

FIRST DIVISION

[G.R. No. 229413, June 15, 2020]

AGATA MINING VENTURES, INC., PETITIONER, VS. HEIRS OF TERESITA ALAAN, REPRESENTED BY DR. LORENZO ALAAN, RESPONDENTS.

DECISION

REYES, J. JR., J.:

Assailed in this Petition for Review on *Certiorari* are the September 16, 2016 Decision^[1] and the January 9, 2017 Resolution^[2] of the Court of Appeals-Cagayan de Oro City (CA) in CA-G.R. SP No. 07230. The assailed Decision and Resolution nullified the Writ of Possession^[3] issued by the Regional Trial Court, Cabadbaran City, Branch 34 (RTC) in Civil Case No. SC-14-06, an expropriation case.

The Antecedents

The respondents are the registered owners of a parcel of land with an area of 14.22 hectares located at Payong Payong, Tiningbasan, Tubay, Agusan del Norte (subject property).

On May 26, 1999, Minimax Mineral Exploration Corporation (Minimax) entered into a Mineral Production Sharing Agreement (MPSA) No. 134-99-XIII with the Republic of the Philippines represented by the Secretary of the Department of Environment and Natural Resources (DENR). On June 20, 2014, Minimax entered into an Operating Agreement with Agata Mining Ventures, Inc. (petitioner) to explore, develop and operate the mining area located within the municipalities of Tubay, Jabonga, and Santiago in the province of Agusan del Norte which included the subject property. On July 10, 2014, the Operating Agreement was registered before the DENR Mines and Geosciences Bureau (MGB), Regional Office No. XIII, Surigao City and was approved by the MGB, Quezon City on September 18, 2014.^[4] Such agreement was further approved by Leo L. Jasareno, Director of the MGB, by Authority of the DENR Secretary on June 21, 2016.^[5]

Petitioner alleged that the subject property is the most conducive location for the establishment of a sedimentation pond or settling pond needed for the mining operation. Various negotiations took place between petitioner and the respondents wherein the former offered to buy the subject property at the rate of P175,000.00 per hectare. The respondents, however, refused such offer.

On December 4, 2014, petitioner filed a complaint for expropriation with prayer for issuance of writ of possession against the respondents before the RTC.

In their Answer, the respondents moved for the dismissal of the case on the ground that petitioner has no authority to exercise the power of eminent domain.

On June 26, 2015, the RTC issued an Omnibus Resolution granting a writ of possession to petitioner:

IN THE LIGHT OF THE FOREGOING CONSIDERATIONS, the Motion to Hear Affirmative Defenses of the defendants is denied; while the prayer for the issuance of the Writ of Possession (WOP) is granted. Issuance of the WOP is hereby ordered.

The Sheriff or other proper officer of the Court is directed to forthwith place the plaintiff in possession of the properly involved and promptly submit a report to the Court with service of copies to the parties in accordance with the applicable rule.

SO ORDERED.^[6]

The respondents moved for reconsideration but the same was denied by the RTC in a Resolution dated October 30, 2015.

Aggrieved, the respondents filed a petition for *certiorari* before the CA.

The CA Ruling

In a Decision dated September 16, 2016, the CA, citing *Olympic Mines and Development Corp. v. Platinum Group Metals Corp.*,^[7] held that an operating agreement is a purely civil contract between two private entities - one of whom happens to be a party to a mineral agreement with the government. Considering that petitioner is a mere private entity, petitioner does not have the authority to expropriate the subject property. The appellate court opined that granting petitioner the power to expropriate the subject property would degrade the constitutional principle of non-delegation of inherent powers of the State. Thus, it nullified the writ of possession issued to petitioner. The *fallo* reads:

WHEREFORE, the Petition for *Certiorari* is hereby GRANTED. Omnibus Resolution dated June 26, 2015 of the Regional Trial Court, 10th Judicial Region Branch 34, Cabadbaran City, in Civil Case No. SC-14-06 for Expropriation with Prayer for Issuance or Writ of Possession is REVERSED and SET ASIDE. The expropriation proceedings and the Writ of Possession dated July 30, 2015 is declared NULL and VOID.

SO ORDERED.^[8]

Petitioner moved for reconsideration but the same was denied by the CA in a Resolution dated January 9, 2017. Hence, this Petition for Review on *Certiorari*.

The Issue

Whether petitioner may file a complaint to expropriate the subject property.

Petitioner argues that in determining whether a writ of possession should be issued, the trial court is limited only in determining whether the complaint is sufficient in form and substance and that the provisional deposit was made in compliance with

Section 2, Rule 67 of the Rules of Court; that under Section 76 of Republic Act (R.A.) No. 7942 or the Philippine Mining Act of 1995, qualified mining operators have the authority to exercise the power of eminent domain; and that under the Mineral Production and Sharing Agreement, Minimax has the right to transfer and assign its mining rights to petitioner subject to approval of the Government.

The Court's Ruling

The petition is meritorious.

I.

Eminent domain is the inherent power of the State to take, or to authorize the taking of private property for a public use without the owner's consent, conditioned upon payment of just compensation. In most cases, eminent domain "is acknowledged as an inherent political right, founded upon the common necessity of appropriating the private property of individual members of the community for the great necessities of the whole community."^[9]

Eminent domain, which is the power of a sovereign state to appropriate private property to particular uses to promote public welfare, is essentially lodged in the legislature.^[10] While such power may be validly delegated to local government units (LGUs), other public entities and public utilities, the exercise of such power by the delegated entities is not absolute.^[11] In fact, the scope of delegated legislative power is narrower than that of the delegating authority and such entities may exercise the power to expropriate private property only when authorized by Congress and subject to its control and restraints imposed through the law conferring the power or in other legislations.^[12]

In *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*,^[13] the Court has already settled that qualified mining operators have the authority to exercise the power of eminent domain, viz.:

As shown by the foregoing jurisprudence, a regulation which substantially deprives the owner of his proprietary rights and restricts the beneficial use and enjoyment for public use amounts to compensable taking. In the case under consideration, **the entry referred to in Section 76 and the easement rights under Section 75 of Rep. Act No. 7942 as well as the various rights to CAMC under its FTAA are no different from the deprivation of proprietary rights in the cases discussed which this Court considered as taking.** Section 75 or the law in question reads:

Easement Rights. - When mining areas are so situated that for purposes of more convenient mining operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons, such infrastructure as roads, railroads, mills, waste dump sites, tailing ponds, warehouses, staging or storage areas and port facilities, tramways, runways, airports, electric transmission, telephone or telegraph lines, dams and their normal flood and

catchment areas, sites for water wells, ditches, canals, new river beds, pipelines, flumes, cuts, shafts, tunnels, or mills, the contractor, upon payment of just compensation, shall be entitled to enter and occupy said mining areas or lands.

Section 76 provides:

Entry into private lands and concession areas - Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants, or concessionaires when conducting mining operations therein.

The CAMC FTAA grants in favor of CAMC the right of possession of the Exploration Contract Area, the full right of ingress and egress and the right to occupy the same. It also bestows CAMC the right not to be prevented from entry into private lands by surface owners or occupants thereof when prospecting, exploring and exploiting minerals therein.

The entry referred to in Section 76 is not just a simple right-of-way which is ordinarily allowed under the provisions of the Civil Code. Here, the holders of mining rights enter private lands for purposes of conducting mining activities such as exploration, extraction and processing of minerals. Mining right holders build mine infrastructure, dig mine shafts and connecting tunnels, prepare tailing ponds, storage areas and vehicle depots, install their machinery, equipment and sewer systems. On top of this, under Section 75, easement rights are accorded to them where they may build warehouses, port facilities, electric transmission, railroads and other infrastructures necessary for mining operations. All these will definitely oust the owners or occupants of the affected areas the beneficial ownership of their lands. **Without a doubt, taking occurs once mining operations commence.**

Section 76 of Rep. Act No. 7942 is a Taking Provision

Moreover, it would not be amiss to revisit the history or mining laws of this country which would help us understand Section 76 of Rep. Act No. 7942.

This provision is first found in Section 27 of Commonwealth Act No. 137 which took effect on 7 November 1936, viz.:

Before entering private lands the prospector shall first apply in writing for written permission of the private owner, claimant, or holder thereof, and in case of refusal by such private owner, claimant, or holder to grant such permission, or in case of disagreement as to the amount of compensation to be paid for such privilege of prospecting therein, the amount of such compensation shall be fixed by agreement among the prospector, the Director of the Bureau of Mines and the surface owner, and in case of their failure to unanimously agree as to the amount of compensation, all questions at issue shall be determined by the Court of First Instance.

Similarly, the pertinent provision of Presidential Decree No. 463, otherwise known as "The Mineral Resources Development Decree of 1974," provides:

SEC. 12. Entry to Public and Private Lands. - A person who desires to conduct prospecting or other mining operations within public lands covered by concessions or rights other than mining shall first obtain the written permission of the government official concerned before entering such lands. In the case of private lands, the written permission of the owner or possessor of the land must be obtained before entering such lands. In either case, if said permission is denied, the Director, at the request of the interested person may intercede with the owner or possessor of the land. If the intercession fails, the interested person may bring suit in the Court of First Instance of the province where the land is situated. If the court finds the request justified, it shall issue an order granting the permission after fixing the amount of compensation and/or rental due the owner or possessor: Provided, That pending final adjudication of such amount, the court shall upon recommendation of the Director permit the interested person to enter, prospect and/or undertake other mining operations on the disputed land upon posting by such interested person of a bond with the court which the latter shall consider adequate to answer for any damage to the owner or possessor of the land resulting from such entry, prospecting or any other mining operations.

Hampered by the difficulties and delays in securing surface rights for the entry into private lands for purposes of mining operations, Presidential Decree No. 512 dated 19 July 1974 was passed into law in order to achieve full and accelerated mineral resources development. Thus, Presidential Decree No. 512 provides for a new system of surface rights acquisition by mining prospectors and claimants. Whereas in Commonwealth Act No. 137 and Presidential Decree No. 463 eminent domain may only be **exercised** in order that the mining claimants can build, construct or install roads, railroads, mills, warehouses and other facilities, this time, the power of eminent domain may now be **invoked** by mining operators for the entry, acquisition and use of private lands. viz.:

SECTION 1. Mineral prospecting, location, exploration, development and exploitation is hereby declared of public use and benefit, and for which *the power of eminent domain may be invoked and exercised for the entry, acquisition and use of private lands.* x x x

The evolution of mining laws gives positive indication that mining operators who are qualified to own lands were granted the authority to exercise eminent domain for the entry, acquisition, and use of private lands in areas open for mining operations. This grant of authority extant in Section 1 of Presidential Decree No. 512 is not expressly repealed by Section 76 of Rep. Act No. 7942; and neither are the former statutes impliedly repealed by the former. These two provisions can stand together even if Section