



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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SECOND DIVISION

**MR HOLDINGS, INC. and  
MARCOPPER MINING  
CORPORATION,**  
Petitioners,

**G.R. No. 217837**

Present:

**CARPIO, J., Chairperson,  
CAGUIOA,  
J. REYES, JR.,  
LAZARO-JAVIER, and  
ZALAMEDA, JJ.**

- versus -

**ROLANDO A. DE JESUS, in his  
official capacity as the OFFICER-  
IN-CHARGE (OIC)-Regional  
Director, MINES AND  
GEOSCIENCES' BUREAU (MGB),  
Region IV-B (MIMAROPA) and  
VICENTE S. PARAGAS, CESO III,  
in his official capacity as the  
Regional Executive Director, DENR  
Region IV-B (MIMAROPA),**  
Respondents.

Promulgated:

04 SEP 2019

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**DECISION**

**CAGUIOA, J.:**

Before the Court is a petition for review on *certiorari*<sup>1</sup> (Petition) under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated August 14, 2014 and Resolution<sup>3</sup> dated April 16, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 129058, which dismissed petitioners' appeal and affirmed the Decision<sup>4</sup> dated December 21, 2011 of the Regional Trial Court of Manila, Branch 52 (RTC) in SCA Case No. 07-118343 that, in turn, dismissed

\* Also stated as "Geo-Sciences" in some parts of the records.

<sup>1</sup> *Rollo*, pp. 40-130, excluding Attachments.

<sup>2</sup> *Id.* at 132-145. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Pedro B. Corales.

<sup>3</sup> *Id.* at 148-149. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Japar B. Dimaampao and Pedro B. Corales.

<sup>4</sup> *Id.* at 151-168. Penned by Acting Presiding Judge Ruben Reynaldo G. Roxas.

petitioners' amended petition for prohibition and mandamus (Amended Petition).

### Facts

The antecedent facts, as summarized by the CA, are as follows:

On 3 May 2007, Onephil Mineral Resources, Inc., (hereafter Onephil) filed an *Exploration Permit Application* covering a land area of 5,335.0806 hectares in the Municipalities of Sta. Cruz and Boac, Province of Marinduque denominated as EPA-IV-B-177 before the Mines and Geo-Sciences Bureau (hereafter MGB).

On the basis of the said application, the MGB, through its Survey Section, projected the technical description of the land area applied for in the Mineral Land Survey Map (MLSM) covering the (MIMAROPA) Region. The MLSM is a map consisting of several cardboards with control numbers each corresponding to specified coordinates. Each cardboard contains boxes with a corresponding area of nine (9) hectares and each individually named box represents both existing and previous mining applications and claims.

The Survey Section of the MGB found that the application of Onephil overlaps several other mining applications or claims. The list of mining applications or claims affected by Onephil's application was forwarded to the Mining Services Division to determine the status of the same. The Mine Management Division of the MGB also requested for a final plotting of Onephil's applied area with the Survey Section. Additionally, recommendations of the Protected Areas Wildlife and Coastal Zone Management Service (PAWCZMS) and the Forest Management Service (FMS) of the DENR were sought by the One-Stop Shop Committee (OSSC) of Region IV-B in order to facilitate the issuance of an Area Status and Clearance.

After the OSSC received the recommendations of the concerned government agencies, the MGB apprised Onephil that its application conflicts with an existing mining lease contract, a mining application and a portion of the Marinduque Wildlife Sanctuary. The MGB, thus, required Onephil to amend its application (EPA-IV-B-177) and exclude the affected areas. In compliance thereto, Onephil submitted its amended application removing the protected areas of the Marinduque Wildlife Sanctuary. Unfortunately, the land area covered by the amended application was still in conflict with several mining applications and/or claims.

On the other hand, petitioner-appellant Marcopper Mining Corporation, the operator of the San Antonio Copper Project (SACP) and the owners of private lands, private works and mining infrastructure and facilities therein with an area of about 4,243 hectares located in the Municipalities of Sta. Cruz and Boac, Marinduque, has a pending application for Mineral Production Sharing Agreement (MPSA) denominated as AMA IV-B127, filed on 22 March 2001, for a total area of 763.6650 hectares with the MGB. The said application is a renewal of Marcopper's previous Lode Lease Contracts Nos. V-1199 and V-1149.

Aware of Onephil's application, Marcopper sent a letter to respondent-appellee Rolando De Jesus, the Office[r]-In-Charge (OIC) Regional Director, MGB Region IV-B (MIMAROPA) notifying him that the areas covered by the SACP are closed to mining applications and requested the latter to ensure that said areas should be excluded from any application for Exploration Permit, MPSA or x x x any other type of mining application.

On 30 October 2007, Onephil submitted its amended application (for an Exploration Permit) to MGB and, this time, the same showed no conflict with any existing mining applications or claims. As a result, the OSSC issued an Area Status and Clearance in favor of Onephil with the notations from the Lands Management Services (LMS), FMS, PAWCZMS and the MGB Region IV-MIMAROPA. According to the findings of these agencies, the OSSC found that "the applied area is open to mining application".

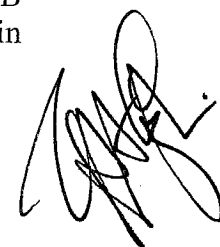
Despite the issuance of the Area Status and Clearance, Onephil's *Exploration Permit Application*, to date, is still pending before the MGB.

Meanwhile, on 19 November 2007, Marcopper sought to expand its MPSA AMA IV-B127 and consequently filed an amended sketch plan. On the same date, Marcopper sent another letter to De Jesus calling again his attention to the fact that the area covered by its MPSA Application No. AMA IV-B127 are now included in the amended sketch plan covering the entire SACP with a total area of 4,668.3222 hectares. Marcopper reminded De Jesus that it has valid mining rights over the said land under R.A. No. 7942 and "are under the private works" of the SACP. However, the MIMAROPA Area Status report shows that the additional areas are in conflict with several Exploration Permit Applications, including that of Onephil.

In a letter dated 16 November 2007, the MGB sought Onephil's comment to Marcopper's claim. Onephil replied to MGB, stating that at the time it "applied for the application permit the areas [are] clear and open for mining". Finding merit in Onephil's contentions, the MGB rejected Marcopper's claim that the overlapped areas are closed to mining applications. The MGB likewise denied the amendment of Marcopper's MPSA Application No. AMA IV-B127 as the same conflicts with Onephil's EPA-IV-B-177.

Aggrieved, on 26 November 2007, appellants filed a *Petition for Prohibition and Mandamus with prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* against De Jesus before the Regional Trial Court of Manila. The case was docketed as SCA Case No. 07-118343 and raffled by (*sic*) Branch 52 thereof (hereafter court *a quo*). Appellants contended that De Jesus committed grave abuse of discretion when he accepted and acted on Onephil's *Exploration Permit Application* knowing that the land covered by the same overlaps with SACP land.

Appellants likewise filed an *Amended Petition for Prohibition and Mandamus* to include in the case respondent-appellee Vicente S. Paragas, CESO III, in his capacity as the Regional Executive Director of the Department of Environment and Natural Resources (DENR) Region IV-B (MIMAROPA) for approving the OSSC's Area Status and Clearance in favor of Onephil.



On 20 December 2007, the court *a quo*, through Presiding Judge Antonio Rosales issued an *Order* denying appellants' prayer for injunction and set the case for pre-trial.<sup>5</sup>

Subsequent to this, on February 22, 2008, respondents filed a Motion to Dismiss arguing that the RTC had no jurisdiction over the case. They argued that the issues raised are considered mining disputes and thus were under the exclusive and original jurisdiction of the Panel of Arbitrators.<sup>6</sup>

Petitioners opposed this and argued that respondents' act of processing Onephil Mineral Resources, Inc.'s (Onephil) Exploration Permit Application was a violation of their rights since the application covered lands and private works in the San Antonio Copper Project (SACP).<sup>7</sup> They also argued that the Amended Petition did not involve mining rights but involved a violation of petitioners' proprietary rights.<sup>8</sup>

On May 23, 2008, the RTC issued an Order<sup>9</sup> denying the Motion to Dismiss. It ruled that it had primary jurisdiction over the case since it did not involve a mining dispute.<sup>10</sup> It also ruled that the Panel of Arbitrators had no jurisdiction over the case.<sup>11</sup>

On July 23, 2008, respondents filed a petition for *certiorari* before the CA questioning the May 23, 2008 Order of the RTC.<sup>12</sup> This was docketed as CA-G.R. SP No. 104490.<sup>13</sup> But in a Resolution<sup>14</sup> dated November 13, 2008, the CA dismissed the petition for non-compliance with the CA's directives.<sup>15</sup> Respondents' motion for reconsideration was likewise denied.<sup>16</sup>

Respondents then filed a petition for review on *certiorari* under Rule 45 before the Court and docketed as G.R. No. 188229.<sup>17</sup> The Court, in a Resolution dated March 8, 2010, denied the petition for failure to sufficiently show that the CA committed an error in dismissing the petition for *certiorari*.<sup>18</sup>

Subsequently, after trial on the merits, the RTC, through Acting Presiding Judge Ruben Reynaldo G. Roxas, rendered a Decision dismissing petitioners' Amended Petition for lack of jurisdiction.<sup>19</sup> The RTC ruled that

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<sup>5</sup> Id. at 133-136.

<sup>6</sup> See id. at 136.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at 259-262. Penned by Presiding Judge Antonio M. Rosales.

<sup>10</sup> Id. at 261.

<sup>11</sup> Id.

<sup>12</sup> Id. at 137.

<sup>13</sup> Id.

<sup>14</sup> Id. at 303-305. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicedican.

<sup>15</sup> Id. at 305.

<sup>16</sup> Id. at 137.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.



the issue raised in the Amended Petition involves a mining dispute and is therefore within the jurisdiction of the Panel of Arbitrators.<sup>20</sup>

The RTC ruled as follows:

Verily, the instant controversy involves both an application for a mineral agreement by petitioners and the exploration permit application by OMRI. Thus, petitioners pray for the exclusion of the conflicting areas in OMRI's Exploration Permit No. EPA-IVB-177. In the same breadth, they seek to include the claimed area in its own MPSA Application No. AMA-IVB-127. Stated differently, this controversy involves the adjudication of petitioner's rights with respect to their MPSA application vis-à-vis OMRI's rights with respect to its EPA.

Similarly, since petitioners invoke their supposed ownership and possessory rights over surface lands to defeat OMRI's application, the instant controversy also falls under Section 7(c) of R.A. 7942 because it refers to surface owners, occupants and concessionaires of the real property affected by the mining activities conducted by the claim-holders/concessionaires (entities which are holding mining rights granted by the government).

x x x x

Truth be told, after a thorough evaluation of the records, this Court was convinced of the necessity for technical knowledge on the subject matter before it can competently adjudicate the factual issues in this case. Specifically, during the proceedings, petitioners tried to show that they have mining rights, property and structures over the entirety of the claimed area through their expert witness, Geodetic Engineer Armando E. Quinto. The latter used his specialized knowledge in engineering to determine the metes and bounds of what it (*sic*) claimed to be the SACP area and, in the process, referred extensively to topological maps and Global Positioning System (GPS) coordinates during his testimony. Similarly, respondents presented personnel from the MGB, who used their specialized engineering knowledge and repetitively referred to topological maps and the Mineral Land Survey Map (MLSM) to establish previous and current mining claims. Surely, these circumstances only lead to the conclusion that indeed, a mining dispute exists, and that the Panel of Arbitrators is especially suited to determine the factual issues in this case.<sup>21</sup>

The dispositive portion of the RTC Decision states:

**WHEREFORE**, premised on the foregoing considerations, the Amended Petition is hereby **DISMISSED**.

**SO ORDERED.**<sup>22</sup>

On appeal, the CA affirmed the RTC's dismissal of the Amended Petition. The CA ruled that the issue involved in the Amended Petition is the overlap or conflict between Onephil's EPA-IV-B-177 and petitioner

<sup>20</sup> Id.

<sup>21</sup> Id. at 165-167; see also Records (Vol. IV), pp. 2361-2363.

<sup>22</sup> Id. at 168.



Marcopper Mining Corporation's (petitioner Marcopper) MPSA No. AMA-IV-B127 over the land sought to be covered by the SACP.<sup>23</sup> For the CA, the case pertains to factual matters of whether petitioner Marcopper was able to prove the existence of the overlap or conflict between its claimed area and that covered by Onephil's Exploration Permit Application such that the latter need not be approved or that the land covered by petitioner Marcopper's claim be excluded from the grant of Onephil's application.<sup>24</sup> The CA ruled that to resolve the controversy, it would require the application of technological knowledge and experience of mining authorities.<sup>25</sup> This involves a mining dispute, which the CA defined as follows:

The jurisdiction of the Panel of Arbitrators is embodied in x x x Section 77 of R.A. No. 7942 (The Philippine Mining Act of 1995), to wit:

"SEC. 77. Panel of Arbitrators. — There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one [1] licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, **the panel shall have exclusive and original jurisdiction to hear and decide on the following:**

- (a) Disputes involving rights to mining areas;
- (b) **Disputes involving mineral agreements or permits;**
- (c) Disputes involving surface owners, occupants and claimholders/concessionaires[.]” x x x

x x x x

Under the above-quoted provision, mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, Financial and Technical Assistance Agreements (FTAA), or permits, and (c) surface owners, occupants and claimholders/concessionaires. In the case of *Celestial Nickel Mining Exploration vs.[.] Macrosia*, the Supreme Court explained that the phrase “disputes involving rights to mining areas” in Section 77(a) of R.A. No. 7942 refers to any adverse claim, protest, or

<sup>23</sup> Id. at 140.

<sup>24</sup> Id. at 140-141.

<sup>25</sup> Id. at 141.

opposition to an application for mineral agreement or conferment of mining rights, while Sec[tion] 77(b) thereof refers to disputes involving mineral agreements and **permits**. Parenthetically, the “**permit**” referred to in Section 77(b) of the [Philippine] Mining Act pertains to **exploration permit**, quarry permit, and other mining permits recognized in Chapters IV, VIII, and IX of the [Philippine] Mining Act.

Additionally, in the case of *Gonzales vs.[.] Panel of Arbitrators*, the Supreme Court held that the Panel of Arbitrators’ jurisdiction is limited only to those mining disputes **which raise questions of fact or matters requiring the application of technological knowledge and experience.**<sup>26</sup> (Emphasis in the original; citations removed)

Further, the CA ruled that petitioners were not entitled to a writ of prohibition and mandamus because they have an adequate remedy under Republic Act No. (RA) 7942<sup>27</sup> or the *Philippine Mining Act* by filing a complaint with the Panel of Arbitrators in order to determine whether or not there exists an overlap or conflict in petitioner Marcopper’s mining claim or application.<sup>28</sup>

The CA also ruled that the Court’s Resolution<sup>29</sup> in G.R. No. 188229, entitled “*The Regional Executive Director, Department of Environment and Natural Resources Region IV-B [MIMAROPA], et al. vs. MR Holdings, Inc. and Marcopper Mining Corporation,*” did not settle the issue of jurisdiction since the Court only affirmed the CA’s dismissal of the petition for *certiorari* on procedural grounds.<sup>30</sup> Neither the CA nor the Court delved into the issue of jurisdiction over the Amended Petition.<sup>31</sup> Nonetheless, the CA also ruled that the RTC’s May 23, 2008 Order is merely interlocutory and cannot be considered as having finally resolved on the merits the issue of whether the case involves a mining dispute.<sup>32</sup> The CA found that the RTC (albeit with a new judge), after evaluating the records, including the testimonies of the parties, was convinced of the necessity for technical knowledge and expertise in order to determine the metes and bounds of what petitioners are claiming to be part of their mining claims.<sup>33</sup>

The dispositive portion of the CA Decision states:

**WHEREFORE**, the instant appeal is **DISMISSED**. The *Decision* dated 21 December 2011 of the Regional Trial Court of Manila, Branch 52, in SCA Case No. 07-118343 **STANDS**.

**SO ORDERED.**<sup>34</sup>

<sup>26</sup> Id. at 139-140.

<sup>27</sup> AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION, May 3, 1995.

<sup>28</sup> *Rollo*, p. 142.

<sup>29</sup> Id. at 383-384.

<sup>30</sup> See id. at 143.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id. at 144.

<sup>34</sup> Id. at 144-145.



Petitioners moved for reconsideration, but this was denied. Hence, this Petition.

### Issues

The issues raised in the Petition are as follows:

#### [I.]

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN RULING THAT THE ISSUE RAISED IN THE CASE *A QUO* IS A MINING DISPUTE BETWEEN TWO CLAIMANTS. THE ISSUE IS THE REFUSAL BY RESPONDENTS GOVERNMENT OFFICIALS TO COMPLY WITH SECTION 19 OF R.A. NO. 7942, THE MINING LAW OF 1995, THAT CERTAIN MINING AREAS ARE CLOSED TO MINING APPLICATIONS. THIS ISSUE IS PROPERLY THE SUBJECT OF A PETITION FOR PROHIBITION AND MANDAMUS UNDER RULE 65 OF THE RULES OF COURT.

#### [II.]

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN DEFYING THE RESOLUTION OF THE SUPREME COURT IN G.R. NO. 188229 WHICH UPHELD THE ORDER DATED MAY 23, 2008 OF THEN PRESIDING JUDGE ANTONIO M. ROSALES IN THE CASE *A QUO*. THE RESOLUTION OF THE SUPREME COURT IN G.R. NO. 188229 IS DEEMED TO BE A DECISION ON THE MERIT[S]. THE ORDER DECLARING THAT THE RTC HAS JURISDICTION AND THAT THE CASE DOES NOT INVOLVE A MINING DISPUTE HAS ATTAINED FINALITY. THE RTC'S ACTING PRESIDING JUDGE DECIDED THE CASE *A QUO* STRANGELY UNAWARE OF HIS OWN COURT'S PREVIOUS ORDER, AND THE FINAL AND EXECUTORY RESOLUTION OF THE SUPREME COURT, UPHOLDING THE RTC'S JURISDICTION.

#### [III.]

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN FAILING TO RECOGNIZE THAT ONEPHIL IS NOT A HOLDER OF MINING RIGHTS. BEING A MERE APPLICANT FOR AN EXPLORATION PERMIT, ONEPHIL HAS NOT ACQUIRED MINING RIGHTS.

#### [IV.]

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN FAILING TO RECOGNIZE THAT ONEPHIL, BEING A MERE APPLICANT FOR AN EXPLORATION PERMIT, DOES NOT FALL INTO THE CATEGORIES OF A PARTY TO A DISPUTE, THE RESOLUTION OF WHICH IS UNDER THE JURISDICTION OF THE MGB PANEL OF ARBITRATORS.





[V.]

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN FAILING TO RECOGNIZE THAT R.A. NO. 7942 PROVIDED PROTECTION TO THE PROPERTY RIGHTS OF PRIVATE LAND OWNERS WITH PRIVATE WORKS. THAT UNLESS SUCH LAND OWNERS GIVE THEIR CONSENT IN WRITING, THEIR PRIVATE LANDS ARE CLOSED TO MINING APPLICATIONS. IT IS THESE RIGHTS THAT THE 1987 CONSTITUTION PROTECTS AND WHICH R.A. NO. 7942 PROVIDED, WHICH RESPONDENTS HAVE VIOLATED BY DECLARING THEIR AREAS OPEN TO MINING APPLICATIONS WITHOUT THEIR CONSENT.<sup>35</sup> (Emphasis omitted)

Distilling the foregoing, there are essentially only two issues for the Court's resolution, and they are: (a) whether the dispute is within the jurisdiction of the Panel of Arbitrators; and, (b) whether the Court, in G.R. No. 188229, already ruled with finality that it is the RTC and not the Panel of Arbitrators that has jurisdiction over the Amended Petition.

### **The Court's Ruling**

The Petition is denied.

***The Panel of Arbitrators has jurisdiction.***

Petitioners claim that “[w]hat is involved in this case are private lands and private works which are closed to mining applications pursuant to Section 19 of [RA] 7942.”<sup>36</sup> Petitioners’ theory is that “[u]nless the consent of the private landowners is secured, private land area is closed to mining applications.”<sup>37</sup>

Petitioners also argue that the real issue is “whether or not respondents public officials acted illegally and without or in excess of their jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, in declaring [that] the area applied for by Onephil is open to mining application.”<sup>38</sup> For petitioners, this is not “a mining dispute, nor does it require the technical expertise of [the] Panel of Arbitrators.”<sup>39</sup>

Petitioners’ arguments lack basis.

The nature of an action and whether the tribunal has jurisdiction over such action are to be determined from the material allegations of the complaint, the law in force at the time the complaint is filed, and the character

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<sup>35</sup> Id. at 72-74.

<sup>36</sup> Id. at 76.

<sup>37</sup> Id. at 78.

<sup>38</sup> Id. at 80.

<sup>39</sup> Id.



of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims averred since jurisdiction is not affected by the pleas or the theories set up by defendant in an answer to the complaint or a motion to dismiss the same.<sup>40</sup>

Here, the following are settled:

- (a) Onephil's Exploration Permit Application EPA-IV-B-177 does not include areas covered by petitioner Marcopper's MPSA application AMA-IVB-127;<sup>41</sup>
- (b) The area covered by Onephil's EPA-IV-B-177 overlaps with the private lands and private works included in the SACP, but are not included in Marcopper's AMA-IVB-127;<sup>42</sup> and,
- (c) Marcopper is the owner of the private lands and works which are covered by the area subject of Onephil's EPA-IV-B-177.<sup>43</sup>

In their arguments, petitioners try to make a distinction that what they are questioning is the action of respondents for issuing the Area Clearance. But the material allegations in the Amended Petition belies this posture as they show that petitioners are essentially opposing the Exploration Permit Application of Onephil or any other applicant for mining rights that allegedly overlaps with the SACP. Their Amended Petition alleges the following:

27. That public respondents' unjust and wrongful refusal to block-off and exclude the areas of the San Antonio Copper Project from any EP or MPSA or other mining applications by third parties will open the flood gates to illegal entries and incursions over the said areas in the guise of an (*sic*) illegally issued EP or MPSA applications, and has caused and is causing grave injustice and irreparable injury to petitioners.

28. Public respondents with grave abuse of discretion and/or in excess of jurisdiction, tantamount to lack of jurisdiction, have indiscriminately and unlawfully accepted, processed and published, and **continue to accept, process and publish EPAs of third persons and entities in the areas of the San Antonio Copper Project, and has (*sic*) unlawfully refused to block-off and exclude the said mining areas from any EPA, MPSA OR FTAA applications, contrary to law and in flagrant violation of the mining rights of petitioners.**<sup>44</sup> (Emphasis and underscoring supplied; underscoring in the original omitted)

In fact, in their prayer in their Amended Petition, petitioners state:

<sup>40</sup> *Malabanan v. Republic*, G.R. No. 201821, September 19, 2018 accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/64605>.

<sup>41</sup> See *rollo*, p. 78.

<sup>42</sup> See *id.* at 134-135.

<sup>43</sup> See *id.* at 134.

<sup>44</sup> *Id.* at 182-183.

3. After due proceedings, the petition be granted and judgment be rendered:

a) Converting the Writ of Preliminary Injunction into a Permanent Writ of Prohibitory and Mandatory Injunction.

b) The privileged writ of prohibition be issued commanding public respondents OIC Regional Director, and Executive Regional Director, respectively, for MGB, Region IV-B (MIMAROPA), their agents, representatives and persons acting in his behalf to **desist from accepting, processing, publishing and issuing to third persons and entities whomsoever Exploration Permits (EPs), Mineral Production Sharing Agreement (MPSA), or Financial Technical Assistance Agreement (FTAA) within the boundaries of petitioners' San Antonio Copper Project Area at San Antonio, Sta. Cruz, Marinduque, which areas are closed to mining applications;** and,

c) Writ of Mandamus be issued commanding said public respondents, their agents, representatives and persons acting in their behalf to block-off and **exclude from any Exploration Permit Application (EPA), or MPSA application, or FTAA applications by third persons or entities the mining areas of the San Antonio Copper Project which are closed to mining applications.**<sup>45</sup>  
(Emphasis and underscoring supplied; underscoring in original omitted)

Even as the petition is couched as one for *mandamus* and *prohibition*, what petitioners really seek is the denial of Onephil's application and other application for mining rights insofar as they overlap with the private lands over which petitioners claim they have rights. The hair-splitting distinction they make that what they are questioning is the issuance of respondents of the Area Clearance utterly fails to convince the Court. Once more, the material allegations of their Amended Petition and the character of the reliefs they seek indubitably show that the case involves a dispute over the conferment of mining rights to Onephil — which is within the jurisdiction of the Panel of Arbitrators.

To reiterate, the jurisdiction of the Panel of Arbitrators is stated in Section 77 of the *Philippine Mining Act* as follows:

SEC. 77. *Panel of Arbitrators.* — There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the

<sup>45</sup> Id. at 188-189.

region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

- (a) Disputes involving rights to mining areas;
- (b) Disputes involving mineral agreements or permits;
- (c) Disputes involving surface owners, occupants and claimholders/concessionaires; and
- (d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

The foregoing is reflected in the *Philippine Mining Act Implementing Rules and Regulations (Philippine Mining Act IRR)*,<sup>46</sup> thus:

#### Section 202. Jurisdiction of Panel of Arbitrators

The Panel of Arbitrators shall have exclusive and original jurisdiction to hear and decide on the following:

- a. Disputes involving rights to mining areas;
- b. Disputes involving Mineral Agreements, FTAA's or Permits;
- c. Disputes involving surface owners, occupants and claimholders/concessionaires[.]

Interpreting paragraph (a) of Section 77 of the *Philippine Mining Act*, the Court in *Celestial Nickel Mining Exploration Corp. v. Macroasia Corp.*,<sup>47</sup> held that paragraph (a) of Section 77 of the Mining Act "specifically refer only to those disputes relative to the **applications for a mineral agreement or conferment of mining rights.**"<sup>48</sup>

The current dispute squarely falls under paragraph (a) of Section 77 of the *Philippine Mining Act* as it involves a dispute relative to the application of Onephil for an exploration permit.

In fact, the procedure outlined in the *Philippine Mining Act* and its *IRR* as to the process in applying for and the grant of an exploration permit leads to the clear conclusion that it is the Panel of Arbitrators that has jurisdiction over this dispute.

<sup>46</sup> DENR Administrative Order No. 96-40, REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7942, OTHERWISE KNOWN AS THE "PHILIPPINE MINING ACT OF 1995," December 19, 1996.

<sup>47</sup> 565 Phil. 466 (2007).

<sup>48</sup> Id. at 500; emphasis and underscoring supplied.

Upon the filing of the application for an exploration permit, the concerned Regional Office (RO) or the MGB shall check the control maps if the area applied for is free or open for mining applications. If there are specific claims or conflicts or complaints of overlaps from landowners, non-government organizations, local government units, and other concerned stakeholders, the Regional Director is directed to exert all efforts to resolve the same. After resolving any issues, the RO or the MGB shall issue the Area Clearance.<sup>49</sup>

Once the Area Clearance is issued, the RO shall issue a Notice of Application for Exploration Permit to the applicant for publication and radio announcement and for posting. The Notice shall be published in two newspapers, one of general circulation published in Metro Manila and another one published in the municipality or province where the proposed permit area is located. The Notice shall also be posted in bulletin boards for one week in the province, municipality and barangay where the proposed permit area is located. Radio announcements of the notice shall also be done every day for one week.<sup>50</sup>

<sup>49</sup> See PHILIPPINE MINING ACT IRR, Sec. 20 which provides:

**Section 20. Area Status/Clearance**

Within fifteen (15) working days from receipt of the Exploration Permit application, the Bureau for areas within Mineral Reservations, or the concerned Regional Office(s), for areas outside Mineral Reservations, shall check in the control maps if the area is free/open for mining applications. The Regional Office shall also transmit a copy of the location map/sketch plan of the applied area to the pertinent Department sector(s) affected by the Exploration Permit application for area status, copy furnished the concerned municipality(ies)/city(ies) and other relevant offices or agencies of the Government for their information. Upon notification of the applicant by the Regional Office as to the transmittal of said document to the concerned Department sector(s) and/or Government agency(ies), it shall be the responsibility of the same applicant to secure the necessary area status/consent/clearance from said Department sector(s) and/or Government agency(ies). The concerned Department sector(s) must submit the area status/consent/clearance on the proposed permit area within thirty (30) working days from receipt of the notice: *Provided*, That the concerned Department sector(s) can not unreasonably deny area clearance/consent without legal and/or technical basis: *Provided, further*, That if the area applied for falls within the administration of two (2) or more Regional Offices, the concerned Regional Office(s) which has/have jurisdiction over the lesser area(s) of the application shall follow the same procedure.

In reservations/reserves/project areas under the jurisdiction of the Department/Bureau/Regional Office(s) where consent/clearance is denied, the applicant may appeal the same to the Office of the Secretary.

If the proposed permit area is open for mining applications, the Bureau/concerned Regional Office(s) shall give written notice to the applicant to pay the corresponding Bureau/Regional Office(s) clearance fee (Annex 5-A): *Provided*, That if a portion of the area applied for is not open for mining applications, the concerned Regional Office shall, within fifteen (15) working days from receipt of said written notice, exclude the same from the coverage of Exploration Permit application: *Provided, further*, That in cases of overlapping of claims/conflicts/complaints from landowners, NGOs, LGUs and other concerned stakeholders, the Regional Director shall exert all efforts to resolve the same.

<sup>50</sup> See PHILIPPINE MINING ACT IRR, Sec. 21, as amended by DENR Department Administrative Order No. 2007-15, which provides:

**Section 21. Publication/Posting/Radio Announcement of an Exploration Permit Application**

Within five (5) working days from receipt of the necessary area clearances, the Regional Office(s) concerned shall issue the Notice of Application for Exploration Permit to the applicant for publication and radio announcement, and to the Offices concerned for posting. The Notice must contain, among others, the name and complete address of the applicant, duration of the permit applied for, extent of exploration activities to be undertaken, area location, geographical coordinates/meridional block(s) of the proposed permit area and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

Within five (5) working days from receipt of the Notice, the Exploration Permit applicant shall cause the publication thereof once in two (2) newspapers: one of general circulation published in Metro Manila and another published in the municipality or province where the proposed permit area is located,

Within five working days from the last date of posting and radio announcement, certifications shall be issued by the concerned officers on the compliance with the posting and radio announcement requirement. The affidavit of the publisher will also be submitted as proof of the publication.<sup>51</sup>

The *Philippine Mining Act IRR* also specifically states that “[a]ny adverse claim, protest or opposition shall be filed directly, within ten (10) days from the date of publication or from the last date of posting/radio announcement, with the Regional Office concerned or through any PENRO<sup>52</sup> or CENRO<sup>53</sup> concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations.”<sup>54</sup>

Petitioner Marcopper, claiming that its private lands should be excluded from Onephil’s Exploration Permit Application, may file such protest or opposition with the Panel of Arbitrators within 10 days from the date of publication or from the last date of posting/radio announcement. The Panel of Arbitrators is mandated to decide on the dispute within 30 days after the case is submitted for decision.<sup>55</sup> The decision of the Panel of Arbitrators is appealable to the Mines Adjudication Board,<sup>56</sup> and in turn, the decision of the Mines Adjudication Board is appealable to the Court.<sup>57</sup>

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if there be such newspapers; otherwise, in the newspaper published in the nearest municipality or province. The pertinent affidavits of publication shall be submitted by the Exploration Permit applicant to the Regional Office concerned within five (5) days from the date of publication of the Notice.

The Regional Office concerned shall cause the posting of the Notice on its bulletin board, and those of the province(s) and municipality(ies) concerned, or city(ies) concerned, for one (1) week, copy furnished the Bureau and the barangay(s) where the proposed permit area is located. Where necessary, the Notice shall be in a language generally understood in the concerned locality where it is posted.

The radio announcements shall be made daily for one (1) week in a local radio program and shall consist of the name and complete address of the applicant, area location, duration of the permit applied for and instructions that information regarding such application may be obtained at the Regional Office(s) concerned. The publication and radio announcements shall be at the expense of the applicant.

Within five (5) working days from the last date of posting and radio announcement, the authorized officer(s) of the concerned office(s) shall issue a certification(s) that the posting/radio announcement have been complied with. Any adverse claim, protest or opposition shall be filed directly, within ten (10) days from the date of publication or from the last date of posting/radio announcement, with the Regional Office concerned or through any PENRO or CENRO concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days from receipt of the request of any concerned party.

x x x x

No Exploration Permit shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition thereto is resolved with finality.

<sup>51</sup> Id.

<sup>52</sup> Provincial Environment and Natural Resources Office.

<sup>53</sup> Community Environment and Natural Resources Office.

<sup>54</sup> PHILIPPINE MINING ACT IRR, Sec. 21, as amended.

<sup>55</sup> Id., Sec. 205.

<sup>56</sup> Id., Sec. 206.

<sup>57</sup> Id., Sec. 211.

It is only when the dispute is settled with finality, as certified by the Panel of Arbitrators, will the Regional Director then issue the Exploration Permit. Section 21 of the *Philippine Mining Act IRR* further states that “[u]pon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days from receipt of the request of any concerned party.”<sup>58</sup>

Thereafter, Section 23 of the *Philippine Mining Act IRR* states that after the terms and conditions of the exploration permit have been evaluated and after conflicts have been cleared, the Director of the MGB or the Regional Director concerned shall issue the exploration permit, thus:

**Section 23. Registration of Exploration Permit**

Upon evaluation that all the terms and conditions and all pertinent requirements are in order and that the subject area has been cleared from any conflict, the Director in case of Mineral Reservation areas or the Regional Director concerned in case of Non-Mineral Reservation areas and upon clearance by the Director shall approve and issue the Exploration Permit. The Permittee shall cause the registration of the same in the Regional Office concerned within fifteen (15) working days from receipt of the written notice and upon payment of the required fees: *Provided*, That the Permittee shall comply with the required consultation with the Sanggunian concerned pursuant to the pertinent provisions of RA No. 7160, The Local Government Code of 1991, prior to the implementation of the Exploration Work Program.

In filing a petition for *mandamus* and *prohibition* — instead of following the procedure outlined above — petitioners attempted to circumvent and avoid the jurisdiction of the Panel of Arbitrators. The Court cannot allow this legal maneuvering as the material allegations and the relief sought by petitioners show that the dispute clearly falls within the exclusive jurisdiction of the Panel of Arbitrators. The RTC and the CA therefore correctly dismissed the Amended Petition.

***Issue of jurisdiction can be raised at any time.***

Petitioners argue that the Court’s dismissal of its petition in G.R. No. 188229 already settled the issue of jurisdiction.<sup>59</sup> Petitioners’ arguments lack merit.

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<sup>58</sup> Id., Sec. 21, as amended.

<sup>59</sup> See *rollo*, p. 84.



To recall, respondents herein filed a Motion to Dismiss based on lack of jurisdiction, which the RTC denied in an Order dated May 23, 2008.<sup>60</sup> Respondents filed a petition for *certiorari* before the CA, which was summarily dismissed.<sup>61</sup> The summary dismissal by the CA was affirmed by the Court in G.R. No. 188229.<sup>62</sup>


In *Machado v. Gatdula*,<sup>63</sup> the Court ruled that “[w]henver it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside.”<sup>64</sup>

Further, in *Bilag v. Ay-ay*,<sup>65</sup> the Court reiterated that “when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action[,] x x x [as] any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.”<sup>66</sup>

Here, the RTC did not commit an error in dismissing the Amended Petition despite the Order dated May 23, 2008. The issue of jurisdiction may be interposed at any time and may be ruled upon even during appeal or even after finality of judgment. The RTC, CA, or even the Court cannot conveniently set aside the fact that the Philippine Mining Act conferred jurisdiction over the dispute involved in the Amended Petition with the Panel of Arbitrators.

**WHEREFORE**, premises considered, the Petition is **DENIED**.

**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>60</sup> Id. at 136.

<sup>61</sup> Id. at 143.

<sup>62</sup> See id.

<sup>63</sup> 626 Phil. 457 (2010).

<sup>64</sup> Id. at 469.

<sup>65</sup> 809 Phil. 236 (2017).

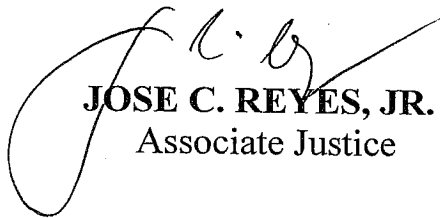
<sup>66</sup> Id. at 243.



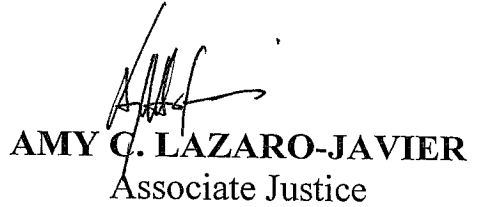
WE CONCUR:



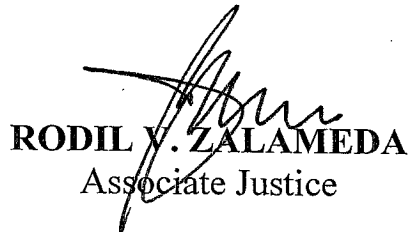
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**JOSE C. REYES, JR.**  
Associate Justice



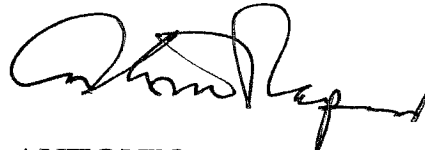
**AMY C. LAZARO-JAVIER**  
Associate Justice



**RODIL V. ZALAMEDA**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

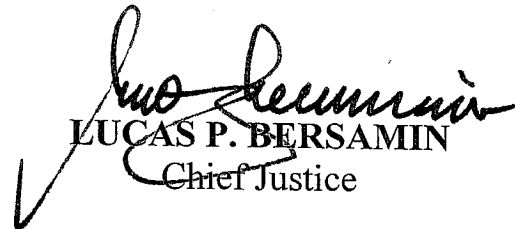


**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
LUCAS P. BERSAMIN  
Chief Justice

