominco be granted to Naredico as per the original intention of the parties. So the portion which covers the mill plant, administrative building, staff house, assay laboratory, refilling stations, dynamites and ammo magazines, motor pool and mill waste dumpsites, referred as the built-up areas, shall be awarded to Krominco in compliance to the contractual stipulations and the rest of the area applied for and included in the [Agreement] of Naredico, which is the free area, be awarded to Naredico, Inc.

Thus, we now rule that the structures which include Krominco's mill plant, administrative building, staffhouse, assay laboratory, refilling station, dynamite and ammo magazines, motor pool and mill waste dump sites that are within the contested area should properly belong to the contract area of Krominco with the precise/specific metes and bounds covered by each with allowable [setbacks] to be determined by the survey to be conducted by a surveyor authorized by the Regional Office of the [Department of Environment and Natural Resources] (Region XIII, Surigao City[]), the cost of which [is] to be equally shared by Naredico and Krominco; the rest of the area, even those portions in between those areas covered by the enumerated Krominco structures properly belong to the contract area of Naredico, all in accordance with respective contracts of both companies with the government: namely Section 1.1 of the Operating Contract dated February 2, 1989 between Krominco and the Government and Section 4.1 of the [Agreement] between Naredico and the Government. It is understood that Naredico shall nevertheless allow Krominco and the public to use all the roads and easements of right of way within its area as determined above. [112]

The Mines Adjudication Board May 25, 2007 Decision was primarily based on respondent's Operating Contract which stipulated that its final operating area, as surveyed, would only include the actual areas occupied by its structures:

I

CONTRACT AREA

1.1. DESCRIPTION: THE OPERATING AREA

The Contract Area, hereinafter referred to as the OPERATING AREA, shall consist of 729 hectares, more or less, within CAB I of Parcel III of the Surigao Mineral Reservation, as initially defined by the following coordinates:

....

It is understood that the final OPERATING AREA shall be subject to actual survey and verification by deputized geodetic engineers acceptable to both parties with respect to its boundaries and locations so as to cover the actual areas where [Krominco's] mill, plant, equipment[,] and main ore body are situated in accordance with Par. 7 above.[113] (Emphasis supplied)

This Court sees no reason to disturb the findings of the Mines Adjudication Board.

Chapter XIII of Republic Act No. 7942 enumerates the powers available to the Panel of Arbitrators and Mines Adjudication Board. Section 77, in turn, granted the Panel of Arbitrators exclusive and original jurisdiction on: (1) disputes involving rights to mining areas; (2) disputes on mineral agreements or permit; (3) disputes among surface owners, occupants, and claimholders/concessionaires; and (4) disputes pending before the Mines and Geosciences Bureau and Department of Environment and Natural Resources when the law was passed.[114]

The Mines Adjudication Board has appellate jurisdiction over decisions and orders of the Panel of Arbitrators,[115] while also possessing specific powers and functions related to its quasi-judicial functions:

SECTION 79. Mines Adjudication Board. — The Mines Adjudication Board shall be composed of three (3) members. The Secretary shall be the chairman with the Director of the Mines and Geosciences Bureau and the Undersecretary for Operations of the Department as members thereof. The Board shall have the following powers and functions:

(a)

To promulgate rules and regulations governing the hearing and disposition of cases before it, as well as those pertaining to its internal functions, and such rules and regulations as may be necessary to carry out its functions;

(b)

To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and other documents as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Act;

(c)

To conduct hearings on all matters within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearing at any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity, whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss the mining dispute as part thereof, where it is trivial or where further proceedings by the Board are not necessary or desirable;

(1)

To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and

(2)

To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.

In any proceeding before the Board, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that shall govern. The Board shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Board, the parties may be represented by legal counsel. The findings of fact of the Board shall be conclusive and binding on the parties and its decision or order shall be final and executory.

A petition for review by certiorari and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board. (Emphasis in the original)

In this case, after its Joint Relocation Survey, the Mines Adjudication Board found that respondent's final operating area went beyond the actual areas occupied by its structures, in clear contravention of the terms in its Operating Contract:

The purpose of the relocation survey is to establish and identify the final area of Krominco under the Operating Contract to include where the mill plant and equipment and main ore body are situated as well as to identify the area to be excluded from the [Agreement] of Naredico in compliance to the stipulation in the [Agreement] that the contract area shall further exclude those covered by valid and subsisting mining rights.

The Relocation Survey Report identified that the contested area is confined in one meridional block with the technical description as follows:

Corner No. Longitude Latitude

1 125°37'30" 10°21'30"

2 125°37'30" 10°22'00"

3 125°38'00" 10°22'00"

4 125°38'00" 10°21'30"

The report indicated that from the verification and ocular observation made by the team of the mining areas after the relocation of the common boundaries, the mine pit of Krominco, Inc. and its main ore body are within the company's contract area and outside of the contested area. The company's ore stockpile lies within the boundary limit, while all the other structures which include their mill plant, administrative building, staff house, assay laboratory, refilling stations, dynamites and ammo magazines, motor pool and mill waste dumpsite lie outside of the company's contract area and are within the contested area of the two companies.[116]

As the administrative body with jurisdiction over disputes relative to mining rights, the Mines Adjudication Board's findings should be treated with deference in recognition of its expertise and technical knowledge over such matters.[117]

Additionally, Rule 43, Section 10[118] of the Rules of Civil Procedure, acknowledging the primacy and deference accorded to decisions of quasi-judicial agencies, states that the factual findings of a quasi-judicial agency, when supported by substantial evidence, shall be binding on the Court of Appeals. Hence, this Court upholds the findings of the Mines Adjudication Board and reinstates its Decision.

III

In reversing the Mines Adjudication Board Decision, the Court of Appeals referred to, among others, then Associate Justice, now Chief Justice, Lucas Bersamin's separate opinion in *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.*, which noted this jurisdiction's supposed adherence to the first-in-time, first-in-right principle in mining.[119]

The Court of Appeals is mistaken.

There is no vested right to mining rights, save for patented mining claims that were granted under the Philippine Bill of 1902.

When the Philippines was still under Spanish rule, the Royal Decree of May 14, 1867, or the Spanish Mining Law, was the prevailing law for the exploration and use of our mineral lands. When the Americans took control of the Philippines, they governed our country through a series of organic acts which effectively acted as our Constitution from 1900 to 1935. Among these was the Philippine Bill of 1902, through which the United States Congress assumed control over the Philippines.[120]

The Philippine Bill of 1902 declared all valuable mineral deposits in public lands to be open to "exploration, occupation[,] and purchase"[121] by Americans and Filipinos. It required the locator of a mineral claim to record [122] it in the mining recorder of the district it was found in within 30 days, with no less than US\$100.00 worth of labor or improvements of the same value each year.[123]

Yinlu Bicol Mining Corp. v. Trans-Asia Oil and Energy Development Corp.[124] explained:

Pursuant to the Philippine Bill of 1902, therefore, once a mining claim was made or a mining patent was issued over a parcel of land in accordance with the relative provisions of the Philippine Bill of 1902, such land was

considered private property and no longer part of the public domain. The claimant or patent holder was the owner of both the surface of the land and of the minerals found underneath.[125]

However, once the 1935 Constitution took effect, the alienation of mineral lands, among other natural resources of the State, was expressly prohibited:

Article XIII

Conservation and Utilization of Natural Resources

SECTION 1. All agricultural timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and limit of the grant.[126] (Emphasis supplied)

Commonwealth Act No. 137 or the Mining Act, as amended,[127] echoing the prohibition in the 1935 Constitution, granted only lease rights to mining claimants:

SECTION 5. Mineral Deposits Open to Location and Lease. Subject to any existing rights or reservations, all valuable mineral deposits in public land including timber or forest land as defined in Presidential Decree No. 389, otherwise known as the Forestry Reform Code or in private land not closed to mining location, and the land which they are found, shall be free and open to prospecting, occupation, location and lease.[128]

Both the 1943 and 1973 Constitutions maintained the proscription on State alienation of mineral land while allowing qualified applicants to lease mineral land. The 1943 Constitution stated:

1943 Constitution

Article VIII

Conservation and Utilization of Natural Resources

SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all sources of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

The 1973 Constitution, in turn, read:

1973 Constitution

Article XIV

The National Economy and Patrimony of the Nation

SECTION 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant.

While the 1987 Constitution retained the prohibition on the sale of mineral lands, there was a conspicuous absence of the State's previous authority in the 1943 and 1973 Constitutions to administer inalienable natural resources through "license, concession or lease:"[129]

1987 Constitution

Article XII National Economy and Patrimony

SECTION 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. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

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. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

Under the 1987 Constitution, the State is expected to take on a more hands-on approach or "a more dynamic role in the exploration, development[,] and utilization of the natural resources of the country"[130] as a consequence of its full control and supervision over natural resources. It exercises control and supervision through the following modes:

- The State may directly undertake such activities; or

- The State may enter into co-production, joint venture or production-sharing agreements with Filipino citizens or qualified corporations;
- Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens;
- For the large-scale exploration, development and utilization of minerals, petroleum and other mineral oils, the President may enter into agreements with foreign-owned corporations involving technical or financial assistance.[131] (Emphasis in the original)

Instead of a first-in-time, first-in right approach toward applicants for mining claims and mining rights, the State decides what the most beneficial method is when it comes to exploring, developing, and utilizing minerals. It may choose to either directly undertake mining activities by itself or enter into co-production, joint venture, or production sharing agreements with qualified applicants.

The Court of Appeals erred in relying on a mere obiter dictum as its basis for proclaiming that this jurisdiction adheres to the first-in-time, first-in--right principle.

In *Apex Mining Co.*, [132] this Court did not rule on which between Apex and Balite had the better right or priority over the mining operations within the forest reserve in Monkayo, Davao Del Norte and Cateel, Davao Oriental. Apex Mining Co. stated that the issue had been overtaken by the issuance of Proclamation No. 297 on November 25, 2002, which declared 8,100 hectares in Monkayo, Compostela Valley, including the disputed area, as a mineral reservation. Apex Mining Co. explained that the mining operations within the mineral reservation was a purely executive function over which courts will not interfere.[133]

In denying the motion for reconsideration for its earlier Decision, Apex Mining Co. reiterated its ruling that it cannot direct the Government to accept either Apex's or Halite's applications for exploration permits. The Executive Department has the prerogative to accept an exploration application or to develop the site on its own, and courts cannot meddle in a purely executive function.[134]

Nonetheless, Chief Justice Bersamin in his Separate Opinion suggested that in order to prevent further litigation should the Government decide later on to accept an exploration application, this Court should already determine which between Apex and Balite had the priority right to mine the Diwalwal Gold Rush Area.[135] He noted that under Philippine mining laws, the person who first locates and registers a mining claim, and later mines the area, has a valid and existing right:

Which between Apex and Balite has priority?

On the one hand, Apex rests its claim to priority on the precept of first-in-time, first-in-right, a principle that is explicitly recognized by Section 1 of Presidential Decree (P.D.) No. 99-A, which amended Commonwealth Act (C.A.) No. 137 (Mining Act), which provides:

Whenever there is a conflict between claim owners over a mining claim, whether mineral or non-mineral, the locator of the claim who first registered his claim with the proper mining registrar, notwithstanding any defect in form or technicality, shall have the exclusive right to possess, exploit, explore, develop and operate such mining claim.[136] (Emphasis in the original)

Despite his noble intention of addressing a potential issue to prevent the parties from going through the whole judicial process again, Chief Justice Bersamin's statement was a separate opinion; thus, it was not and should not be treated as a binding precedent. Further, his statement was obiter dictum. He simply expressed an opinion not directly related to the question raised before this Court.[137]

All told, respondent's right over the contested area failed to hold since the boundaries of its Amended Survey Plan

went against the clear provisions of its Operating Contract that only the area it actually occupied will be included in its final operating area. Additionally, the exclusions in petitioner's Agreement only pertained to vested contractual rights, which in this case were the actual areas occupied by respondent's structures in the contested area.

WHEREFORE, premises considered, the Petition for Review on Certiorari is GRANTED. The assailed Court of Appeals November 26, 2010 Decision and May 10, 2011 Resolution in CA-G.R. SP No. 99372 are REVERSED and SET ASIDE. The Mines Adjudication Board May 25, 2007 Decision is REINSTATED.

SO ORDERED.

Peralta (Chairperson), Gesmundo, J. Reyes, Jr., and Hernando, JJ., concur.

[1] Rollo, pp. 9-34.

[2] Id. at 35-52. The Decision was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Bienvenido L. Reyes and Priscilla J. Baltazar-Padilla of the Special Third Division, Court of Appeals, Manila.

[3] Id. at 53-59. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Bienvenido L. Reyes and Priscilla J. Baltazar-Padilla of the Former Special Third Division, Court of Appeals, Manila.

[4] Id. at 148-159. The Decision was penned by Chairman Angelo T. Reyes, member Armi Jane Roa-Borje and alternate member Teresita M. Repizo of the Mines Adjudication Board.

[5] Id. at 127-138. The Decision was penned by the Panel of Arbitrators Chairman, Atty. Paquito R. Rosal, and members Alilo C. Ensomo, Jr. and Atty. Jesus M. Mission of the Mines and Geosciences Bureau, Surigao City.

[6] Id. at 37.

[7] Id.

[8] Id.

[9] Id.

[10] Id. at 60.

[11] Id. at 62-79.

[12] Id. at 76.

[13] Id. at 64.

[14] Id. at 65.

[15] Id. at 80.

[16] Id. at 81.

[17] Id.

[18] Id. at 80.

- [19] Id.
- [20] Id. at 38-39.
- [21] Id. at 84-85.
- [22] Id. at 84-85.
- [23] Id. at 39.
- [24] Id. at 86-108.
- [25] Id. at 91.
- [26] Id.
- [27] Id. at 109.
- [28] Id. at 16.
- [29] Id. at 109-1-112.
- [30] Id. at 110.
- [31] Id. at 112.
- [32] The Petition was docketed as DENR Case No. 7461.
- [33] Rollo, p. 113.
- [34] Id. at 113-126.
- [35] Id. at 121.
- [36] Id. at 121-122.
- [37] Id. at 123.
- [38] Id. at 122-123.
- [39] Id. at 125-126.
- [40] Id. at 509.
- [41] Id. at 509-511.
- [42] Id. at 510-511.
- [43] Id. at 511.
- [44] Id. at 153.
- [45] Id.
- [46] Id. at 127-138.
- [47] Id. at 132-134.
- [48] Id. at 138.
- [49] Id. at 41.

[50] Id. at 140.

[51] Id. at 139-145. The Report was submitted by Engineer III Ernesto R. Alcantara, Engineer II Pio Zaldy M. Merano, and Cartographer II Ronnie R. Juarez of the Mines and Geosciences Bureau.

[52] Id. at 142.

[53] Id. at 148-159.

[54] Id. at 157.

[55] Id. at 158-159.

[56] Id. at 35-52.

[57] Id. at 44-45.

[58] Id. at 45.

[59] Id. at 46.

[60] Id. at 46-47.

[61] Id. at 49-51.

[62] Id. at 51-52.

[63] Id. at 53.

[64] Id. at 53-59.

[65] Id. at 54-55.

[66] Id. at 9-31.

[67] Id. at 22.

[68] Id. at 22-23.

[69] Id. at 25-26.

[70] Id. at 27-29.

[71] Id. at 26-27.

[72] Id. at 314.

[73] Id. at 319-344.

[74] Id. at 325-326.

[75] Id. at 514-533.

[76] Id. at 326-327.

[77] Id. at 327.

[78] Id.

[79] Id. at 328-331.

[80] Id. at 331.

[81] Id. at 332.

[82] Id.

[83] Id. at 333-334.

[84] Id. at 339-340.

[85] Id. at 428.

[86] Id. at 431-442.

[87] Id. at 434-435.

[88] Id. at 436-437.

[89] Id. at 452-453.

[90] Id. at 483-507.

[91] Id. at 494-495.

[92] Id. at 495-496.

[93] Id. at 497-498.

[94] Id. at 504-505.

[95] Id. at 458-482.

[96] Id. at 465-466.

[97] CONST., art. VIII, sec. 1.

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[98] Republic v. Moldex Realty, Inc., 780 Phil. 553, 560 (2016) [Per J. Leonen, Second Division].

[99] Id. citing David v. Macapagal-Arroyo, 522 Phil. 705, 753 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[100] Rollo, pp. 497-498.

[101] Id.

[102] Id. at 76-77.

[103] Id. at 497-498.

[104] Bolos v. Bolos, 648 Phil. 630,637 (2010) (Per J. Mendoza, Second Division), citing Amores v. House of Representatives Electoral Tribunal, 636 Phil 600 (2010) [Per J. Carpio Morales, En Banc].

[105] Rollo, pp. 465-466.

[106] Id. at 60.

[107] Id. at 81.

[108] Id. at 62-79.

[109] Id. at 155.

[110] Id. at 156.

[111] Id. at 156-157.

[112] Id. at 157-158.

[113] Id. at 64-65.

[114] Rep. Act No. 7942 (1995), sec. 77.

[115] Rep. Act No. 7942 (1995), sec. 78.

[116] Rollo, pp. 156-157.

[117] JMM Promotions and Management v. Court of Appeals, 439 Phil. 1, 10-11 (2002) [Per J. Corona, Third Division]; Spouses Calvo v. Spouses Vergara, 423 Phil. 939, 947 (2001) [Per J. Quisumbing, Second Division]; Alvarez v. PICOP Resources, Inc., 538 Phil. 348, 397 (2006) [Per J. Chico-Nazario, First Division].

[118] SECTION 10. Due course. — If upon the filing of the comment or such other pleadings or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the basis of the petition or the records the Court of Appeals finds prima facie that the court or agency concerned has committed errors of fact or law that would warrant reversal or modification of the award, judgment, final order or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same. The findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals.

[119] Rollo, pp. 49-50.

[120] Atok Big-Wedge Mining Co. v. Intermediate Appellate Court, 330 Phil. 244, 261-262 (1996) [Per J. Hermosisima, Jr., First Division].

[121] Philippine Bill (1902), sec. 21:

SECTION 21. That all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation, and purchase, and the land in which they are found to occupation and purchase, by citizens of the United States, or of said Islands: Provided, That when on any lands in said Islands entered and occupied as agricultural lands under the provisions of this Act, but not patented, mineral deposits have been found, the working of such mineral deposits is hereby forbidden until the person, association, or corporation who or which has entered and is occupying such lands shall have paid to the Government of said Islands such additional sum or sums as will make the total amount paid for the mineral claim or claims in which said deposits are located equal to the amount charged by the Government for the same as mineral claims.

[122] Philippine Bill (1902), sec. 31:

SECTION 31. That every person locating a mineral claim shall record the same with the provincial secretary or such other officer as by the Government of the Philippine Islands may be described as mining recorder of the district within which the same is situated, within thirty days after the location thereof. Such record shall be

made in a book to be kept for the purpose in the office of the said provincial secretary or such other officer as by said Government described as mining recorder, in which shall be inserted the name of the claim, the name of each locator, the locality of the mine, the direction of the location line, the length in feet, the date of location, and the date of the record. A claim which shall not have been recorded within the prescribed period shall be deemed to have been abandoned.

[123] Philippine Bill (1902), sec. 36:

SECTION 36. That the United States Philippine Commission or its successors may make regulations, not in conflict with the provisions of this Act, governing the location, manner of recording, and amount of work necessary to hold possession of a mining claim, subject to the following requirements: On each claim located after the passage of this Act, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. . .

[124] 750 Phil. 148 (2015) [Per J. Bersamin, First Division].

[125] *Id.* at 167.

[126] 1935 CONST., art. 13, sec. 1. Amended.

[127] Presidential Decree No. 463 (1974).

[128] Presidential Decree No. 463 (1974), sec. 5.

[129] CONSTITUTION, art. XII, sec. 2.

[130] *Miners Association of the Phils., Inc. v. Factoran, Jr.*, 310 Phil. 113, 130-131 (1995) [Per J. Romero, En Banc].

[131] *J. Puno*, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 1003 (2000) [Per Curiam, En Banc].

[132] 525 Phil. 436 (2006) [Per J. Chico-Nazario, First Division].

[133] *Id.* at 471-472.

[134] *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.*, 620 Phil. 100, 154 (2009) [Per J. Chico-Nazario, En Banc].

[135] *J. Lucas Bersamin*, Dissenting Opinion in *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.*, 620 Phil. 100, 157 (2009) [Per J. Chico-Nazario, En Banc].

[136] *Id.* at 171.

[137] *Delta Motors Corporation v. Court of Appeals*, 342 Phil. 173, 186 (1997) [Per J. Davide, Jr., Third Division].

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