

## EN BANC

[ G.R. No. 209165, April 12, 2016 ]

**LNL ARCHIPELAGO MINERALS, INC., PETITIONER, VS. AGHAM PARTY LIST (REPRESENTED BY ITS PRESIDENT REP. ANGELO B. PALMONES), RESPONDENT.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a petition for review on certiorari<sup>[1]</sup> assailing the Amended Decision dated 13 September 2013<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 00012.

#### The Facts

Petitioner LNL Archipelago Minerals, Inc. (LAMI) is the operator of a mining claim located in Sta. Cruz, Zambales. LAMI's mining area is covered by Mineral Production Sharing Agreement<sup>[3]</sup> No. 268-2008-III dated 26 August 2008 by virtue of an Operating Agreement<sup>[4]</sup> dated 5 June 2007 with Filipinas Mining Corporation.

LAMI embarked on a project to build a private, non-commercial port in Brgy. Bolitoc, Sta. Cruz, Zambales. A port is a vital infrastructure to the operations of a mining company to ship out ores and other minerals extracted from the mines and make the venture economically feasible. Brgy. Bolitoc, about 25 kilometers away from the mine site, makes it an ideal location to build a port facility. In the area of Sta. Cruz, Shangfil Mining and Trading Corporation (Shangfil)/A3Una Mining Corporation (A3Una) and DMCI Mining Corporation, have been operating their own ports since 2007.

LAMI secured the following permits and compliance certificates for the port project: (1) Department of Environment and Natural Resources (DENR) Environmental Compliance Certificate<sup>[5]</sup> (ECC) R03-1104-182 dated 2 May 2011 covering the development of causeway, stockpile and related facilities on LAMI's property with an area of 18,142 sq.m.; (2) DENR provisional foreshore lease agreement with LAMI;<sup>[6]</sup> (3) Philippine Ports Authority (PPA) Clearance to Develop a Port;<sup>[7]</sup> (4) PPA Permit to Construct a Port;<sup>[8]</sup> (5) PPA Special Permit to Operate a Beaching Facility;<sup>[9]</sup> and (6) Tree Cutting Permit/Certification<sup>[10]</sup> from the Community Environment and Natural Resources Office (CENRO) of the DENR.

The Zambales Alliance, a group of other mining companies operating in Sta. Cruz, Zambales which do not have their own port, namely Eramen Minerals, Inc.; Zambales Diversified Metals Corporation; Zambales Chromite Mining Corporation, Inc.; BenguetCorp Nickel Mines, Inc., supported the port project of LAMI and issued

Letters<sup>[11]</sup> of Intent to use the port facilities of LAMI upon completion.

The Bolitoc community - the *barangay*, its officials and residents -gave several endorsements<sup>[12]</sup> supporting the project. Even the *Sangguniang Bayan* of Sta. Cruz gave its consent to the construction of the port.<sup>[13]</sup>

However, LAMI allegedly encountered problems from the local government of Sta. Cruz, headed by Mayor Luisito E. Marty (Mayor Marty). LAMI stated that Mayor Marty unduly favored some mining companies in the municipality and allegedly refused to issue business and mayor's permits and to receive payment of occupation fees from other mining companies despite the necessary national permits and licenses secured by the other mining companies.

On 24 April 2012, Mayor Marty issued an order<sup>[14]</sup> directing LAMI to refrain from continuing with its clearing works and directed the Sta. Cruz Municipal Police Chief Generico Binan to implement his order. On 26 April 2012, LAMI responded through a letter<sup>[15]</sup> explaining that Mayor Marty's order was illegal and baseless. Chief Binan, together with two of his deputies, went to LAMI's port site to demand that LAMI cease its clearing works. LAMI's supervisor showed Chief Binan all of LAMI's permits. In a Memorandum dated 3 May 2012, Chief Binan made a report to his supervisor, S/Supt. Francisco DB Santiago, Jr. (S/Supt. Santiago), Zambales Police Provincial Director, that there was no leveling of a mountain on the port site. On 6 May 2012, S/Supt. Santiago made a Special Report re: Police Assistance<sup>[16]</sup> to the Philippine National Police (PNP) Regional Director citing the findings of Chief Biñan.

Thereafter, Rep. Dan Fernandez, a member of the Committee on Ecology of the House of Representatives, passed House Resolution No. 117 (HR 117) entitled "Resolution Directing the Committee on Ecology to Conduct an Inquiry, in Aid of Legislation, on the Implementation of Republic Act No. 7942, Otherwise Known as the Philippine Mining Act of 1995, Particularly on the Adverse Effects of Mining on the Environment." HR 117 was issued in order to conduct an alleged ocular inspection of the port site in aid of legislation. On 21 May 2012, the Committee on Ecology conducted an ocular inspection of the LAMI port site, as well as the other ports adjacent to LAMI's - those of Shangfil/A3Una and D.M. Consunji, Inc. The Committee allegedly never visited any mining site in the area of Sta. Cruz.

Meanwhile, on 30 April 2012, the DENR Environmental Management Bureau in Region III (DENR-EMB R3) received a letter dated 27 April 2012 from Mayor Marty inquiring if the ECC the DENR issued in favor of LAMI allowed LAMI to cut trees and level a mountain.

On 25 May 2012, representatives from the DENR Provincial Environment and Natural Resources Office (PENRO) in Zambales and the local government of Sta. Cruz conducted an ECC compliance monitoring of LAMI's property. The DENR PENRO team found that LAMI violated some of its conditions under the ECC. Accordingly, a Notice of Violation (NOV) dated 1 June 2012 was issued against LAMI for violation of certain conditions of the ECC with a cease and desist order from further constructing and developing until such time that the ECC conditions were fully complied.

On 8 June 2012, a technical conference was held where LAMI presented its reply to the NOV. The DENR-EMB R3 ascertained that LAMI's violations of the four conditions

of its ECC constitute minor violations since they only pertain to non-submission of documents. However, the leveling of the elevated portion of the area was a major violation. A penalty was consequently imposed on LAMI, and the DENR-EMB R3 directed LAMI to (1) immediately cause the installation of mitigating measures to prevent soil erosion and siltation of the waterbody, and (2) submit a rehabilitation plan.

On 11 June 2012, LAMI wrote a letter<sup>[17]</sup> to the DENR-EMB R3 regarding the commitments agreed upon during the technical conference. LAMI signified compliance with the conditions of DENR-EMB R3. Attached to the letter were: (1) Official Receipt of payment of penalties under Presidential Decree (PD) No. 1586, (2) Matrix of Mitigation and Rehabilitation Plan, (3) Designation of Pollution Control Officer dated 6 May 2011, and (4) Tree Cutting Permit dated 17 April 2012 issued by DENR R3 CENRO.<sup>[18]</sup>

On 20-21 June 2012, the DENR composite team, composed of DENR-EMB R3, Mines and Geosciences Bureau (MGB) R3 and PENRO Zambales, conducted an investigation to determine whether mitigating measures done by LAMI were sufficient. The composite team found that LAMI's activities in its property would not result to any environmental damage to its surrounding communities.

Thereafter, the DENR-EMB R3 lifted the cease and desist order after LAMI was found to have complied with the requirements. In a Letter<sup>[19]</sup> dated 24 October 2012, Lormelyn E. Claudio (Dir. Claudio), the Regional Director of DENR-EMB R3 wrote:

x x x x

The violated ECC conditions have been rectified and clarified while the penalty corresponding to such violation was fully paid and the required rehabilitation and mitigating measures were already implemented as committed. As such, the matter leading to the issuance of the NOV is now resolved.

As ECC holder, you are enjoined to ensure the effective carrying out of your Environmental Management and Monitoring Plan.<sup>[20]</sup>

Meanwhile, earlier, or on 6 June 2012, respondent Agham Party List (Agham), through its President, former Representative Angelo B. Palmones (Rep. Palmones), filed a Petition<sup>[21]</sup> for the issuance of a Writ<sup>[22]</sup> of Kalikasan against LAMI, DENR, PPA, and the Zambales Police Provincial Office (ZPPO).

Agham alleged that LAMI violated: (1) Section 68<sup>[23]</sup> of PD No. 705,<sup>[24]</sup> as amended by Executive Order No. III,<sup>[25]</sup> or the Revised Forestry Code; and (2) Sections 57<sup>[26]</sup> and 69<sup>[27]</sup> of Republic Act No. 7942,<sup>[28]</sup> or the Philippine Mining Act of 1995 (Philippine Mining Act). Agham added that LAMI cut mountain trees and flattened a mountain which serves as a natural protective barrier from typhoons and floods not only of the residents of Zambales but also the residents of some nearby towns located in Pangasinan.

On 13 June 2012, this Court remanded the petition<sup>[29]</sup> to the Court of Appeals for hearing, reception of evidence and rendition of judgment.

On 25 June 2012, LAMI filed its Verified Return dated 21 June 2012, controverting Agham's allegations. LAMI stated that it did not and was not violating any environmental law, rule or regulation. LAMI argued that: (1) LAMI had the necessary permits and authorization to cut trees in the port site; (2) LAMI had the necessary permits to construct its port; (3) LAMI consulted with and obtained the support of the Sangguniang Barangay and residents of Barangay Bolitoc; (4) LAMI's port site is located on private and alienable land; (5) there is no mountain on the port site; (6) the Philippine Mining Act is irrelevant and inapplicable to the present case; and (7) the other allegations of Agham that LAMI violated environmental laws, rules or regulations are likewise baseless, irrelevant and false. LAMI stated further that there is no environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities and provinces.

Public respondents DENR, PPA and ZPPO, filed with the Court of Appeals their Pre-Trial Brief dated 1 August 2012. In the Pre-Trial Brief, public respondents stated that they will present the following witnesses: (1) Dir. Claudio, Regional Director, DENR-EMB R3; two from the PPA - (2) Engineer Marieta G. Odicta (Engr. Odicta), Division Manager, Engineering Services Division, Port District Office, Manila, Northern Luzon; and (3) Emma L. Susara (Ms. Susara), Department Manager, Commercial Services of the PPA (NCR); and (4) S/Supt. Santiago, Provincial Director of the ZPPO.

The witnesses of public respondents submitted their Judicial Affidavits dated 6 August 2012. The testimonies of the witnesses were offered to prove the facts and allegations in the petition:

(1) Dir. Claudio<sup>[30]</sup> -

- a) That the issues presented by Agham were already subject of the complaint filed by Mayor Marty with the DENR-EMB R3;
- b) That the DENR-EMB R3 issued an ECC to LAMI;
- c) That the DENR-EMB R3 acted on the complaint of Mayor Marty with regard to construction by LAMI of its port facility;
- d) That the DENR-EMB R3 issued a NOV dated 1 June 2012 to LAMI;
- e) That the DENR-CENRO issued a tree cutting permit to LAMI;
- f) That there is no mountain within or inside the property of LAMI in Brgy. Bolitoc, Sta. Cruz, Zambales;
- g) That the cutting of the trees and the partial leveling of a landform (which is determined to be an "elongated mound" but is alleged to be a "mountain" by the petitioner) conducted by LAMI in its property in Brgy. Bolitoc, Sta. Cruz, Zambales do not pose adverse environmental impact on the adjoining communities more so to the larger areas or the entire provinces of Zambales and Pangasinan.

(2) Eng. Odicta<sup>[31]</sup> -

- a) That the PPA issued a permit to construct to LAMI only after due application and submission of the required documents;
- b) That other private companies, namely: DMCI Mining Corporation and Shangfil/A3Una constructed port facilities along the Brgy. Bolitoc coastline and contiguous to where the port facility of LAMI is located.

- (3) Ms. Susara<sup>[32]</sup> -
- a) That the PPA issued a clearance to develop and a permit to operate to LAMI only after due application and submission of the required documents;
  - b) That other private port facilities, namely: DMCI Mining Corporation, Shangfil/A3Una are operating along the Brgy. Bolitoc coastline and contiguous to where the port facility of LAMI is located; and
  - c) That since the 1970's, the coastline along Brgy. Bolitoc, Municipality of Sta. Cruz, Zambales, has been the location of port facilities necessary for mining operations in the province of Zambales.
- (4) S/Supt. Santiago<sup>[33]</sup> -
- a) That the members and officials of the ZPPO did not violate, or threaten with violation, petitioner's right to a balanced and healthful ecology;
  - b) That the members and officials of the ZPPO did not cover-up any alleged illegal activity of LAMI; and
  - c) The contents of the Memorandum (Special Report re: Police Assistance) dated 6 May 2012 submitted by S/Supt. Santiago to the PNP Regional Director.

On 10 September 2012, Agham presented its first and only witness, former Rep. Angelo B. Palmones. Rep. Palmones was cross-examined by counsel for LAMI and counsel for public respondents DENR, PPA, and ZPPO.<sup>[34]</sup>

On 26 September 2012, public respondents presented their witnesses.<sup>[35]</sup>

On 28 September 2012, LAMI manifested that it was adopting the testimonies of the witnesses of the public respondents. On the same hearing, LAMI presented its witness, Felipe E. Floria, LAMI's Vice-President and General Manager.<sup>[36]</sup>

In a Decision<sup>[37]</sup> dated 23 November 2012, the Court of Appeals decided the case in favor of petitioner. The appellate court found that the government, through the CENRO, authorized LAMI to cut trees and LAMI strictly followed the proper guidelines stated in the permit. The appellate court also stated that there can be no flattening of a mountain when there is no mountain to speak of. Thus, for failing to comply with the requisites necessary for the issuance of a Writ of Kalikasan, the Court of Appeals resolved to deny the petition. The dispositive portion of the Decision states:

WHEREFORE, premises considered, the petition is hereby DENIED.

SO ORDERED.<sup>[38]</sup>

Agham filed a Motion for Reconsideration with the Court of Appeals. In its Motion for Reconsideration, Agham argued that the alleged leveling of the subject hill by LAMI: (1) was not sanctioned by the DENR since LAMI allegedly had no ECC from the DENR; (2) affected the ecological balance of the affected towns and provinces since