

APEX MINING CO., INC., MT. DIWATA EXPLORATION AND MINING CORPORATION, CAMILO BANAD, PRUDENCIO SUAREZ, AURORA SUAREZ, RODOLFO BOLO, LEONILA VILLAFLOR, MAURICIA AMACIO, ANITA BITA...*G.R. No. 92605. July 16, 1991*

Ponente: PARAS, J.

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This is a petition for certiorari with prayer for the issuance of a writ of preliminary injunction and/or restraining order seeking to nullify and set aside the July 27, 1989 decision of the Office of the President* in O.P. Case No. 3728 dismissing the appeal of Apex Mining Co., Inc. and affirming the April 15, 1987 decision and January 14, 1988 order of the Department of Environment and Natural Resources (DENR), respectively, declaring that the respective mining claims of Apex Mining Co., Inc., et al., as well as Small Scale Mining Permits Nos. (X1) 04 (X-1) 05, are null and void and/or inoperative and the Permit to Explore No. 133 of Marcopper Mining Corporation as valid and subsisting; and denying the motion for reconsideration.

The controversy in this case involves conflicting mining claims between herein petitioners Apex Mining Co., Inc., et al. (APEX for short) and private respondent Marcopper Mining Corporation (MARCOPPER for short). The disputed area is inside a timberland area located at Moncayo, Davao del Norte and Cateel, Davao Oriental, consisting of 4,941.0 hectares (Rollo, p. 64).

MARCOPPER was one of the first mining claimants in the disputed area, having registered its 16 claims on January 19 and 20, 1984 through the filing of declarations of location pursuant to Presidential Decree No. 463, otherwise known as the Mineral Resources Development Decree. MARCOPPER, allegedly, after registering its mining claims, learned from the central office of the Bureau of Forest Development (BFD) that the disputed area is within an existing forest reservation known as the "Agusan-Davao-Surigao Forest Reserve" established by Proclamation No. 369 on February 27, 1931 by then Governor General Dwight F. Davis, and realizing the invalidity of its mining claims for having availed of a wrong procedure, abandoned its 16 mining claims and applied for a prospecting permit instead with the BFD on April 11, 1984. The area covered by its application consisted of 4,941.0 hectares overlapping its abandoned mining claims. On July 1, 1985, the BFD issued to it a Permit to Prospect No. 755-123185. Discovering strong evidence of mineral deposits in the area, it applied for a permit to explore with the then Bureau of Mines and Geo-Sciences (BMGS). On March 10, 1986, it was issued Permit to Explore No. 133. However, upon verification from the records of the BMGS, Davao City Mineral District Office, it found that the area covered by its Permit to Explore No. 133 is also the subject of several claims/declarations of APEX. Thus, on August 11, 1986, MARCOPPER filed with the BMGS a "Petition for Cancellation of Mining Claims and/or Small Scale Mining Permits" against APEX, alleging, among others and in substance, that the area covered by its Permit to Explore No. 133 and the declarations of locations/mining claims belonging to APEX are within an established and existing forest reservation (Agusan-Davao-Surigao Forest Reserve) under Proclamation No. 369, dated February 27, 1931, that the said mining claims/declarations of

location of APEX are invalid for being violative of Presidential Decree No. 463 and its implementing rules and regulations since the acquisition of mining rights within a forest reserve is through the filing of application for a permit to prospect with the BFD and not through registration of declarations of location with the BMGS p. 65; O.P. Decision, p. 2).

On September 23, 1986, APEX filed a Motion to Dismiss Marcopper's petition, alleging, in substance, that their mining claims are not within any established or proclaimed forest reserve, and as such, the acquisitions of mining rights thereto must be undertaken through the registration of declaration of location with the BMGS and not through the filing of an application for permit to prospect with the BFD; and that the permit to prospect and permit to explore issued to MARCOPPER are inoperative and of no legal force and effect (Ibid., pp. 587-588).

On December 9, 1986, after MARCOPPER filed its reply, the BMGS issued an order, the dispositive portion of which reads:

"VIEWED IN THE LIGHT OF THE FOREGOING, the motion to dismiss should be, as hereby it is GRANTED. Accordingly, the Permit to Explore No. 133 of the MMC is hereby declared null and void." (Rollo, p. 110).

MARCOPPER appealed the said order, and the DENR after due hearing, rendered the appealed decision on April 15, 1987, the dispositive portion of which reads:

"WHEREFORE, the Order dated 9 December 1986 of the Director, Bureau of Mines and Geo-Sciences, is hereby REVERSED or SET ASIDE. Accordingly Permit to Explore No. 133 of appellant Marcopper Mining Corporation is hereby declared valid and subsisting. The respective mining claims of appellees Apex Mining Corporation, et al., as well as Small Scale Mining Permit Nos. (X-1) 04 and (X-1) 05, are hereby declared null and void and/or inoperative. The Director, Bureau of Mines and Geo-Sciences, is hereby directed to cancel the registered mining claims and to revoke Small Scale Mining Permit Nos. (X-1) 04 (X-1) 05 of Apex Mining Co., et al." (Ibid., p. 100).

The motion for reconsideration of said decision having been denied by the DENR on January 4, 1988, APEX Appealed the case to the Office of the President (Ibid., p. 591), which on July 27, 1989, through, the Assistant Executive Secretary for Legal Affairs, Cancio C. Garcia, rendered a decision, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, the instant appeal is hereby dismissed for lack of merit and the appealed DENR decision and order, dated April 15, 1987 and January 4, 1988, respectively, are hereby AFFIRMED. The stay-order issued by this Office on February 11, 1988 is accordingly LIFTED.

"Further the Petition To Intervene As Party filed by Minfed dated May 21, 1988, is hereby DENIED." (Ibid., pp. 74-75; O.P. Decision, pp. 11-12).

APEX filed a motion for reconsideration, but the same was denied on November 16, 1989. Hence, this petition.

This Court, after the parties had submitted the required pleadings, in its resolution of August 7, 1990 (Ibid., p. 637), resolved to give due course to the petition.

The instant petition is devoid of merit.

The main issue in this case is whether or not the disputed area is within an established and existing forest reservation.

The answer is in the affirmative.

The thrust of the petitioners' argument is that the subject area is not situated within a forest reserve and that

Proclamation No. 369 did not establish a forest reservation. The said proclamation merely withdrew from settlement or disposition certain tracts of land described therein situated in the Province of Davao, Agusan and Surigao. It did so on the basis of Section 8 of Act No. 2874, otherwise known as "the Public Land Act", which was promulgated on November 29, 1919 (Rollo, pp. 654-657). Proclamation No. 369 could not have, as a matter of law, established a forest reserve for the simple reason that it was issued not on the basis of Chapter XII, Title V of Act No. 2874 nor on the basis of Section 1826 of Act 2711 (the Revised Administrative Code which took effect on June 15, 1939), but on the basis of Section 8 of Act 2874 which empowers the Governor-General only to reclassify lands of the public domain. In confirmation, Proclamation No. 369 does not even use the word "reserve" or "forest reserve" (Ibid., p. 24; Petition, p. 17).

Section 8 of Act No. 2874, the former Public Land Act, the basis of Proclamation No. 369, provides -

"Section 8. Only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when practicable, surveyed, and which have not been reserved for public or quasi-public uses, nor appropriated by the Governor, nor in any manner become private property, not those on which a private right authorized and recognized by this Act or any other valid law may be claimed, or which, having been reserved or appropriated, have ceased to do so. However, the Governor-General may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reasons, suspend their concession or disposition by proclamation duly published or by Act of Legislature." (Rollo, pp. 745-746).

From the above-quoted provision, the Governor-General was specifically empowered not only to declare lands of public domain open to disposition but also to suspend their concession or disposition. Accordingly, withdrawal of a certain area to establish a forest reserve is, without question, within the power of the Governor-General. The then Governor-General Dwight F. Davis, in issuing Proclamation No. 369, withdrew from settlement or disposition the tracts of land described therein to establish a forest reserve. The intention can be gleaned from the last paragraph of Proclamation No. 369, which reads:

"From this reserve shall be considered automatically excluded all areas which had already been certified and which in the future may be proclaimed as classified and certified by the Director of Forestry as non-forest lands and approved by the Secretary of Agriculture and Natural Resources." (Rollo, p. 768).

Moreover, then President Carlos P. Garcia confirmed that Proclamation No. 369 did establish a forest reserve when he issued an May 8, 1959 Proclamation No. 583 entitled "Excluding From the Operation of Proclamation No. 369, Dated February 27, 1931, Which Established The Agusan-Davao-Surigao Forest Reserve, Certain Parcels of Land Embraced Therein, And Declaring the Same Open to Disposition Under the Provisions of the Mining Act." (Underscoring supplied). This proclamation was concurred in by the Congress of the Philippines on May 21, 1959 through Concurrent Resolution No. 17 entitled "Concurrent Resolution Concurring in Proclamation Numbered Five Hundred Eighty-Three of the President of the Philippines, Dated May Eight, Nineteen Hundred Fifty Nine, Excluding From the Operation of Proclamation Numbered Three Hundred Sixty-Nine, which Established the Agusan-Davao-Surigao Forest Reserve, Certain Parcels of Land Embraced Therein, and Declaring the Same Open to Disposition Under the Provisions of the Mining Act." (Underscoring supplied).

In this connection, it should be stated that the findings of government agencies with respect to the construction of statutes the implementation of which has been reposed in them, are controlling on the Court (*Greenhills Mining Company v. Office of the President*, 163 SCRA 350 [1988]).

The disputed areas, being clearly within a forest reserve, are not open to mining location. Sections 8 and 13 of P.D. No. 463, as amended by P.D. No. 1385, provide:

"Sec. 8. Prospecting, Exploration and Exploitation of Minerals in Reserved Lands. Prospecting, exploration and exploitation of minerals in reserved lands other than mineral reservations may be undertaken by the proper Government agencies. In the event that said agencies cannot undertake the prospecting, exploration and exploitation of mineral in reserved lands, qualified persons may be permitted to undertake such prospecting, exploration and exploitation in accordance with the rules and regulations promulgated by the Secretary. The right to exploit the minerals found therein shall be awarded by the President under such terms and conditions as recommended by the Director and approved by the Secretary: Provided, That the party who undertook prospecting, exploration and exploitation of said area shall be given priority.

"Notwithstanding the provisions of the preceding paragraph, a special permit may be issued by the Director to the exploration permittee to extract, remove and dispose of minerals in limited quantities as verified by the Bureau of Mines."

"Sec. 13. Areas Closed to Mining Location. No prospecting and exploration shall be allowed:

'a) In military, or other Government reservations except when authorized by the proper Government agency concerned;

xxx xxx xxx."

Pursuant to P.D. No. 463, as amended, one can acquire mining rights within forest reserves by initially applying for a permit to prospect with the Bureau of Forest and Development (BFD) and subsequently for a permit to explore with the Bureau of Mines and Geo-Sciences (BMGS). Such procedural requisites were complied with and undertaken by MARCOPPER after it had ascertained that its mining claims were found to be within the Agusan-Davao-Surigao Forest Reserve. On the other hand, the mining claims and SSMPs of APEX being located within said forest reserve are in violation of the law and therefore result in a failure to validly acquire mining rights.

Finally, invariable is the rule that in reviewing administrative decisions of the Executive Branch of the government, the finding of fact made there in must be respected, as long as they are supported by substantial evidence, even if not overwhelming or preponderant. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of the witnesses, or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of the evidence. The administrative decision in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud or error of law (Assistant Executive Secretary for Legal Affairs of the Office of the President v. Court of Appeals, 169 SCRA 27 [1989]).

PREMISES CONSIDERED, the appealed decision of the Office of the President is AFFIRMED and the petition for certiorari is DISMISSED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.
Gancayco, J., on leave.

* Signed by Assistant Executive Secretary for Legal Affairs Cancio C. Garcia

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