

SECOND DIVISION

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

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 L. JASARENO, ENVIRONMENTAL MANAGEMENT BUREAU, REP. BY DIRECTOR JUAN MIGUEL T. CUNA, AND PRIVATIZATION AND MANAGEMENT OFFICE REP. BY CHIEF PRIVATIZATION OFFICER, KAREN G. SINGSON, RESPONDENTS.

DECISION

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:

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[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.

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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;