

## THIRD DIVISION

[ G.R. No. 191705, March 07, 2016 ]

**BASIANA MINING EXPLORATION CORPORATION, BASIANA MINERALS DEVELOPMENT CORPORATION AND RODNEY O. BASIANA, IN HIS OWN PERSONAL CAPACITY AS PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE OF BASIANA MINING EXPLORATION CORPORATION AND BASIANA MINING DEVELOPMENT CORPORATION, PETITIONERS, VS. HONORABLE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND SR METALS INC. (SRMI), RESPONDENTS.**

### DECISION

**REYES, J.:**

In this petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Basiana Mining Exploration Corporation (BMEC), Basiana Mining Development Corporation (BMDC), and Rodney O. Basiana (Basiana) (petitioners) assail the Amended Decision<sup>[2]</sup> dated June 18, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 103033, which granted the motions for reconsideration dated January 21, 2009<sup>[3]</sup> and December 23, 2008<sup>[4]</sup> of the Honorable Secretary of the Department of Environment and Natural Resources (DENR) and SR Metals, Inc. (SRMI), respectively, reversed and set aside the CA's Decision<sup>[5]</sup> dated December 10, 2008 and dismissed the petition for review filed by the petitioners, among others.

### The Facts

Petitioner BMEC, headed by its President Basiana, applied on July 31, 1997 for a Mineral Production Sharing Agreement (MPSA) with the DENR for the extraction of nickel and other minerals covering an area of 6,642 hectares in Tubay and Jabonga, Agusan del Norte, docketed as MPSA (XIII)-00014.<sup>[6]</sup>

Pending approval of its application, BMEC, on April 29, 2000, assigned to Manila Mining Corporation (Manila Mining) all its rights and interest in MPSA (XIII)-00014, with the latter acknowledging BMEC as the real and true owner of said application.<sup>[7]</sup> Manila Mining, in turn, assigned on October 17, 2005, its rights and interest to SRMI.<sup>[8]</sup> A day after, or on October 18, 2005, Basiana and SRMI executed a Memorandum of Agreement where SRMI agreed, among others, to undertake technical and geological tests, exploration and small-scale mining operations of the site subject of MPSA (XIII)-00014.<sup>[9]</sup> Necessary permits and certificates were then issued by the DENR and the Provincial Government of Agusan del Norte to SRMI, San R Construction Corporation (San R) and Galeo Equipment Corporation (Galeo). Consequently, SRMI, using BMEC's application, applied for an MPSA for the extraction of nickel, iron and cobalt on a 591-ha area in Tubay, Agusan del Norte.

The application was docketed as APSA-000014-XIII.<sup>[10]</sup>

On November 24, 2006, the DENR Secretary issued a cease and desist order against the mining operations due to excess in annual production, maximum capitalization and labor cost to equipment utilization. The Minerals Development Council, on December 7, 2006, also advised SRMI, San R and Galeo to immediately stop all mining activities in Tubay, which were conducted under the pretext of small-scale mining.<sup>[11]</sup>

Basiana then filed a complaint before the Regional Trial Court of Butuan City on May 15, 2007 for rescission of contract, abuse of rights and damages against SRMI, docketed as Civil Case No. 5728.<sup>[12]</sup> For its part, BMEC, then already known as BMDC, also filed a complaint for breach of trust, accounting and conveyance of proceeds, judicial confirmation of declaration of partial nullity of contract and termination of trust, and abuse of rights with damages against SRMI, San R, Galeo, et al. on July 13, 2007, docketed as Civil Case No. 5746.<sup>[13]</sup>

Subsequently, the Director of the Mines and Geosciences Bureau (MGB), on January 10, 2008, recommended the approval of APSA-000014-XIII filed by SRMI.<sup>[14]</sup> Thus, BMEC and Basiana filed with the MGB Panel of Arbitrators (MGB-POA) a petition to deny and/or disapprove and/or declare the nullity of the application for MPSA and/or cancellation, revocation and termination of MPSA.<sup>[15]</sup> Pending resolution of the protest before the MGB-POA, the Republic of the Philippines, represented by the DENR Secretary entered into MPSA No. 261-2008-XIII with SRMI for the development and commercial utilization of nickel, cobalt, iron and other associated mineral deposits in the 572.64-ha area in Tubay, Agusan del Norte.<sup>[16]</sup>

Hence, the herein petitioners filed a petition for review with the CA assailing the issuance of MPSA No. 261-2008-XIII on the grounds that (1) "there was clear violation of due process and the entire proceedings was railroad and suited for the benefit of [SRMI]," and that (2) the approval of the application is a patent nullity and/or absolutely without any factual and legal basis.<sup>[17]</sup>

### **CA Decision dated December 10, 2008**

The CA initially granted the petition and declared MPSA No. 261-2008-XIII null and void.<sup>[18]</sup> According to the CA, MPSA No. 261-2008-XIII should be stricken down for the reasons that the DENR Secretary has no authority and jurisdiction to approve SRMI's application pending resolution by the MGB-POA of the petitioners' protest. The CA ruled that the grounds raised by the petitioners in their protest, to wit: (a) "the application of [SRMI] to extract mineral and dispose nickel, iron and cobalt for commercial purposes is a falsified document;" and (b) "[SRMI] is not qualified to undertake the exploration, development and utilization of minerals in Tubay, Agusan del Norte," involve a dispute on rights to mining areas and fall within the jurisdiction of the MGB-POA.<sup>[19]</sup>

The CA also found that the petitioners adopted the wrong mode of appeal when it filed a petition for review before it; nevertheless, it resolved to treat the petition as one for *certiorari* since it alleged grave abuse of discretion on the part of the DENR Secretary in approving the application despite the pendency of the petitioners'

protest.<sup>[20]</sup>

SRMI filed a motion for reconsideration of the CA decision, which was granted by the CA.<sup>[21]</sup>

### **CA Amended Decision dated June 18, 2009**

According to the CA, the petition for review filed by the petitioners cannot be treated as a special civil action for *certiorari* for lack of jurisdictional grounds.<sup>[22]</sup> The CA ruled that the approval by the DENR Secretary of SRMFs application does not involve a quasi-judicial function since both the petitioners and SRMI are still applicants and there was yet an adjudication of rights between them.<sup>[23]</sup> The CA also ruled that the petition for review was premature due to the absence of any decision or resolution rendered by a competent body exercising a quasi-judicial function and the petitioners should have exhausted all administrative remedies available before it filed the petition for review.<sup>[24]</sup> The CA also stated that even if it were to treat the petition as a special civil action for *certiorari*, it failed to show any grave abuse of discretion committed by the DENR Secretary when it entered into MPSA No. 261-2008-XIII.<sup>[25]</sup> Citing *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*,<sup>[26]</sup> the CA ruled that it is the DENR Secretary that has jurisdiction to cancel existing mining agreements.<sup>[27]</sup> Finally, the CA found the petitioners to have committed forum shopping as the petition for review was filed despite the pendency of the protest with the MGB-POA.<sup>[28]</sup>

### **Petition before the Court**

Hence, the present petition anchored on the ground that —

THE HONORABLE [CA], WITH DUE RESPECT, GRIEVOUSLY ERRED IN REVERSING ITS OWN RESOLUTION, XXX, DECLARING THAT THE MPSA ISSUED BY THE [DENR] AS NULL AND VOID, BY GIVING THE FOLLOWING SPECIOUS AND BASELESS LEGAL GROUNDS, WHICH ARE NOT IN ACCORD WITH EXISTING LAWS AND JURISPRUDENCE: X X X.<sup>[29]</sup>

The petitioners insist that they made the proper recourse when they filed a petition for review with the CA because the determination by the DENR Secretary as to the propriety of the MGB Director's recommendation of approval and SRMFs qualification to undertake development and its compliance with the law requires an exercise of its quasi-judicial function, and that the issue of whether the petitioners failed to exhaust its administrative remedies when it did not await the MGB-POA's resolution of its protest involves questions of law.<sup>[30]</sup>

The petitioners also take exception to the CA's use of the *Celestial Nickel Mining*<sup>[31]</sup> case, citing alleged differences. According to the petitioners, in *Celestial Nickel Mining*, the Court did not make an issue on the remedy resorted to by Blue Ridge Mineral Corporation (Blue Ridge) and instead, delved on the merits of the case thereby implying that the filing of a petition for *certiorari* resorted to by Blue Ridge was proper. Also, *Celestial Nickel Mining* did not rule into the action of the DENR Secretary in entering into the mining agreement because its issuance was not raised before the MGB Director and the DENR Secretary and neither was it presented

before the CA. This case, on the other hand, presents sufficient grounds why the DENR Secretary's approval was illegal and tainted with grave abuse of discretion, that is, despite that the DENR Secretary and the MGB Director knew of the existence of the protest before the MGB-POA, the agreement was still entered into.<sup>[32]</sup>

SRMI, meanwhile, argues that the DENR Secretary's signing of MPSA No. 261-2008-XIII was within his authority and that the grounds raised by the petitioners are mere rehash of the arguments raised in the CA.<sup>[33]</sup>

On the other hand, the Office of the Solicitor General, who appeared for the DENR Secretary, maintains that the CA properly dismissed the petition on ground of forum shopping.<sup>[34]</sup>

### **Ruling of the Court**

Without stamping approval on the validity of MPSA No. 261-2008-XIII, the Court dismisses the petition for the simple reason that the petitioners' recourse to the CA was erroneous.

First, the act of the DENR Secretary in approving SRMI's application and entering into MPSA No. 261-2008-XIII is not an exercise of its quasi-judicial power; hence, it cannot be reviewed by the CA, whether by a petition for review under Rule 43 or a special civil action for *certiorari* under Rule 65 of the Rules of Court.

Depending on its enabling statute,<sup>[35]</sup> administrative agencies possess distinct powers and functions - administrative, quasi-legislative, and quasi-judicial. "Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs."<sup>[36]</sup> Quasi-judicial or administrative adjudicator/ power, on the other hand, "is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."<sup>[37]</sup> "A government agency performs adjudicator/ functions when it renders decisions or awards that **determine the rights of adversarial parties**, which decisions or awards have the same effect as a judgment of the court."<sup>[38]</sup>

In the case of the DENR Secretary, its power to approve and enter into a MPSA is unmistakably administrative in nature as it springs from the mandate of the DENR under the Revised Administrative Code of 1987, which provides that "[t]he [DENR] shall x x x be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country's natural resources."<sup>[39]</sup> Contrary to the petitioners' position, the determination by the DENR Secretary as to (1) the propriety of the MGB Director's recommendation of approval, and (2) the qualification of SRMI to undertake development and its compliance with the law, does not involve the exercise of quasi-judicial power. Note that under Section 41 of DENR Administrative Order (A.O.) No. 96-40, initial evaluation of an application for an MPSA is made by the MGB Regional Office in the area covered by the application. Thereafter, the application will be reviewed by the MGB Director for further evaluation.<sup>[40]</sup> It is only after the MGB Director has evaluated the application that the same will be forwarded to the DENR

Secretary for final evaluation and approval. In approving an MPSA, the DENR Secretary does not determine the legal rights and obligations of adversarial parties, which are necessary in adjudication. In fact, it is only after an application is approved that the right to undertake the project accrues on the applicant's part, and until then, no rights or obligations can be enforced by or against any party.<sup>[41]</sup> Neither does the DENR Secretary resolve conflicting claims; rather, what is involved here is the determination whether a certain applicant complied with the conditions required by the law, and is financially and technically capable to undertake the contract, among others. Thus, in *Republic of the Philippines v. Express Telecommunication Co., Inc.*,<sup>[42]</sup> the Court stated that the powers granted to the Secretary of Agriculture and Commerce (natural resources) by law such as granting of licenses, permits, leases and contracts, or approving, rejecting, reinstating, or canceling applications, are all **executive and administrative** in nature. It even further ruled that purely administrative and discretionary functions may not be interfered with by the courts.<sup>[43]</sup>

Jurisprudence also emphasized the administrative nature of the grant by the DENR Secretary of license, permits, lease and contracts, reiterating the distinction made in *Pearson v. Intermediate Appellate Court*<sup>[44]</sup> between the different mining claims/disputes, to wit:

Decisions of the Supreme Court on mining disputes have recognized a distinction between (1) **the primary powers granted by pertinent provisions of law to the then Secretary of Agriculture and Natural Resources (and the bureau directors) of an executive or administrative nature, such as "granting of license, permits, lease and contracts, or approving, rejecting, reinstating or cancelling applications, or deciding conflicting applications,"** and (2) controversies or disagreements of civil or contractual nature between litigants which are questions of a judicial nature that may be adjudicated only by the courts of justice.<sup>[45]</sup> (Emphasis ours)

This distinction has been carried over under Republic Act No. 7942 (R.A. No. 7942) or the Philippine Mining Act of 1995.<sup>[46]</sup>

Moreover, even assuming, for the sake of argument, that recourse to the courts may be had by the petitioners, the circumstances of this case do not warrant its intervention at this point for the following reasons:

For one, in their petition for review filed with the CA, the petitioners prayed that MPSA No. 261-2008-XIII be set aside and its implementation enjoined.<sup>[47]</sup> In effect, the petitioners seek a cancellation of MPSA No. 261-2008-XIII. As earlier discussed, however, the power to approve and enter into agreements or contracts rests primarily with the DENR Secretary. Perforce, the power to cancel an MPSA likewise lies with the DENR Secretary. Such implied power of the DENR Secretary was upheld by the Court in *Celestial Nickel Mining*.

*Celestial Nickel Mining* involved the cancellation of several mining lease contracts in favor of Macroasia Corporation. The pivotal issue in said case was defined by the Court as: "who has authority and jurisdiction to cancel existing mineral agreements under [R.A. No. 7942] in relation to [Presidential Decree No.] 463 and pertinent