



Republic of the Philippines
Supreme Court
Cagayan de Oro City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 6, 2023** which reads as follows:*

“G.R. No. 229000 (National Commission on Indigenous Peoples (NCIP) v. Lepanto Consolidated Mining Company and Far Southeast Gold Resources, Inc.). – This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision² dated 15 June 2016 and the Resolution³ dated 04 November 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 141648. The CA affirmed the Orders⁴ dated 18 March 2015 and 28 May 2015 of the Regional Trial Court of Makati City, Branch 149 (RTC Branch 149) in SP Proc. No. M-7767, issuing a Writ of Preliminary Injunction⁵ in favor of respondents Lepanto Consolidated Mining Company and Far Southeast Gold Resources, Inc. (respondents).

Antecedents

National Commission in Indigenous Peoples is the primary government agency responsible for the formulation and implementation of policies, plans, and programs to promote and protect the rights and well-being of the Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) and the recognition of their ancestral domains as well as the rights thereto.⁶

On the other hand, Lepanto Consolidated Mining Company (Lepanto Consolidated) is a Philippine mining company engaged in the mining of gold and silver, and Far Southeast Gold Resources, Inc. (Far Southeast) is its subsidiary company.⁷

¹ *Rollo*, pp. 13-51.

² *Id.* at 54-65. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Danton Q. Bueser and Nina G. Antonio-Valenzuela.

³ *Id.* at 255-256. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Danton Q. Bueser and Nina G. Antonio-Valenzuela.

⁴ *Id.* at 96-106, 109. Penned by Presiding Judge Cesar O. Untalan.

⁵ *Id.* at 107-108.

⁶ Republic Act No. 8371, Section 38.

⁷ *Rollo*, p. 55.

On 03 March 1990, the Republic of the Philippines (Republic), through the Department of Environment and Natural Resources (DENR), executed Mineral Production Sharing Agreement (MPSA) 001-90 with respondents.⁸ Through MPSA 001-90, respondents undertook for and on behalf of the Republic, mining operations within the contract area measuring 948.9695 hectares within the Municipality of Mankayan, Province of Benguet.⁹

Pursuant to Section 3.1 of MPSA 001-90, the term of the Agreement shall be renewable for another period of 25 years, to wit:

3.1. THE INITIAL TERM OF THIS AGREEMENT SHALL BE TWENTY-FIVE (25) CONTRACT YEARS FROM THE EFFECTIVE DATE, SUBJECT TO TERMINATION AS PROVIDED HEREIN, RENEWABLE FOR ANOTHER PERIOD OF TWENTY-FIVE (25) YEARS UPON SUCH TERMS AND CONDITIONS AS MAY BE MUTUALLY AGREED UPON BY THE PARTIES OR AS MAY BE PROVIDED FOR BY LAW.¹⁰

Likewise, Section 12.2 of MPSA 001-90 stipulates an Arbitration Clause, indicating that any disagreements and disputes between the parties which cannot be solved amicably shall be settled by a tribunal of three arbitrators.¹¹

During the effectivity of MPSA 001-90, Congress enacted Republic Act No. (RA) 8371, otherwise known as the Indigenous Peoples' Rights Act of 1997 (IPRA). This requires as a precondition, the prior certification of NCIP that any grant or renewal of concession, license, or product-sharing agreement does not involve an area which overlaps with an ancestral domain:

Section 59. *Certification Precondition* – All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: *Provided*, That no certification shall be issued by the NCIP without the free and prior informed and written consent of the ICCs/IPs concerned: *Provided, further*, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for CADT: *Provided, finally*, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

⁸ Id. at 110-139.

⁹ Id. at 111.

¹⁰ Id. at 116.

¹¹ Id. at 128.

As the expiration of MPSA 001-90 was approaching on 18 March 2015, respondents sent a Letter¹² to the Mines and Geosciences Bureau-Cordillera Administrative Region (MGB-CAR) on 22 May 2014, expressing their intention to renew the agreement for a period of 25 years under the same terms and conditions. In response to such Letter, MGB-CAR informed respondents on 20 August 2014 that they have substantially complied with the requirements for renewing MPSA 001-90, but the documents will have to undergo further evaluation and additional documents might be required.¹³ Thus, the matter was endorsed to NCIP for appropriate action.¹⁴

On 01 September 2014, respondents sent a Letter to MGB-CAR stating that there is no legal basis for the endorsement of the application to NCIP.¹⁵ Respondents argued that Section 56 of the IPRA recognizes existing property rights already existing and/or vested prior to the effectivity of the law.¹⁶

Thus, respondents asserted that they cannot be required to obtain new requirements imposed by subsequently enacted laws, such as the Free and Prior Informed Consent (FPIC) and Certification Precondition, as these would impair their vested rights under the Constitution, the Mining Act, and MPSA 001-90.¹⁷

On 11 September 2014, MGB-CAR replied to respondents informing them that the matter has already been forwarded to MGB Central Office for appropriate action.¹⁸ In response to this, respondents sent Letters dated 05 November 2014 and 06 January 2015 to MGB Central Office, requesting that action on the matter be expedited as time is of the essence.¹⁹

Respondents raised that four months have already passed since the matter was endorsed to MGB-CAR, thus, they wrote a letter dated 22 January 2015 to DENR to emphasize that the renewal of MPSA 001-90 is exempt from the Certification Precondition under the IPRA.²⁰

On 27 January 2015, Atty. Faustino A. Olowan (Atty. Olowan), counsel of the Mankayan ICCs/IPs, notified respondents that the indigenous inhabitants affected by the mining activities have not been paid royalties, rentals, and damages.²¹ Atty. Olowan added that the Mankayan ICCs/IPs are willing to sit down with respondents to discuss the settlement of their claims.²² Unless there is settlement of their claims for compensatory benefits,

¹² Id. at 140-148.

¹³ Id. at 149.

¹⁴ Id.

¹⁵ Id. at 150-151.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 342-345.

¹⁹ Id. at 58.

²⁰ Id.

²¹ Id. at 152-156.

²² Id.

the Mankayan ICCs/IPs will be forced to act accordingly to protect their rights and interests.²³

Subsequently, respondents served a Demand for Arbitration dated 16 February 2015 on the Republic, through DENR.²⁴ This was done pursuant to Section 12.2 of MPSA 001-90, due to the existing disagreement on the applicability of IPRA and related laws imposing the FPIC and Certification Precondition as additional requirements for the renewal of MPSA 001-90.²⁵

To prevent disturbance in their mining operations pending arbitration, respondents filed a Petition for Interim Measures of Protection under RA 876, RA 9285,²⁶ and the Special Rules of Court on Alternative Dispute Resolution (Special Rules on ADR) against the Secretary of DENR, Director of MGB, Chairperson of NCIP, and the NCIP Regional Hearing Office-CAR.²⁷ Respondents prayed that a Temporary Restraining Order (TRO)/and or Writ of Preliminary Injunction (WPI) be issued against the mentioned parties, to prevent any acts which would disrupt their mining operations and prevent them from exercising their rights and performing their obligations under MPSA 001-90 pending the issuance of a final and executory Award.²⁸ Further, respondents sought that the mentioned parties be directed to perform acts necessary and proper to maintain the validity and enforceability of their vested rights.²⁹

Proceedings before the RTC

On 18 March 2015, RTC Branch 149 granted the relief sought by respondents, to wit:

WHEREFORE, premises considered, a writ of preliminary injunction is hereby issued enjoining all respondents from performing any act that would: (a) disrupt, disturb or impede petitioners' operations in the area covered by MPSA No. 001-90; and acts that would (b) hinder, prevent or delay the petitioners from exercising their rights and/or from discharging their obligations under MPSA No. 001-90 in any manner whatsoever, until such time that a final and executory Award is issued with respect to the arbitration proceedings commenced by petitioners' Demand for Arbitration dated 16 February 2015; and said respondents are directed to perform all acts necessary and proper to maintain and protect the validity and/or enforceability of the petitioners' vested rights under MPSA No. 001-90 during the pendency of the arbitration proceedings

²³ Id.

²⁴ Id. at 157-159.

²⁵ Id.

²⁶ Entitled "AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION, AND FOR OTHER PURPOSES." Approved on 02 April 2004.

²⁷ Id. at 160-199.

²⁸ Id.

²⁹ Id.



commenced by petitioners' Demand for Arbitration dated 16 February 2015.

SO ORDERED.³⁰

The Joint Motion for Reconsideration filed by the DENR, NCIP, and MGB was likewise summarily denied by the RTC through its Order³¹ dated 28 May 2015.

Aggrieved, NCIP filed a Petition for *Certiorari* with the CA.³²

Proceedings before the Arbitral Tribunal and the CA

While the Petition for *Certiorari* was pending with the CA, the Arbitral Tribunal rendered a Final Award³³ on 27 November 2015. The dispositive portion reads:

WHEREFORE, after considering the submissions/pleadings and evidence submitted by the parties, the Tribunal has decided, in full and final resolution of the issues submitted for determination in the arbitration, as follows:

1. The parties' disagreement regarding the imposition of the FPIC and Certificate Precondition as a requirement for the renewal of MPSA is not under the original and exclusive jurisdiction of the court;
2. The parties' disagreement regarding the imposition of the FPIC and Certificate of Precondition as a requirement for the renewal of MPSA is arbitrable or is within the scope of the arbitration agreement; and
3. The FPIC and Certification Precondition may not be validly imposed as a requirement for the renewal of MPSA 001-90, and the latter should be renewed under the same terms and conditions, without prejudice to changes mutually agreed upon by the parties.
4. Respondent must reimburse Claimants the amount of Two Million Six Hundred Thousand Pesos (Php 2,600,000.00), which the Claimants have advanced on behalf of the Respondent.

SO ORDERED.³⁴

On 04 January 2016, the Republic filed a Petition to Vacate before the RTC to assail the adverse ruling of the Arbitral Tribunal.³⁵ This was granted by RTC Branch 141 through a Resolution³⁶ dated 06 May 2016 in SP. Proc. Case No. M-7932. The matter was elevated to the CA in CA-G.R. SP No.

³⁰ Id. at 106.

³¹ Id. at 109.

³² Id. at 66-90.

³³ Id. at 282-315.

³⁴ Id. at 314-315.

³⁵ Id. at 316-341.

³⁶ Id. at 387-399. Penned by Jude Maryann E. Corpus-Mañalac.

146806.³⁷

Meanwhile, the CA issued its assailed Decision³⁸ on 15 June 2016, affirming the assailed Orders dated 18 March 2015 and 28 May 2015 of RTC Branch 149:

WHEREFORE, premises considered, the instant Petition for Certiorari is **DENIED**. The assailed Orders dated 18 March 2015 and 28 May 2015 of the Regional Trial Court of Makati City, Branch 149 in SP Proc. No. M-7767 are **AFFIRMED**.

SO ORDERED.³⁹

The CA held that NCIP availed of the wrong remedy since it should have filed a Petition for Review before the CA within 15 days from notice of the final order of the court *a quo*, pursuant to Sections 19.12, 19.13, and 19.14 of the Special Rules on ADR.⁴⁰ It explained that since NCIP received a copy of the Order of RTC Branch 149 dated 28 May 2015 on 09 June 2015, it only had until 24 June 2015 to file a Petition for Review or a Petition for *Certiorari* with the CA.⁴¹ However, NCIP filed its Petition for *Certiorari* on 10 August 2015, approximately two months from receipt of the assailed Order.⁴² Consequently, the assailed Orders of RTC Branch 149 have lapsed into finality.⁴³

On 04 November 2016, the CA likewise denied NCIP's Motion for Reconsideration.⁴⁴ Hence, this Petition.

In assailing the CA's Decision, the NCIP argues that:⁴⁵ (1) the CA erred in applying the Special Rules on ADR in denying the Petition for *Certiorari*. NCIP was not a party-signatory to MPSA 001-90, thus not bound by the Arbitration Clause embodied therein; (2) the CA erred in denying the Petition for *Certiorari* for being filed out of time, as the period of filing pleadings or petitions under the Special Rules on ADR should not apply; (3) the CA erred in affirming the Orders of RTC Branch 149 dated 18 March 2015 and 28 May 2015, which were issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

On the other hand, respondents contend that NCIP availed of the wrong remedy, as what should have been filed with the CA was a Petition for

³⁷ Id. at 606-637.

³⁸ Id. at 54-65. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Danton Q. Bueser and Nina G. Antonio-Valenzuela.

³⁹ Id., unpaginated.

⁴⁰ Id. at 61-65.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Id. at 255-256.

⁴⁵ Id. at 25-44.

Review.⁴⁶ In any case, respondents argue that the Petition for *Certiorari* was properly denied as it was filed out of time pursuant to the Special Rules on ADR.⁴⁷ Moreover, respondents assert that the CA correctly affirmed the orders of RTC Branch 149, as the latter had jurisdiction to issue interim measures of protection against NCIP.⁴⁸

Issues

The issue for resolution of the Court is whether or not the CA erred in affirming the Orders of RTC Branch 149 issuing a WPI to respondents.

Ruling of the Court

The petition should be dismissed on the ground of mootness.

The Court has defined a moot and academic case as follows:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness — save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.⁴⁹

Nonetheless, case law provides exceptions to this principle. Essentially, courts will decide cases, otherwise moot and academic, if: (1) there is a grave violation of the Constitution; (2) the exceptional character of the situation and the paramount public interest is involved; (3) when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review.⁵⁰

It bears noting that on 30 April 2018, the CA promulgated its Decision⁵¹ in CA-G.R. SP No. 146806. The CA set aside the Resolution dated 06 May 2016 and Order dated 05 July 2016 of RTC Branch 141, and affirmed the Final Award dated 27 November 2015.⁵² It likewise denied the Motion for

⁴⁶ Id. at 484-489.

⁴⁷ Id.

⁴⁸ Id. at 489-493.

⁴⁹ *Republic v. Bloomberry Resorts and Hotels, Inc.*, G.R. No. 224112, 02 September 2020. Emphasis supplied.

⁵⁰ *David v. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006).

⁵¹ *Rollo*, pp. 606-637. Penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Jose C. Reyes, Jr. and Franchito N. Diamante.

⁵² Id.

Reconsideration filed by the Republic in its Resolution⁵³ dated 14 January 2019.⁵⁴ Hence, this was elevated to the Court, docketed as G.R. Nos. 244063 and 244216.

On 21 June 2022, the Court promulgated its Decision in G.R. Nos. 244063 and 244216.⁵⁵ Markedly, the Court reversed and set aside the ruling of the CA in CA-G.R. SP No. 146806 insofar as it sustained the Final Arbitral Award dated 27 November 2015.⁵⁶ It declared the said Final Arbitral Award vacated, without prejudice to respondents' full compliance with the requirement of "Free and Prior Informed and Written Consent" as a condition for the renewal of MPSA No. 001-90.⁵⁷

To reiterate, the instant case is limited to the issuance of a WPI to respondents to prevent disturbance in their mining operations pending the release of a final and executory award as a result of the arbitration proceedings. While the NCIP likewise questions the CA's dismissal of its petition based on procedural technicalities, ultimately, it argues that respondents do not have a right in *esse* for the issuance of the WPI.⁵⁸ It maintains that the Republic is not unwilling to grant their application for the renewal of MPSA No. 001-90, as it is merely requiring respondents to comply Section 59 of the IPRA for the protection of the Mankayan ICCs/IPs.⁵⁹

Notably, in G.R. Nos. 244063 and 244216, the Court elucidated that the FPIC and Certification Precondition under Section 59 of the IPRA are in accordance with the State's policy to provide protection to the rights of ICCs/IPs.⁶⁰ It confirmed that respondents do not have a vested right for the renewal of MPSA 001-90 under the same terms and conditions, as a mining agreement partakes of a mere privilege granted by the State.⁶¹ Consequently, the Court explained that the Final Arbitral Award should be vacated as it was rendered in manifest disregard of the IPRA and the policy to provide protection to ICCs/IPs.⁶²

Considering the foregoing, it is clear that the present matter has been rendered moot due to the promulgation of the Court's Decision in G.R. Nos. 244063 and 244216. The relevant issues laid down in the petition have been overtaken by events. Notably, none of the exceptions to the principle on

⁵³ Penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Franchito N. Diamante and Rodil V. Zalameda.

⁵⁴ *The Department of Environment and Natural Resources v. Lepanto Consolidated Mining Company and Far Southeast Gold Resources, Inc.*, G.R. Nos. 244063 and 244216, 21 June 2022.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Rollo*, pp. 32-44.

⁵⁹ *Id.*

⁶⁰ *The Department of Environment and Natural Resources v. Lepanto Consolidated Mining Company and Far Southeast Gold Resources, Inc.*, G.R. Nos. 244063 and 244216, 21 June 2022.

⁶¹ *Id.*

⁶² *Id.*

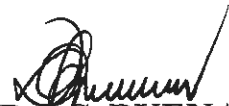
mootness applies. The adjudication of the instant case no longer presents any practical use or value, as there is no actual substantial relief which would be negated by the dismissal of the petition.⁶³

Nonetheless, in view of the Court’s pronouncement in G.R. Nos. 244063 and 244216, the WPI should be ordered lifted.

WHEREFORE, premises considered, the petition is **DISMISSED** for being moot and academic. The Writ of Preliminary Injunction dated 18 March 2015 is ordered **LIFTED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *9/13*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁶³ *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535, 540 (2014).