

THIRD DIVISION

[G.R. No. 196892, December 05, 2018]

**NAREDICO, INC., PETITIONER, V. KROMINCO, INC.,
RESPONDENT.**

D E C I S I O N

LEONEN, J.:

In deference to its technical knowledge and expertise on matters falling within its jurisdiction, the findings of fact of the Mines Adjudication Board, when supported by substantial evidence, are binding on the Court of Appeals and on this Court.

This resolves the Petition for Review on Certiorari^[1] filed by Naredico, Inc. (Naredico), assailing the Court of Appeals November 26, 2010 Decision^[2] and May 10, 2011 Resolution^[3] in CA-G.R. SP No. 99372, which reversed the May 25, 2007 Decision^[4] of the Mines Adjudication Board in MAB Case No. 0118-00 and reinstated the October 4, 2001 Decision^[5] of the Mines and Geosciences Bureau Panel of Arbitrators in Mines Special Case Nos. POA XIII-36 and 37.

On February 27, 1977, Krominco, Inc. (Krominco), then called Malayan Wood Products, Inc., entered into an Operating Contract with the Government, through the Department of Environment and Natural Resources. They aimed to explore, develop, exploit, and use the chromite deposits over a 50,600.38-hectare area within Parcel III of the Surigao Mineral Reservation. The contract had a lifespan of 25 years, renewable for another 25 years.^[6]

On April 27, 1978, Krominco and the Government entered into a second Operating Contract for a portion of Parcel II within the Surigao Mineral Reservation.^[7]

On May 30, 1986, then Minister of Natural Resources Ernesto Maceda canceled both contracts due to violations of their terms and conditions.^[8]

Krominco moved for reconsideration of the cancellation. However, while its motion was pending, it negotiated a new agreement to replace the canceled Operating Contracts.^[9]

On December 8, 1988, Romarico G. Vitug (Vitug), Naredico's president, applied^[10] for an Exploration Contract with the Mines and Geosciences Bureau. The application covered approximately 500 hectares of mineral reservation land in Barangay San Ramon, Municipality of Loreto, Dinagat Island, and the Province of Surigao Del Norte.

On February 21, 1989, Krominco and the Government signed a new Operating Contract^[11] that had a lifespan of 16 years, renewable for another 25 years.^[12] It covered an area of approximately 729 hectares within Parcel III of the Surigao

Mineral Reservation.^[13] The boundaries and locations of its final operating area were still "subject to actual survey and verification by deputized geodetic engineers acceptable to both parties[.]"^[14]

Krominco also hired Certeza Surveying & Aerophoto Systems, Inc. (Certeza) to survey its mining claim.^[15]

On August 13, 1990,^[16] Vitug wrote the Mines and Geosciences Bureau to request for the revision of Naredico's earlier application. He asked for a conversion of the pending application for an Exploration Contract into a mineral production sharing agreement. He also asked that the area originally applied for be increased to 1,620 hectares.^[17]

On September 19, 1990,^[18] Mines and Geosciences Bureau Director Joel D. Muyco (Director Muyco) granted Certeza's request to survey Krominco's mining claim subject to the following conditions:

1. Be guided by the Manual for the Philippine Land Surveyor, laws, rules[,] and regulations governing mineral land surveys in the Philippines in the execution of the survey;
2. The terms and conditions of the Operating Contract entered into between KROMINCO, INC as represented by its President, Mr. Eric L. Lee and the Government as represented by the Secretary of the Department of Environment and Natural Resources, Fulgencio S. Factoran, Jr.[,] acknowledged by Notary Public Miguel C. Manalo on February 27, 1989[,] done in Quezon City[,] should be strictly complied with;
3. Representative of the government [through] the Regional Executive Director of the DENR Region X or his authorized representative shall witness the faithful execution of the survey who (sic) will submit his report as to his observations and comments/recommendations thereof.

Please be guided accordingly.^[19]

On August 28, 1991, Director Muyco approved Krominco's Amended Survey Plan for the final operating area or contract area of its Operating Contract.^[20]

On January 28, 1992,^[21] Director Muyco informed Vitug that the area sought to be covered by Naredico's proposed mineral production sharing agreement overlapped with a portion of Krominco's final operating area. He suggested including a colatilla, which read: "This contract area shall further exclude those covered by valid and subsisting mining rights. Provided, however, that in the event that such area is eventually abandoned or relinquished by the former grantee of mining rights or operator, the same shall be deemed part of the herein CONTRACT AREA."^[22]

Vitug agreed^[23] to the proposed colatilla. On February 21, 1992, the Government and Naredico executed a Mineral Production Sharing Agreement (Agreement)^[24] that spans a period of 25 years and is renewable for another 25 years.^[25] The colatilla was incorporated as Section IV^[26] of the Agreement.

On May 15, 1992,^[27] the Office of the President approved the Agreement.

On March 29, 1993, Naredico applied for an Order of Survey, which Director Muyco granted on April 7, 1993. Director Muyco then directed Engineer Felix M. Illana (Engineer Illana) to execute Naredico's boundary survey.^[28]

On January 19, 1994, Engineer Illana submitted a Technical Report^[29] comparing Naredico's Agreement with Krominco's Operating Contract and approved Amended Survey Plan. He concluded that there was no overlapping areas between the Agreement and Operating Contract.^[30] However, he noted that Krominco's Amended Survey Plan pertained to an area different from what was described in its Operating Contract, with several portions going outside the Operating Contract and encroaching the contract area of Naredico's Agreement. He observed that the overlap was around 445.50 hectares.^[31]

Naredico filed a Petition^[32] before the Department of Environment and Natural Resources to cancel Krominco's Operating Contract and declare its Amended Survey Plan as null.^[33]

In his January 31, 1995 Decision,^[34] then Environment and Natural Resources Secretary Angel C. Alcala (Secretary Alcala) declared the Amended Survey Plan as null. He found no conflict in the contract areas of Naredico's Agreement and Krominco's Operating Contract, as the overlap only arose with the Amended Survey Plan.^[35] Secretary Alcala found that Certeza, which was neither authorized nor deputized to conduct the survey, even delegated it to another surveyor^[36] without any Government representative.^[37] Moreover, he pointed out that Krominco failed to file an adverse claim to Naredico's application for a mineral production sharing agreement.^[38]

The dispositive portion of Secretary Alcala's Decision read:

WHEREFORE, in view of the foregoing disquisitions, the amended survey of herein respondent KROMINCO, INC. (KROMINCO) is hereby declared NULL AND VOID and its contract area defined in Section 1.1 of its Operating Contract (OC) is hereby declared as its final contract area with the caveat that it confines its operations within the same.

The Regional Executive Director (RED) concerned is hereby directed to conduct a field verification/ocular inspection of the area in contention to determine once and for all whether or not KROMINCO, Inc. (KROMINCO), the herein respondent, is operating inside the Mineral Production Sharing Agreement (MPSA) area of the herein petitioner NAREDICO, Inc. (NAREDICO) and to evaluate the amount of ores extracted from therein which shall thereby become the basis for reimbursement and/or payment by KROMINCO, Inc. (KROMINCO) to NAREDICO, Inc. (NAREDICO), if warranted.

SO ORDERED.^[39]

Naredico moved for the execution of Secretary Alcala's Order, which Krominco opposed.^[40]

In his November 21, 1996 Order,^[41] then Environment and Natural Resources Secretary Victor O. Ramos (Secretary Ramos) granted the Motion for Execution and

directed the Regional Executive Director to conduct an ocular inspection over the disputed area. Secretary Ramos emphasized that jurisdiction over the controversy lay with the Department of Environment and Natural Resources, not with the Mines and Geosciences Bureau Panel of Arbitrators.^[42]

The dispositive portion of his November 21, 1996 Order read:

WHEREFORE, the motion for execution is hereby **GRANTED**. Accordingly, the Regional Executive Director (now the Regional Director), Mines and Geo-Sciences Bureau, DENR-CARAGA Region, is hereby directed to execute the Decision, dated January 31, 1995, as directed in the second paragraph of the dispositive portion thereof.

SO ORDERED.^[43] (Emphasis in the original)

On April 14, 1999, Krominco filed before the Mines and Geosciences Bureau Panel of Arbitrators a Petition against Naredico. It prayed that the overlap area be excluded from Naredico's Agreement, and that its exclusive rights over the overlap area be recognized.^[44]

On April 16, 1999, Naredico filed its own Petition before the Panel of Arbitrators. It asserted its right over the overlap, which it claimed was erroneously included in Krominco's Operating Contract.^[45]

In its October 4, 2001 Decision,^[46] the Panel of Arbitrators ruled that Krominco had a better right than Naredico over the overlap area. It found that Naredico had known that its proposed contract area overlapped with Krominco's final operating area, and agreed to exclude it from its own final contract area.^[47]

The dispositive portion of the Panel of Arbitrators' October 4, 2001 Decision read:

WHEREFORE, it is hereby declared that KROMINCO has the exclusive, valid[,] and subsisting rights over the area claimed by NAREDICO.

SO ORDERED.^[48]

On November 19, 2001, Naredico appealed^[49] the Panel of Arbitrators' Decision before the Mines Adjudication Board. In its December 7, 2006 Order, the Mines Adjudication Board directed the Regional Director of the Mines and Geosciences Bureau to conduct a Joint Relocation Survey of the common boundaries between the mining claims of Naredico and Krominco.^[50]

On February 2, 2007, Officer-in-Charge Regional Director Alilo C. Ensomo, Jr. submitted his Joint Relocation Survey Report,^[51] writing that Krominco's "mill plant, administrative building, staffhouse, assay laboratory, refilling station, dynamite and [ammo] magazines, motorpool and mill waste dump sites"^[52] lay outside of its contract area and within the contested area.

In its May 25, 2007 Decision,^[53] the Mines Adjudication Board modified the Panel of Arbitrators' October 4, 2001 Decision. Recognizing the validity of the contracts entered into by the parties, it awarded the area occupied with Krominco's structures to Krominco, and the free area to Naredico.^[54] The dispositive portion of its Decision read:

WHEREFORE, in view of the foregoing, the appealed Decision of the Panel of Arbitrators is accordingly MODIFIED and it is hereby declared and ordered that:

- (1) Naredico has the exclusive right over the disputed area and is entitled to the possession thereof EXCEPT for the areas over which [Krominco's] mill plant, administrative building, staff house, assay laboratory, refilling station, dynamite and ammo magazines, motorpool and mill waste dump sites are situated which will be determined through a survey to be conducted by a surveyor authorized by the Regional Office of the DENR (Region XIII, Surigao City[]), the cost of which to be equally shared by Naredico and Krominco;
- (2) Krominco is ordered to immediately surrender to Naredico those areas over which the structures above are not situated and correspondingly Naredico is ordered to allow Krominco and the public to enter and use the road within said areas;
- (3) The Contract Areas in both the Operating Agreement between Krominco and the government and the MPSA between Naredico and the government be accordingly amended.

SO ORDERED.^[55]

Acting on Krominco's Appeal, the Court of Appeals in its November 26, 2010 Decision^[56] reversed the Mines Adjudication Board May 25, 2007 Decision and reinstated the Panel of Arbitrators' October 4, 2001 Decision. It brushed aside Naredico's contention that the disputed area was not included in Section 1.1 or the Operating Area of Krominco's Operating Contract. It held that the provision only defined the initial geographical coordinates of Krominco's operating area, with the final operating area still "subject to actual survey and verification by deputized geodetic engineers[.]"^[57]

It also ruled that the clear intention of the contracting parties, namely Krominco and the Government, was to include in its final operating area the actual area where Krominco's structures, equipment, and main ore body were located.^[58]

The Court of Appeals likewise found that despite not having a representative, the Government accepted Krominco's final contract area, as shown in Director Muyco's letter to Vitug.^[59] It further pointed out that Naredico agreed to Director Muyco's suggestion to exclude from its Agreement the areas covered by Krominco's subsisting mining rights.^[60]

Finally, the Court of Appeals upheld the "first-in-time, first-in-right" principle in mining claims. Thus, it proclaimed that Krominco had a superior right over Naredico since it registered its mining claims first.^[61]