

SHULEY MINE, INC., PETITIONER, VS. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, REP. BY SECRETARY RAMON J.P. PAJE, MINES AND GEOSCIENCES BUREAU, REP. BY ACTING DIRECTOR LEO ...

G.R. No. 214923. August 28, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

The Facts and The Case

Before this Court is a Petition for Review on Certiorari filed by petitioner Shuley Mine, Inc. (SMI) against respondents Secretary Ramon J.P. Paje (Sec. Paje) of the Department of Environment and Natural Resources (DENR), Acting Director Leo L. Jasareno (Dir. Jasareno) of the Mines and Geosciences Bureau (MGB), Director Juan Miguel T. Cuna (Dir. Cuna) of the Environmental Management Bureau (EMB), and Chief Privatization Officer, Karen G. Singson (CPO Singson) of the Privatization and Management Office (PMO), seeking to annul and set aside the June 13, 2014 Decision[1] and the October 9, 2014 Resolution[2] of the Court of Appeals-Cagayan de Oro City (CA) in CA-G.R. SP No. 05709 which annulled the Writ of Preliminary Injunction issued by the Regional Trial Court (RTC) of Surigao City, Branch 29.

On September 2, 1994, the Philippine Government and Philnico Mining and Industrial Corporation (Philnico) entered into a Mineral Production Sharing Agreement (MPSA) No. 072-97-XIII (SMR) for the exploration, development and commercial utilization of nickel ores covering the contract area of about 25,000 hectares in Cagdianao, Surigao del Norte and Hanigad, Awasan and Nonoc Islands, Surigao City within the Surigao Mineral Reservation.[3] This was approved by the President of the Philippines on January 20, 1995.[4]

On May 2, 1997, Philnico entered into a Deed of Assignment with Pacific Nickel Philippines, Inc. (Pacific Nickel) and Nonoc Mining & Industrial Corporation (Nonoc Mining) where it assigned its mining rights to Pacific Nickel and its processing rights to Nonoc Mining, subject to the same terms and conditions under MPSA No. 072-97-XIII (SMR).[5]

On August 7, 1997, MPSA No. 072-97-XIII (SMR) of January 20, 1995 was amended by virtue of the Amended and Restated Definitive Agreement (ARDA) and to conform with the applicable provisions of Republic Act (R.A.) No. 7942 or the Philippine Mining Act of 1995 and DENR Department Administrative Order (DAO) No. 96-40.[6]

On April 27, 2009, Pacific Nickel, as holder of MPSA No. 072-97-XIII (SMR), entered into a Mines Operating Agreement (MOA) with the petitioner, where the latter agreed to perform mining activities such as the extraction, hauling, shipment and marketing of nickel ore within the 1,174-hectare contract mining area in Nonoc Island in Surigao del Norte as an Operator. Under the MOA, the petitioner likewise agreed to assume and perform all of the obligations of Pacific Nickel under the said agreement and the MPSA. The parties agreed that the contract period

was for 48 months, reckoned from the date of the agreement, or from April 27, 2009 to April 27, 2013.[7]

On June 2, 2009, the MOA was registered with the MGB Regional Office (RO) No. XIII, and the same was approved by the MGB Central Office in an Order dated July 23, 2009.[8]

In September 2009, petitioner and Pacific Nickel entered into a Supplemental Agreement where they agreed, among others, that the four-year effectivity of the MOA shall commence on the date of approval of the Partial Declaration of the Mining Project Feasibility (DMPF) pertaining to the contract area.[9] On December 20, 2010, the Supplemental Agreement was registered with MGB RO No. XIII.[10]

The petitioner alleged that the MGB approved the DMPF in its Order dated April 8, 2010. Hence, pursuant to the Supplemental Agreement, the MOA became operative beginning April 8, 2010 until April 8, 2014. Thereupon, petitioner SMI immediately conducted its mining operations.[11]

Pursuant to the May 18, 2011 letter of the Finance Secretary, calling the attention of the DENR Secretary to the continuing mining activities in the contract area despite Philnico's non-payment of the amount of US\$263,762,000.00 due to the government under the ARDA, Dir. Jasareno issued a Memorandum dated May 20, 2011, directing then Acting Regional Director of the MGB RO XIII Alilo C. Ensomo, Jr. (RD Ensomo) to immediately suspend the Ore Transport Permits (OTPs) and Mineral Ore Export Permits (MOEPs) that have been issued to Philnico and its assignees and suspend the acceptance of applications for, and issuance of the same permits for the minerals and ore extracted from the contract area under the subject MPSA.[12]

In compliance with the May 20, 2011 Memorandum, RD Ensomo sent a letter of even date to Pacific Nickel directing it to immediately comply with the suspension of the OTPs and MOEPs.[13]

Aggrieved, Pacific Nickel filed with the RTC of Surigao City separate petitions for injunction seeking to enjoin the implementation of MGB's directives in the May 20, 2011 Memorandum and Letter. These were docketed as Civil Case Nos. 7404 and 7405 and raffled to Branches 30 and 29, respectively.[14]

The trial courts, in both cases, issued temporary restraining orders (TROs). The TROs were later converted to writs of preliminary injunction in the Orders dated June 30, 2011 and July 25, 2011 issued by RTC Branches 29 and 30, respectively.[15]

The DENR and MGB assailed the said Orders before the CA via petitions for certiorari, docketed as CA-G.R. SP Nos. 04479-MIN and 04688-MIN.[16]

In view of the issuance of the writs prohibiting the implementation of the May 20, 2011 directive of the MGB, the petitioner alleged that it negotiated with the Department of Finance, DENR and MGB for it to be allowed to continue its mining operations in Nonoc Island. Thereafter, it applied for the issuance of OTPs and MOEPs. However, despite the issuance of the said writs and its payment of the MGB royalty fee, petitioner claimed that the MGB RO XIII refused to issue OTPs and MOEPs in its favor.[17]

On October 12, 2012, Roger A. De Dios, the Regional Director of MGB (RD De Dios) who replaced RD Ensomo, after being served by the petitioner with a formal demand letter, and after seeking clearance from his superiors, conducting several technical conferences and site visits, issued the requested OTPs and MOEPs to the petitioner.[18]

In a letter dated December 6, 2012, CPO Singson brought to the attention of Dir. Jasareno the continuous withdrawal and loading of ore materials within the contract area as well as the continued issuance by RD De Dios of OTPs. She explained that the case for the recovery of debt owed to the National Government amounting to USD300 Million remains pending in court and its eventual recovery lies in the value of the mineral deposits

remaining in the said area. Thus, she urged the MGB to preserve the contract area by ensuring that all mining laws, rules and regulations are strictly complied with by Pacific Nickel, the MPSA holder, prior to allowing its operators, such as the petitioner, to withdraw or ship out minerals from the said area as the depletion of the mineral ores therein will leave the area worthless to the great prejudice of the government.[19]

In a letter dated April 18, 2013, Pacific Nickel informed the Finance Secretary that by virtue of the OTPs and MOEPs petitioner was able to secure from MGB, it was able to ship out from the contract area approximately 270,000 WMT of nickel ores. Philippine Nickel claimed, however, that the petitioner undertook the same without its prior clearance and in violation of the terms and conditions of their MOA. The letter reads in part:

x x x x

[Petitioner's] activities, however, were undertaken without any prior clearance from [Pacific Nickel].

As new owners of [Pacific Nickel] and in deference to our relationship with PMO, we immediately took action and sent a letter last April 08, 2013 to [petitioner's] President, Mr. Antonio L. Co, to "suspend all mining and hauling operations in Nonoc Island until [the petitioner] has complied [with] all the legal requisites for its operation." Our due diligence works showed that there might be a need to amend the Project's Environmental Compliance Certificate and Declaration of Mining Project Feasibility due to changes in the nature and grade of the materials being mined.[20]

In another letter dated April 22, 2013, addressed to RD De Dios, copy furnished to Dir. Jasareno and Sec. Paje, Pacific Nickel informed them that it directed the petitioner to immediately suspend all its mining and hauling activities until it had complied with all the legal requisites for its operations to which it had agreed. It stated that the reason it ordered the petitioner to stop its operations was because it mined nickel ores with grades up to 1.79% which were beyond the allowed ore grade approved by the MGB under the Declaration of Mining Feasibility Study (DMFS). Pacific Nickel likewise assured the said offices that it remains committed to the full and faithful compliance with its obligations under its MPSA and will continue to guard against any acts of any operators or parties which may adversely affect its MPSA. Thus, considering the materiality of petitioner's acts which might adversely affect its MPSA, Pacific Nickel requested RD De Dios to suspend the right of the petitioner to transport and ship ore under its OTPs and MOEPs, and to temporarily suspend the issuance of additional OTPs and MOEPs to it until the petitioner has complied with all the legal requirements relative to its mining operations.[21]

On April 24, 2013, RD De Dios ordered the petitioner to respond to Pacific Nickel's complaint within five days from notice.[22]

In a letter dated April 25, 2013, petitioner countered that it did not go beyond the purportedly allowable nickel ore grade by mining nickel ore with grades up to 1.79%. It asserted that under the Philippine Mining Act of 1995, the purpose of DMFS was only to determine the commercial viability of a mining project and not to put a limit on what can be extracted from the mines. It added that a perusal of the approved DMFS would show that, contrary to the claim of Pacific Nickel, it was not limited to extracting nickel ore with a grade lower than 1.5% but could in fact, extract nickel ore with grades ranging from 0.92% to 2.10%. As such, it claimed that petitioner's mining operations were well within the scope of the subject MPSA and the DMFS. The petitioner also denied that it agreed to stop its mining operations as it had always complied with the legal requirements, pertinent laws, rules and regulations relative to its mining operations as shown by the fact that it had never received any notice of violation from the MGB or the EMB.[23]

In a Memorandum dated May 7, 2013, Dir. Jasareno directed RD De Dios not to issue any OTP or MOEP under the subject MPSA; and to suspend or stop the mining operations under the said MPSA pending the resolution of the issues raised by Pacific Nickel and PMO.[24]

In compliance with the May 7, 2013 Memorandum, RD De Dios wrote a letter dated May 8, 2013 to the petitioner directing it to temporarily suspend its mining operations in the contract area at once.[25]

On May 20, 2013, Dir. Jasareno informed the petitioner that its MOA with Pacific Nickel had already expired on April 27, 2013. The letter reads:

This refers to the Mines Operating Agreement (MOA) executed by and between Shuley Mine, Inc. (Shuley) and Pacific Nickel Philippines, Inc. on April 27, 2009 involving the conduct of mining and related activities by Shuley within a portion of the contract area under Mineral Production Sharing Agreement (MPSA) No. 072-97-XIII (SMR), as amended.

It may be recalled that under the Order dated July 23, 2009, this Office approved the conduct of the above activities by Shuley in the said contract area pursuant to the said MOA and Department of Environment and Natural Resources Memorandum Order No. 2004-09 which provides in part that "...Operating Agreement...shall be subject to the approval of the MGB Director."

The records of this Office show that the same MOA has expired on April 27, 2013, thus, the July 23, 2009 Order is no longer in force and effect from said date of expiration.[26]

Consequently, on May 25, 2013, petitioner filed a complaint with application for a temporary restraining order, and preliminary prohibitory and mandatory injunction before the RTC to enjoin the respondents from preventing it from conducting mining and shipping operations in the contract area.[27]

On May 27, 2013, the RTC issued an Ex-parte TRO enjoining the respondents to preserve the status quo and restraining them from preventing or disallowing SMI's mining and shipping operations for a period of seventy-two (72) hours from the date of the Order.[28]

On May 30, 2013, the RTC issued a TRO and set the case for the hearing of petitioner's prayer for the issuance of a writ of preliminary injunction on June 13 and 14, 2013.[29]

After the reception and evaluation of the evidence of the parties, the RTC granted petitioner's application for a writ of preliminary injunction, subject to its posting of a bond in the amount of P1M. The pertinent portion of the June 14, 2013 Order[30] reads:

The Court's evaluation of the evidence presented reveals, at the very least, the following established facts: (1) that [Pacific Nickel and [the petitioner] entered into the subject MOA, which, as admitted by [respondents], bore the approval of the MGB Director; (2) that [Pacific Nickel] and [the petitioner] entered into the Supplemental MOA, which, as admitted by [respondents], was registered with the MGB Regional Office No. XIII.

Whether such registration is equivalent to approval is an issue which should be resolved during the hearing on the merits of the case, where all pertinent issues can be properly ventilated. After all, this issue cannot be resolved without prejudging the outcome of the case. At this point, the Court is satisfied of the fact that no less than MGB Regional Director Roger De Dios finds, in MGB Memorandum No. RD-MMD-13-04-00 dated April 26, 2013, that the Mines Operating Agreement (MOA) between [Pacific Nickel] and SMI is still valid and effective until April 2014, which is covered by an approved Partial Declaration of Mining Project Feasibility of [Pacific Nickel] under MPSA No. 072-97-XIII.

x x x x

Section 3, Rule 58 of the Revised Rules of Civil Procedure provides that the issuance of a writ of preliminary injunction may be granted if the following requisites are met:

(1) The applicant must have a clear and unmistakable right, that is, a right in esse;

(2) There is a material and substantial invasion of such right; and

(3)

There is an urgent need for the writ to prevent irreparable injury to the applicant; and no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

All the foregoing requisites are present in the case at bar. The testimony of Engr. Noel Bombarda and the documentary evidence offered by [the petitioner] sufficiently established that it has a clear and unmistakable right to conduct mining operations by virtue of the MOA; that such right was indefinitely suspended by [respondents] without prior notice and hearing; that it stands to suffer great and irreparable injury if the implementation of the suspension is not enjoined, and that there is no other speedy and adequate remedy except this judicial intervention.[31]

On June 17, 2013, the RTC issued a writ of preliminary injunction. The same provides:

NOW, THEREFORE, [respondents] and all those acting [in their] behalf, are hereby restrained and enjoined from further committing the acts complained of—impeding and preventing [the petitioner] from conducting its mining and shipping operations in Nonoc, restraining and enjoining [respondents] and all persons acting on their behalf from taking any action that would hamper or prevent [the petitioner] and its shareholders, contractors, agents or employees from performing their rights, powers and functions under the MOA and MPSA and directing [respondent] Office of the Regional Director of the Mines and Geosciences Bureau – Region XIII (CARAGA) to issue and release to [the petitioner] the subject Ore Transport Permits and Mineral Ore Export Permits and to grant future application[s] for OTPs and MOEPs.[32]

On June 21, 2013, petitioner sent a letter to Dir. Jasareno, attaching a copy of the Writ and demanding compliance therewith, particularly the issuance of the OTPs and MOEPs already applied and paid for.[33]

On June 26, 2013, the MGB Central Office, through MGB Mining Technology Division Officer-in-Charge Esteban C. Martin, denied petitioner's request for the issuance of the OTPs and MOEPs premised on the expiration of the MOA between the petitioner and Pacific Nickel.[34] The letter reads:

This is in connection with your three (3) separate Letters, all dated April 23, 2013, with attached applications for Ore Transport Permit (OTP) and Mineral Ore Export Permit (MOEP) and pertinent documents, corresponding to the following:

a)

50,000 WMT of lateritic nickel ore with an estimated value of US\$1,000,000.00 for shipment to DH Kingstone Holding Co., Inc.;

b)

50,000 WMT of lateritic nickel ore with an estimated value of US\$1,650,000.00 for shipment to DH Kingstone Holding Co., Inc.;

c)

50,000 WMT of lateritic nickel ore with an estimated value of US\$1,000,000.00 for shipment to Great Bright Resources Limited.

Pursuant to Department Memorandum Circular No. 2010-07, please be informed that our evaluation of the pertinent documents reveals the lack of proof of approval of the September 29, 2009 Supplemental Agreement

between your company and Pacific Nickel Philippines, Inc., pursuant to Section 4 of the DMO No. 2004-09.

In view thereof, we shall in the meantime hold in abeyance the further processing of your OTP and MOEP applications pending compliance of the above-cited deficiency.

x x x x[35]

Without filing a motion for reconsideration, respondents elevated the matter before the CA via a petition for certiorari.

Upon the application of the respondents, the CA issued a TRO on September 5, 2013 enjoining the trial court from implementing and enforcing; and the petitioner and its employees, agents and those acting on its behalf, from causing the implementation and enforcement of the assailed June 14, 2013 Order and June 17, 2013 Writ of Preliminary Injunction.[36]

On October 25, 2013, the CA issued a Writ of Preliminary Injunction.[37]

On June 13, 2014, the CA rendered the assailed Decision[38] annulling and setting aside the June 14, 2013 Order and the June 17, 2013 Writ of Preliminary Injunction issued by the RTC on the ground that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting the application for writ of preliminary injunction and in issuing the writ despite the lack of a clear and unmistakable right on the part of the petitioner in view of the expiration of the MOA on April 27, 2013, from which the petitioner derived its right to conduct mining operations in the contract area. The CA also held that even assuming that the MGB approved the Supplemental Agreement and thus effectively extended the effectivity of the MOA for one year from April 27, 2013 to April 27, 2014, the issue is now moot and academic given that the one-year extension had already lapsed as the MOA already expired on April 27, 2014. As such, petitioner's right to conduct mining operations at Nonoc Island is already terminated.[39]

Petitioner moved for reconsideration but the CA denied it in its Resolution dated October 9, 2014.[40]

Aggrieved, the petitioner is now before this Court via the present Petition for Review on Certiorari.

Incidentally, or on September 22, 2015, the CA rendered a Consolidated Decision[41] in CA-G.R. SP Nos. 04479-MIN and 04688-MIN setting aside the injunctive writs issued by Branches 29 and 30 of the RTC of Surigao City. Pacific Nickel moved for reconsideration but the same was denied by the CA in its Resolution[42] dated September 8, 2016. In a Resolution[43] dated March 15, 2017, the Supreme Court declared the case closed and terminated and that the judgment sought to be reviewed had become final and executory by reason of Pacific Nickel's failure to file its petition for review on certiorari within the extended period it had been granted.

The Issues Presented

Petitioner raised the following issues for this Court's consideration:

A.

RESPONDENTS' CERTIORARI PETITION, FILED WITH THE COURT OF APPEALS, SHOULD HAVE BEEN DISMISSED OUTRIGHT FOR RESPONDENTS' FAILURE TO FILE A MOTION FOR RECONSIDERATION IN THE CASE A QUO.

B.

RESPONDENTS' CERTIORARI PETITION, FILED WITH THE COURT OF APPEALS, SHOULD HAVE BEEN DISMISSED OUTRIGHT, AS THE ACT SOUGHT TO BE ENJOINED HAS ALREADY BEEN CONSUMMATED.

C.

THERE WAS NO ERROR OF JURISDICTION THAT MAY HAVE BEEN CORRECTIBLE BY THE COURT OF APPEALS THROUGH ITS LIMITED CERTIORARI JURISDICTION.[44]

The Arguments of the Parties

Petitioner insists that the certiorari petition respondents filed before the CA should have been dismissed outright for their failure to file the required motion for reconsideration as the case does not fall under any of the recognized exceptions when a motion for reconsideration may be dispensed with in that, first, the issue raised was not purely legal since respondents raised several factual matters that have not yet been decided on the merits by the RTC; second, only petitioner's private mining interest and no public interest is involved; third, the need for urgency is only on the part of the petitioner who stands to suffer grave and irreparable injury or threat of injury; and fourth, the issues raised in the certiorari petition have not yet been passed upon by the RTC since the case before the trial court has yet to be decided on the merits.[45]

Petitioner furthermore states that the certiorari petition should not have been entertained since there is nothing left to enjoin. It explains that the writ of preliminary injunction that respondents challenged before the CA covered three matters. First, the prevention of petitioner's mining operations; second, the performance by the petitioner of its rights under the MOA and the MPSA; and third, the issuance by the MGB of OTPs and MOEPs in its favor. Petitioner contends that the propriety of the first and second directives under the writ issued by the trial court is still being litigated therein. As such, the status quo must be observed and the CA should not restrain the implementation of the first two directives as the same would be tantamount to sanctioning an illegal act. As for the third directive, petitioner contends that respondents had no right to withhold the issuance in its favor of OTPs and MOEPs on the ground that its MOA had already expired. Contrary to respondents' position, petitioner claims that at the time the petition was pending before the CA, the MOA was still valid and existing by virtue of the Supplemental Agreement that it registered with the MGB extending the effectivity of the MOA until April 8, 2014. As such, no legal obstacle was present in the issuance of the OTPs and MOEPs. Furthermore, considering that the MGB had already issued in its favor three OTPs on September 6, 2013, in compliance with the writ issued by the RTC, there is nothing left for the CA to enjoin, thus rendering the petition filed before it moot and academic.[46]

Petitioner went on further to state that the CA, in the exercise of its certiorari jurisdiction, is confined only to the determination of whether the trial court gravely abused its discretion in the exercise of its judgment. As such, the CA had no authority to pass upon the merits of the case and rule upon factual matters involved in the main controversy. In particular, the CA erred when it went so far as to rule that petitioner's right to conduct mining operations had already expired on April 27, 2013, to give ground to its decision which set aside the Order and the Writ of Preliminary Injunction issued by the RTC, as this issue requires the establishment of facts and presentation of evidence which must be left to the proper determination of the trial court.[47]

For their part, respondents counter that the rule that a party must first move for the reconsideration of the ruling of the lower court before a petition for certiorari may be filed is not iron clad but is subject to a number of exceptions that are obtaining in this case. From the tenor of the Order of the RTC itself, a motion for reconsideration would have been useless as there was an urgent necessity for the resolution of the question and any further delay would prejudice the interest of the government. Respondents explain that at that time, nickel ore worth millions of dollars per shipment would be exported without the requisite permit. The extreme urgency of the situation and the public interest involved necessitated that the matter be brought immediately to the attention of the CA. Moreover, the Order of the RTC was a patent nullity as it had no basis to enjoin the respondents from suspending petitioner's mining operations through the questioned TRO and writ of preliminary injunction inasmuch as the petitioner had

no valid or existing right to continue its mining operations under the MOA which had already expired on April 27, 2013.[48]

Respondents also claim that the case had already become moot and academic since the petitioner no longer conducts mining operations in the contract area for the reason that its contract had long expired. For reason of mootness, the Court ought to abstain from taking cognizance of this case where no legal relief is needed or called for.[49]

Respondents likewise aver that the CA did not err when it passed upon petitioner's right to conduct mining operations in the exercise of its limited certiorari jurisdiction given that respondents, in their petition before it, specifically asked the CA to rule on the matter. Moreover, when the trial court issued the questioned writ of preliminary injunction, it made a factual finding that the MOA between Pacific Nickel and the petitioner was valid until April 2014. Thus, it becomes necessary and indubitable for the CA to look into the same factual matter to determine if the trial court committed grave abuse of discretion in issuing the said writ. Since the petitioner had no valid and existing right to continue its mining operations under the subject MPSA, the trial court had no basis to enjoin respondents from suspending petitioner's mining operations by issuing the questioned TRO and writ of preliminary injunction. Thus, the CA correctly held that the RTC acted arbitrarily and whimsically in issuing the same.[50]

The Court's Ruling

The Regalian Doctrine has long been recognized as the basic foundation of the State's property regime, and has been consistently adopted under the 1935, 1973, and 1987 Constitutions—it espouses that all lands of the public domain belong to the State, and that, as a consequence thereof, any asserted right of ownership over land necessarily traces back to the State.[51] In the context of mining-related undertakings, the same doctrine also declares that all minerals and mineral lands are owned by the State,[52] unless there are private persons or entities holding mining patents issued pursuant to the Philippine Bill of 1902 and existing prior to November 15, 1935.[53] However, the State may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens for the exploration, development, and utilization of mineral resources.[54] Thus, from the foregoing precept, it logically follows that the mineral agreements entered into by the State with private persons and entities partake of two natures: (a) a permit—as the State is the owner of mineral resources as declared by the 1987 Constitution, all authority for its exploration, development and utilization emanate from it; and (b) a contract—as the fruits of the production agreement are being shared by the State and the private person or entity permitted or allowed to undertake exploration and extraction activities.

Given the foregoing general principles governing mineral lands and mineral resources, the query to be resolved is whether the CA correctly found the RTC to have committed grave abuse of discretion in enjoining the respondents from refusing to issue OTPs and MOEPs to the petitioner.

The Court answers in the affirmative.

Before delving into the merits of the case, the Court takes this opportune time to remind the parties that when it reviews the legal correctness of the CA's decision in resolving a petition for certiorari under Rule 65, it still evaluates the case in the prism of whether the latter tribunal correctly determined the presence or absence of grave abuse of discretion on the part of the court or other tribunal *a quo*. [55] Even if elevated via Rule 45, it is still bound by the intrinsic limitations of a Rule 65 certiorari proceeding as it does not address mere errors of judgment, unless the error transcends the bounds of the tribunal's jurisdiction.[56]

Well-settled is the rule that a petition for certiorari against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested.[57] And it will prosper only if grave abuse of discretion is alleged and proved to exist.[58] Most importantly, mere abuse of discretion is not enough, it must be grave.[59] That is why the Court had defined the term "grave abuse of discretion" as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law." [60] In some rare instances, the term "grave abuse" even refers to cases in which there has been a gross misapprehension of facts[61]—but only for a limited purpose of establishing the allegation of grave abuse of discretion.[62] Correspondingly, the term "without jurisdiction" means that the court acted with absolute lack of authority; while the term "excess of jurisdiction" means that the court transcended its power or acted without any statutory authority.[63] Hence, when seeking the corrective hand of certiorari, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative.[64]

Relatedly, jurisdiction is simply defined as the power and authority, conferred by the Constitution or statute, of a court to hear and decide a case.[65] Such is the reason why jurisdiction is considered as the basic foundation of judicial proceedings.[66] Without it, a judgment rendered by a court is null and void and may be attacked anytime.[67] As a result, a void judgment for want of jurisdiction is no judgment at all. It can neither be the source of any right nor the creator of any obligation and all acts performed pursuant to it and all claims emanating from it have no legal effect.[68]

Having settled the preliminaries, the Court finds that the CA did not commit any reversible error in giving due course to the respondents' Petition for Certiorari for the following reasons:

First, the RTC's act of granting the petitioner's application for a preliminary injunction is a patent violation of existing laws and jurisprudence which amounted to grave abuse of discretion thereby effectively divesting itself of jurisdiction.

A writ of preliminary injunction is a provisional remedy which is adjunct to a main suit, as well as a preservative remedy issued to maintain the status quo of the things subject of the action or the relations between the parties during the pendency of the suit.[69] Its purpose is to prevent actual or threatened acts, until the merits of the case can be heard.[70] Concomitantly, jurisprudence has established that the following requisites must be proven first before a writ of preliminary injunction, whether mandatory or prohibitory, may be issued: (a) the applicant must have a clear and unmistakable right to be protected, that is a right in esse; (b) there is a material and substantial invasion of such right; (c) there is an urgent need for the writ to prevent irreparable injury to the applicant; and (d) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[71]

In this case, the petitioner had no more right in esse to speak of when it filed a complaint with prayer for the issuance of an injunction on May 25, 2013 to enjoin the respondents from suspending the issuance of the OTPs and MOEPs before the RTC. The records show that the petitioner and Pacific Nickel's April 27, 2009 MOA had already expired as early as April 27, 2013. It is obvious that, at the time of seeking an injunction, the MOA had already expired and the petitioner had no more right to perform any act agreed or even contemplated in such agreement. Moreover, the supposed issue of the April 27, 2009 MOA's expiration need not reach the trial stage as the same had been conclusively resolved and established by the evidence offered during the hearing for the issuance of the writ of preliminary injunction. To replicate the same evidence during trial would be to cause needless delays and contribute to the clogging of court dockets.

As regards the petitioner's claim that the registration on December 20, 2010 of its Supplemental Agreement seeking for the extension of the April 27, 2009 MOA was "deemed approved" by the respondents, the Court rejects the same contention as mere act of registration is not tantamount to approval. Section 29 of the Philippine

Mining Act of 1995 relative to the filing and approval of mineral agreements provides:

All proposed mineral agreements shall be filed in the region where the areas of interest are located, except in mineral reservations which shall be filed with the Bureau.

The filing of a proposal for a mineral agreement shall give the proponent the prior right to areas covered by the same. The proposed mineral agreement will be approved by the Secretary and copies thereof shall be submitted to the President. Thereafter, the President shall provide a list to Congress of every approved mineral agreement within thirty (30) days from its approval by the Secretary. (Emphasis supplied)

The registration referred to by the petitioner refers to the mere receipt of its Supplemental Agreement by the MGB's regional office. It does not amount to "approval" for the law labels these mineral agreements as mere "proposals" which "will [still] be approved by the [DENR] Secretary" after a thorough evaluation of the terms and conditions contained therein and after an exhaustive determination that the stipulations not only comply with all laws and regulations but also do not cause undue injury on the part of the Government. As such, the petitioner's Supplemental Agreement cannot be considered to have an operative effect as the records do not show that the DENR Secretary had approved the same.

Furthermore, the petitioner's claim that the respondents' cause had already been rendered moot and academic as the MGB had already issued three OTPs last September 6, 2013 does not persuade the Court. The issuance of OTPs and MOEPs on the MGB's part is a continuing process as long as the mining agreement under which these permits have been issued is still in force and effect. Since the same process of issuance is continuing, the issuance of several OTPs and MOEPs does not render the crux issue of this case moot and academic for the same act of issuance may still be repeated if not enjoined. As discussed earlier, the Court finds it more compelling to uphold the respondents' act of suspending the issuance of OTPs and MOEPs because petitioner's April 27, 2009 MOA with Pacific Nickel had already expired as early as April 27, 2013.

Besides, the real status quo in the case is not the respondents' act of continually issuing OTPs and MOEPs, but the preservation of the State's mineral resources.

Status quo is defined as the last actual peaceful uncontested situation that precedes a controversy, and its preservation is the office of an injunctive writ.^[72] And in the context of mineral exploration and extraction, the event which is considered as "the last actual peaceful uncontested situation preceding the controversy" is the unexplored and unextracted state of the mineral resources involved in this dispute, not the continued exploration, extraction, transportation and exportation of mineral resources out of the country and out of the State's dominion and control. Consistent with the Regalian Doctrine, all unexplored or unextracted mineral resources belong to every Filipino as declared by the Constitution. As a consequence, the determination of what is in the interest of the public is necessarily vested in the State as owner of all mineral resources.^[73] In other words, issues regarding the exploration, extraction and utilization of mineral resources (which are part of the nation's wealth) are imbued with public interest. This striking constitutional realization justifies a strict interpretation in favor of preserving the possession of mineral resources in favor of the State and in trust for its citizens pending controversies regarding their exploration, extraction, transportation or exportation.

In the realm of issuing injunctive reliefs, urgent necessity is present when there is an immediate threat to the status quo. And in the instant case, the Court is not unreasonable to ignore the fact that once the minerals have been shipped to third parties or, worse, exported to other countries, the State, being the owner, cannot retrieve these resources back. Once that happens, the Government stands to irretrievably lose millions or even billions of pesos in revenue for the value of the transported, shipped and lost minerals. Consistent with the interpretation in favor of preserving mineral resources in trust for the Filipinos, the CA is correct in declaring that the RTC erred in

enjoining the DENR-MGB in suspending petitioner's mining operations as well as withholding the issuance of its OTPs and MOEPs. In this regard, the Court finds it constitutionally sound to sustain the propriety of the CA's rulings.

Therefore, the CA correctly found grave abuse of discretion on the RTC's part when it ignored the fact of the April 27, 2009 MOA's expiration as well as the well-established Regalian Doctrine in granting the petitioner's application for injunction.

Second, filing a motion for reconsideration is an exercise in futility on the part of the respondents.

Generally, a motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari.[74] The purpose for this requirement is to grant an opportunity for the court or agency to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case without the intervention of a higher court.[75]

However, the requirement of filing a motion for reconsideration for a petition for certiorari to prosper is not an ironclad rule as it admits well-defined exceptions.[76] These exceptions are as follows: (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were ex-parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[77]

As contemplated in the earlier discussions, it is virtually impossible for the State to retrieve the mineral resources without incurring insurmountable costs once the same have been shipped out to third persons or exported to other countries. It is an evident manifestation that filing a motion for reconsideration against the RTC's Decision would be a waste of time and would definitely prejudice the interest of the Government. The pendency of a motion for reconsideration's resolution would facilitate or buy the petitioner time in continuing to ship out precious minerals to third persons and even out of the country. There would have been a continued dissipation of the State's mineral resources had the CA acceded to the RTC's patently void act of practically forcing the respondents to issue OTPs and MOEPs. Therefore, the assailed CA Decision should be upheld by this Court for there was an urgent need to prevent the petitioner from facilitating the dissipation of the State's mineral resources.

Last, mining contracts are not wholly immune to State regulation by virtue of the State's police power.

Although Section 10, Article III of the present Constitution prohibits Congress from enacting laws that impair the obligation of contracts, such provision is limited by the exercise of the police power of the State—in the interest of public health, safety, morals and general welfare.[78] The Court emphasizes that police power is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State.[79]

Since it was earlier clarified that mineral production sharing agreements as well as their offshoots partake the nature of both a permit and a contract, it may be validly regulated by virtue of the State's police power. Mineral resources are part of national wealth and patrimony. Any issue involving the exploration, development, utilization and disposition of mineral resources is imbued with public interest. Thus, the CA correctly nullified the RTC's

Order and the writ of preliminary injunction it issued because the respondents have the primary authority to protect the State's interest by strictly regulating the conduct relative to exploration, development, utilization and disposition of mineral resources.

WHEREFORE, premises considered, the petition is DENIED. The assailed June 13, 2014 Decision and October 9, 2014 Resolution of the Court of Appeals-Cagayan de Oro City in CA-G.R. SP No. 05709 are AFFIRMED.

SO ORDERED.

Carpio, Senior Associate Justice, (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[1] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Edward B. Contreras, concurring; rollo, pp. 35-44.

[2] Id. at 45-47.

[3] Id. at 36, 83.

[4] Id. at 68.

[5] Id. at 83.

[6] Id. at 68-82.

[7] Id. at 12-13, 61-67, 180.

[8] Id. at 83-86.

[9] Id. at 13, 87-89.

[10] Id. at 90.

[11] Id. at 13.

[12] Id. at 91.

[13] Id. at 92.

[14] Id. at 14-15.

[15] Id. at 15. See also: Consolidated Decision of the Court of Appeals-Cagayan de Oro City in CA-G.R. SP Nos. 04479-MIN and 04688-MIN, (visited on July 10, 2019).

[16] Id. at 15.

[17] Id. at 15.

[18] Id. at 16, 103-105.

[19] Id. at 96-97.

[20] Id. at 98.

[21] Id. at 37; CA rollo, pp. 116-118.

[22] CA rollo, p. 119.

[23] Rollo, pp. 100-102.

[24] Id. at 37, 182; CA rollo, p. 123.

[25] Rollo, p. 108.

[26] CA rollo, p. 125.

[27] See rollo, p. 109.

[28] Id. at 109-110.

[29] Id. at 111-113.

[30] Id. at 114-117; CA rollo, pp. 67-70.

[31] Rollo, pp. 115-116; CA rollo, pp. 68-69.

[32] CA rollo, pp. 71-72.

[33] Rollo, p. 20.

[34] Id. at 20-21.

[35] CA rollo, p. 165.

[36] Id. at 167-174.

[37] Id. at 213-217.

[38] Rollo, pp. 35-44.

[39] Id. at 40-44.

[40] Id. at 45-47.

[41] Id. at 15. See also: Consolidated Decision of the Court of Appeals-Cagayan de Oro City in CA-G.R. SP Nos. 04479-MIN and 04688-MIN, (visited on July 10, 2019).

[42] File:///c:/users/S-OAJ/~2/AppData/Local/Temp/_UPLOADS_PDF_198_SP_04479-MIN_09082016.pdf (visited on July 10, 2019).

[43] G.R. No. 227156-57, p. 22.

[44] Rollo, pp. 21-22.

[45] Id. at 22-23.

[46] Id. at 24-25.

[47] Id. at 25-27.

[48] Id. at 191-196.

[49] Id. at 196-197.

[50] Id. at 197-201.

[51] Republic v. Heirs of Meynardo Cabrera, G.R. No. 218418, November 8, 2017.

- [52] See Section 2, Article XII of the 1987 Constitution.
- [53] *Yinlu Bicol Mining Corporation v. Trans-Asia Oil and Energy Development Corporation*, 750 Phil. 148, 166-168 (2015).
- [54] See Section 2, Article XII of the 1987 Constitution.
- [55] See *Our Haus Realty Development Corporation v. Parian*, 740 Phil. 699, 709 (2014).
- [56] See *Inocente v. St. Vincent Foundation for Children and Aging, Inc./Veronica Menguito*, 788 Phil. 62, 73-74 (2016).
- [57] *Intec Cebu, Inc. v. Court of Appeals*, 788 Phil. 31, 42 (2016).
- [58] *Spouses Bergonia v. Court of Appeals*, 680 Phil. 334, 341 (2012).
- [59] *Tan v. Spouses Antazo*, 659 Phil. 400, 404 (2011).
- [60] *Cruz v. People*, 812 Phil. 166, 173 (2017).
- [61] *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 592 (2007).
- [62] See *Abedes v. Court of Appeals*, 562 Phil. 262, 276 (2007).
- [63] *Tagle v. Equitable PCI Bank*, 575 Phil. 384, 396 (2008).
- [64] *Olanolan v. Commission on Elections*, 494 Phil. 749, 757 (2005).
- [65] *BPI v. Hong*, 682 Phil. 66, 72 (2012).
- [66] *People v. Mariano*, 163 Phil. 625, 629 (1976).
- [67] *Tiu v. First Plywood Corporation*, 629 Phil. 120, 133 (2010).
- [68] *Zacarias v. Anacay*, 744 Phil. 201, 213-214 (2014).
- [69] *Lukang v. Pagbilao Development Corporation*, 728 Phil. 608, 617 (2014).
- [70] *Cagayan de Oro City Landless Residents Association, Inc. v. Court of Appeals*, 324 Phil. 466, 477 (1996).
- [71] *Bicol Medical Center v. Botor*, G.R. No. 214073, October 4, 2017, 842 SCRA 143, 160.
- [72] *Los Baños Rural Bank, Inc. v. Africa*, 433 Phil. 930, 945 (2002).
- [73] *Republic v. Rosemoor Mining and Development Corporation*, 470 Phil. 363, 382-383 (2004).
- [74] *Republic v. Bayao*, 710 Phil. 279, 287 (2013).
- [75] *Spouses Aguilar v. The Manila Banking Corporation*, 533 Phil. 645, 661 (2006).
- [76] *Spouses Davis v. Spouses Davis*, G.R. No. 233489, March 7, 2018.
- [77] *Bucal v. Bucal*, 760 Phil. 912, 920 (2015).
- [78] See *Social Weather Stations, Inc. v. Commission on Elections*, 757 Phil. 483, 526 (2015).
- [79] *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development*, 809 Phil. 315, 340 (2017), citing *Gerochi v. Department of Energy*, 554 Phil. 563 (2007).

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