Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MAXIMO AWAYAN, Petitioner, -versus- **SULU RESOURCES DEVELOPMENT CORPORATION,** Respondent.	**G.R. No. 200474** Present: LEONEN, *J., Chairperson,* HERNANDO, INTING*, DELOS SANTOS, ROSARIO, *JJ.* **Promulgated:** November 9, 2020

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DECISION

LEONEN, *J.*:

The Secretary of the Department of Environment and Natural Resources has the authority to cancel a mineral production sharing agreement upon showing that the licensee failed to comply with the terms of such agreement. This authority is not contingent on a prior recommendation from the Mines and Geosciences Bureau Director.

This Court resolves a Petition for Review on Certiorari[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which reversed the

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* On official leave.

1 *Rollo*, pp. 35–70. Filed under Rule 45 of the Rules of Court.

2 Id. at 72–92. The August 16, 2011 Decision was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicdican and Agnes Reyes-Carpio of the Seventeenth Division of the Court of Appeals, Manila.

3 Id. at 72–92. The February 2, 2012 Resolution was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicdican and Agnes Reyes-Carpio of the Seventeenth Division of the Court of Appeals, Manila.

Office of the President and the Department of Environment and Natural Resources Secretary's (Environment Secretary) cancellation of the Mineral Production Sharing Agreement (Agreement) with Sulu Resources Development Corporation (Sulu Resources).

On April 7, 1998, the Republic of the Philippines entered into an Agreement with Sulu Resources,[4] a mining company, for the "development and utilization for commercial purposes of certain gold, precious and base metals and rock aggregate materials and other minerals."[5] This Agreement covered a 775.1659-hectare area in Barangay Cupang, Antipolo, Rizal, for a period of 25 years renewable for another 25 years.[6]

As required by the Agreement, Sulu Resources submitted quarterly reports for July to December 1998, January to September 1999, October to December 1999, January to March 2000, and April to June 2000, as well as the annual accomplishment report for July 1999 to June 2000. However, on April 16, 2002 and August 2, 2002, Sulu Resources said that it could no longer submit the required reports, as well as the Declaration of Mining Project Feasibility, due to *force majeure*. This prompted the Mines and Geosciences Bureau Assistant Director to order a field investigation to verify Sulu Resources' claims.[7]

Per its field investigation on October 15, 2002,[8] the Mines and Geosciences Bureau found that Sulu Resources was prevented from entering the contract area due to a roadblock and checkpoint manned by a well-armed security force under the order of a certain Armando Carpio (Carpio). Sulu Resources tried to negotiate for the road right-of-way, to no avail. Allegedly, Carpio demanded an exorbitant rate for right-of-way, and the ownership over the area was still being contested before the courts.[9]

The field investigation team concluded that Sulu Resources' failure to submit the mandatory reports was justified by *force majeure* under Section 3(s) of Republic Act No. 7942, or the Philippine Mining Act of 1995.[10] It recommended that the dispute with the surface owners be submitted to the Panel of Arbitrators to determine the reasonable compensation rate and right-of-way charges, as well as the amount due be deposited in an escrow account pending resolution of the cases.[11]

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4 Id. at 910. Sulu Resources Development Corporation changed its corporate name to Holcim Aggregates Corporation effective March 15, 2010. It changed its name again to Holcim Mining and Development Corporation in July 2011.

5 Id. at 14.

6 Id. at 40 and 73.

7 Id. at 508.

8 Id. at 502–507.

9 Id. at 503.

10 Id.

11 Id. at 504.

In 2003, then Environment Secretary Elisea Gozun (Secretary Gozun) issued an Order affirming that Sulu Resources "has not violated any terms and conditions of the [Agreement] and has performed the obligations thereunder."[12] Succeeding Environment Secretary Michael T. Defensor (Secretary Defensor) later issued another Order in 2005, stating that the Agreement was not among the agreements canceled for non-performance and violation of Republic Act No. 7942.[13]

In September 2006, technical personnel of the Mines and Geosciences Bureau reported based on an annual field validation that Sulu Resources failed to submit the reports due to *force majeure*. It cited Sulu Resources' subsisting dispute with the surface owners.[14]

On March 18, 2008, Sulu Resources submitted a report on "geological confirmation data gathering activities" in preparation for feasibility studies.[15] In 2009, Sulu Resources submitted its Quarterly Report for 2008 on the following activities:

a. Completed geophysical survey (geo-resistivity seismic) in area of approximately 130 hectares
b. Completed one (1) confirmatory drill hole with a total depth of 55 meters
c. Demobilization of drill equipment and materials from . . . site to a new site
d. Coordinated with landowners and local officials.[16]

Subsequently, Sulu Resources was also issued an Environmental Compliance Certificate.[17]

On February 16, 2009, Maximo Awayan (Awayan), who owned part of the contract area, filed before the Department of Environment and Natural Resources a Petition seeking to cancel the Agreement with Sulu Resources.[18] He alleged the following:

1) Since the grant of the MPSA in 1998, the contract area has been non-operational and inactive;

2) The inclusion of his private property as part of the contract area without his consent and the non-performance of work thereon has deprived him of the right to benefit from the said private property;

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12 Id. at 547.
13 Id. at 549–560.
14 Id. at 544.
15 Id.
16 Id.
17 Id.
18 Id. at 40.

3) The contractual obligations of [Sulu Resources] under the MPSA such as to perform all mining operations and submit the required reports, among others, were not complied with;

4) [Sulu Resources] failed to comply with the required filing of a declaration of Mining Project Feasibility, thereby hindering the development of the area and contravening its representation and warranty that it has the financial and technical capabilities to carry out the objectives of MPSA No. 108-98A-IV;

5) [Sulu Resources] has over-extended the Exploration Period of the MPSA, to the prejudice of the Government and to his disadvantage as surface owner; and

6) [Sulu Resources] does not meet the minimum requirement of Php2,500,000.00 as paid-up, henc[e], it is not a "Qualified Person."[19]

On September 19, 2009, Environment Secretary Jose L. Atienza, Jr. (Secretary Atienza) granted Awayan's petition and ordered the cancellation of the Agreement with Sulu Resources,[20] thus:

WHEREAS, the verification by this Department confirms that Sulu has committed the following violations of the terms and conditions of MPSA No. 108-98A-IV:

1. Sulu [Resources] has not filed an application for renewal of the Exploration Period of MPSA No. 108-98A-IV since its initial 2-year term that expired in year 2000, in violation of Section 5.1 thereof;

2. Sulu [Resources] has not submitted a Declaration of Mining Project Feasibility during the term of the Exploration Period from 1998 to 2000, in violation of the provisions of Section 5.5 thereof;

3. Sulu [Resources] has not submitted the required reports in violation of Section 5.6 thereof, which requires the submission of quarterly and annual reports and the final and relinquishment reports, among others;

WHEREAS, such violations are grounds for cancellation of MPSA No. 108-98A-IV, pursuant to the provisions of Section 96 of the Mining Act and Section 15.2 of the MPSA;

WHEREAS, it is the pronounced policy of this Department to accelerate the development of mineral resources of the country and in so doing, cleanse its records of non-performing mining tenements in line with the ongoing program of revitalizing the minerals industry;

WHEREFORE, the foregoing premises considered, the Mineral Production Sharing Agreement No. 108-98A-IV granted to Sulu

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19 Id. at 41.

20 Id. at 318–320.

> Resources Development Corporation is hereby **cancelled**.[21] (Emphasis in the original)

Sulu Resources moved for reconsideration, but this was denied by Secretary Atienza, who likewise declared the area open to mining application.[22]

Sulu Resources appealed before the Office of the President, contending that: (1) it was prevented and excused by *force majeure* from strictly complying with its obligations; (2) it substantially complied in good faith with its obligations; and (3) Secretary Atienza erred in ruling that canceling the Agreement would achieve State policies on mining and serve the public interest.[23]

In a March 5, 2010 Decision,[24] the Office of the President affirmed the Orders of the Department of Environment and Natural Resources. It ruled that the deficiencies invoked by Sulu Resources were all due in 2000, and that the problem's persistence militated against Sulu Resources' claim. It also emphasized that the findings of administrative agencies are generally accorded great respect.[25] The dispositive portion of the Office of the President's Decision reads:

> After a careful and thorough evaluation and study of the records of this case, this Office finds the Orders of the DENR to be in accord with facts, law and jurisprudence relevant to the case.
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> **WHEREFORE**, premises considered, the assailed Orders of the DENR dated September 18, 2009 and November 20, 2009 are hereby **AFFIRMED** in toto.[26] (Emphasis in the original)

Sulu Resources moved for reconsideration, but this was denied.[27] Hence, it filed a Petition for Review before the Court of Appeals.

In its August 16, 2011 Decision,[28] the Court of Appeals granted Sulu Resources' Petition and ruled that Secretary Atienza's cancellation order was tainted with grave abuse of discretion in disregarding due process, considering that several officers of the Department of Environment and Natural Resources repeatedly recognized that *force majeure* justified the partial noncompliance of Sulu Resources.[29]

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21 Id. at 319–320.
22 Id. at 42.
23 Id.
24 Id. at 152–155.
25 Id. at 154.
26 Id. at 154–155.
27 Id. at 185.
28 Id. at 13–28.
29 Id. at 20.

In ruling that Sulu Resources was justified in not strictly complying with its obligations, the Court of Appeals disposed of the case as follows:

> **IN LIGHT OF ALL THE FOREGOING**, the instant petition is **GRANTED**. The assailed Decision dated March 5, 2010 and the resolution dated May 28, 2010, respectively issued by the Office of the President which affirmed the cancellation of MPSA No. 108-98A-IV are hereby **ANNULLED**. Accordingly, the Orders dated September 18, 2009 and November 20, 2009 issued by DENR Secretary Lito Atienza are **REVERSED AND SET ASIDE.** The Mineral Production Sharing Agreement No. 108-98A-IV, granted in favor of petitioner, Sulu Resources Development Corporation, now known as Holcim Aggregates Corporation, is declared to be in full force and effect.
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> **SO ORDERED.**[30] (Emphasis in the original)

The Court of Appeals held that the Mines and Geosciences Bureau's recommendation is required in canceling mining agreements, pursuant to Section 7(e) of Administrative Order No. 96-42, or the Implementing Rules and Regulations of Republic Act No. 7942,[31] which states:

> SECTION 7. Organization and Authorization of the Bureau.
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> . . . .
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> The Bureau shall have the following authority, among others:
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> e. To cancel or to recommend cancellation after due process, mining rights, mining applications and mining claims for non-compliance with pertinent laws, rules and regulations[.][32]

Because Secretary Atienza canceled the Agreement without the Mines and Geosciences Bureau Director's recommendation, the Court of Appeals declared the cancellation void.[33]

Awayan moved for reconsideration, but this was denied.[34]

Thus, on March 9, 2012, Awayan filed this Petition for Review on Certiorari.[35] On June 26, 2012, Sulu Resources filed its Comment, to which petitioner filed his Reply[36] on May 21, 2013.

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30 Id. at 27.
31 Id. at 21–23.
32 Id. at 22 citing Implementing Rules and Regulations of Republic Act. No. 7942 (1995), sec. 7(e).
33 Id. at 82.
34 Id. at 30–33.
35 Id. at 35–70. Petitioner had earlier moved to extend time to file a petition, which was granted.
36 Id. at 963.

In a November 9, 2016 Resolution, this Court resolved to give due course to the Petition and required the parties to submit their respective memoranda.[37]

Sulu Resources filed its Memorandum on January 10, 2017,[38] while Awayan filed his on January 26, 2017.[39]

Before this Court, petitioner asserts that he has legal standing to file the Petition. He argues that he is a real party in interest because as a surface owner, he stands to be injured by the Agreement and has the right to protect the full enjoyment of his ownership over the property. He adds that since the Agreement is imbued with public interest, this case demands a proper review by this Court.[40]

While admitting that a Rule 45 petition should only raise questions of fact, petitioner claims that his Petition falls under the recognized exceptions, particularly: (1) the Court of Appeals committed grave abuse of discretion; (2) its findings of facts are conflicting; and (3) its findings contrast with those of the Department of Environment and Natural Resources.[41] Petitioner contends that neither the Office of the President nor the Department of Environment and Natural Resources gravely abused its discretion in evaluating the evidence.[42]

Petitioner also argues that the absence of a recommendation from the Mines and Geosciences Bureau Director does not nullify Secretary Atienza's decision to cancel the Agreement. He contends that the Court of Appeals unduly stretched the Bureau's powers under Section 7 of Administrative Order No. 96-40[43] to mean that the Secretary alone cannot cancel a mineral agreement without such recommendation.[44]

Petitioner avers that the power given to the Mines and Geosciences Bureau Director simply means they may recommend the cancellation; it does not say that only upon such recommendation would mineral agreements be canceled.[45] He also asserts that the Environment Secretary,

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37 Id. at 999.
38 Id. at 1016.
39 Id. at 1099.
40 Id. at 963–964.
41 Id. at 964.
42 Id. at 1100.
43 Department of Environment and Natural Resources Administrative Order No. 96-40, otherwise known as Revised Implementing Rules and Regulations of Republic Act No. 7942 or Philippine Mining Act of 1995, sec. 7(e) provides:
Section 7. Organization and Authority of the Bureau. The Bureau shall have the following authority, among others:
. . . .
(e) To cancel or to recommend cancellation, after due process, mining rights, mining applications and mining claims for noncompliance with pertinent laws, rules and regulations;
44 *Rollo*, p. 47.
45 Id.

as the administrative head of the department in charge of managing and supervising natural resources, can cancel a mineral agreement for violation of its terms even without a petition for its cancellation.[46] Citing *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*,[47] petitioner submits that the jurisdiction to cancel mineral agreements or lease contracts belong to the Environment Secretary.[48]

Petitioner adds that since the cancellation order was based on the findings of respondent's substantial breach of the Agreement, it could not have been issued with grave abuse of discretion.[49]

Petitioner then claims that the Court of Appeals erred in finding that the cancellation was without regard to due process. He zeroes in on Section 2.19 of the Agreement, which provides:

> *Force Majeure* means acts or circumstances beyond the reasonable control of the Contractor including but not limited to, war, rebellion, insurrection, riots, civil disturbances, blockades, sabotage, embargo, strike, lockout, any dispute with surface owners and other labor disputes, epidemics, earthquake, storm, flood, or other adverse weather conditions, explosion, fire, adverse action of the Government or by any of its instrumentality or subdivision thereof, Act of God or any public enemy and any cause as herein described over which the affected party has no reasonable control.[50]

Petitioner contends that respondent's defenses that it was denied access to the contract area by the owner of the adjacent lands and that there was a dispute with the surface owners do not constitute *force majeure*. He avers that to qualify as a *force majeure*, the circumstance must be among those enumerated in Section 2.19, and must be beyond the control of the party claiming a *force majeure*.[51]

Petitioner argues that the dispute is not beyond respondent's control, because nothing prevented it from gaining access to the contract area considering that there are remedies under Sections 75[52] and 76[53] of Republic

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46 Id. at 53.

47 545 Phil. 466 (2007) [Per J. Velasco, Jr., Second Division].

48 *Rollo*, p. 1109.

49 Id. at 53–55.

50 Id. at 56.

51 Id.

52 Republic Act No. 7942 (1995), sec. 75 provides:
SECTION 75. *Easement Rights.* — When mining areas are so situated that for purposes of more convenient mining operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons, such infrastructure as roads, railroads, mills, waste dump sites, tailing ponds, warehouses, staging or storage areas and port facilities, tramways, runways, airports, electric transmission, telephone or telegraph lines, dams and their normal flood and catchment areas, sites for water wells, ditches, canals, new river beds, pipelines, flumes, cuts, shafts, tunnels, or mills, the contractor, upon payment of just compensation, shall be entitled to enter and occupy said mining areas or lands.

53 Republic Act No. 7942 (1995), sec. 76 provides:
SECTION 76. *Entry into Private Lands and Concession Areas.* — Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by

Act No. 7942. Under these sections, petitioner posits that respondent only needs to pay just compensation and to post a bond so that it would be allowed to enter the area.[54] Petitioner concludes that respondent's financial limitation is the reason for its problem with the surface owners.[55]

Since there is no *force majeure*, petitioner contends that respondent is not entitled to the automatic period extension, per Section 16.4 of the Agreement.[56] Its failure to comply with its obligations, says petitioner, constitutes substantial breach which justifies the Agreement's cancellation.[57]

Petitioner points out that the Agreement had long been granted to respondent, but it only gathered data for feasibility studies 10 years later, in 2008. As the Agreement is imbued with public interest, petitioner says the government has long been deprived of the supposed benefits from the Agreement.[58]

Petitioner likewise rejects the Court of Appeals' reliance on the findings and statements of the Department of Environment and Natural Resources' former secretaries and field agents that respondent did not violate the Agreement due to *force majeure*.[59] He argues that the government cannot be estopped by the statements and acts of its officers and agents. Thus, to him, Secretary Atienza could issue a contrary finding, as long as it would be supported by substantial evidence.[60]

On the other hand, respondent argues that the Petition should be dismissed because petitioner is not a real party in interest, but merely one of the surface owners in the contract area. To respondent, petitioner failed to specify any substantial interest, or allege that he would sustain direct injury from the Agreement's enforcement.[61] At most, petitioner is merely a nominal party. Respondent suspects that petitioner's eagerness to cancel the Agreement is due to an attempt to award it to another entity, Suncorp Mines and Development Corporation.[62]

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surface owners, occupants, or concessionaires when conducting mining operations therein: Provided, That any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of such operations shall be properly compensated as may be provided for in the implementing rules and regulations: Provided, further, That to guarantee such compensation, the person authorized to conduct mining operation shall, prior thereto, post a bond with the regional director based on the type of properties, the prevailing prices in and around the area where the mining operations are to be conducted, with surety or sureties satisfactory to the regional director.

54 *Rollo*, pp. 56–59.
55 Id. at 60.
56 Id. at 62–63.
57 Id. at 63–64.
58 Id. at 60–61.
59 Id. at 61.
60 Id. at 62.
61 Id. at 913–916.
62 Id. at 916.

Respondent also maintains that the Petition raises questions of fact improper in a Rule 45 petition, and none of the exceptions apply.[63] It notes that since the Court of Appeals based its ruling on the Department of Environment and Natural Resources' own factual findings, there could be no conflicting factual findings.[64]

Respondent goes on to say that the Court of Appeals correctly nullified Secretary Atienza's cancellation order, it being tainted with grave abuse of discretion. To bolster his point, respondent cites the lack of recommendation from the Mines and Geosciences Bureau and the lack of factual or legal basis for the cancellation.[65]

On this score, respondent highlights the Mines and Geosciences Bureau's power under Section 7(e) of Administrative Order 96-40 "to cancel or to recommend cancellation, after due process, mining rights, mining applications and mining claims for noncompliance with pertinent laws, rules and regulations."[66] That there was no recommendation, says respondent, was more reason to say that Secretary Atienza gravely abused his discretion in ordering the cancellation without factual and legal basis.[67]

Respondent admits that it was not able to promptly prepare and submit its reportorial requirements, but claims that this delay was justified by *force majeure*—particularly, the difficulties it faced involving the surface owners. Respondent narrates that, as likewise found by the Mines and Geosciences Bureau personnel, it was refused entry into the area, which was itself subject to conflicting claims of ownership.[68]

Respondent adds that former Environment Secretaries Gozun and Defensor also affirmed the Mines and Geosciences Bureau's findings when they recognized that respondent has not violated any terms and conditions of the Agreement.[69] Hence, respondent submits that its failure to renew its exploration period and to submit the reports was excused by *force majeure* causes, as provided in Section 16.4 of the Agreement.[70]

Respondent maintains that its disputes with the surface owners constitute *force majeure* as uniformly and clearly provided under Section

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63 Id. at 918.

64 Id. at 918–919.

65 Id. at 919.

66 Id. citing Implementing Rules and Regulations of Republic Act No. 7942 (1995), sec. 7(e).

67 Id. at 920.

68 Id. at 921–925.

69 Id. at 931. Secretary Gozun issued an Order dated September 6, 2003 which stated that "Sulu has not violated any terms and conditions of the Mineral Production Sharing Agreement and has performed its obligations thereunder." Secretary Defensor in Memorandum Order No. 2005-13 dated August 5, 2005 did not include the Mineral Production Sharing Agreement among the "cancelled non-mining tenements in view of certain violation of the provisions of the Philippine Mining Act of 1995, its implementing rules and regulations and/or the terms and conditions of the mining tenements."

70 Id. at 927.

2.19 of the Agreement,[71] Section 3(s) of Republic Act No. 7942,[72] and Section 5(a)(i) of Administrative Order 96-40.[73] Thus, it says petitioner erred in further requiring that the dispute must be beyond the reasonable control of the contractor to be considered a *force majeure*.[74]

Moreover, respondent claims that the remedies under Sections 75 and 76 of Republic Act No. 7942 do not preclude a finding of *force majeure*;[75] otherwise, a situation may arise where the law's provisions are irreconcilable and inconsistent.[76]

Respondent also argues that filing a case before the Panel of Arbitrators or posting a bond will not sufficiently address its problems involving the adverse claims. It asserts that filing a case would be impractical and difficult, adding that the Panel of Arbitrators does not have the jurisdiction to resolve conflicting claims of ownership.[77]

Respondent stresses that it eventually found other ways of resolving the adverse claims when it obtained the consent of the claimants.[78]

With a finding of *force majeure*, respondent claims that the renewal of the exploration period is automatic under Section 16.4 of the Agreement, and an amendment is no longer required. It says the extension or renewal does not require the approval or consent of the Republic.[79] And, since *force majeure* was established, respondent argues that it cannot be held in substantial breach of the Agreement.[80]

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71 Id. at 932–933. Section 2.19 of the Mineral Production Sharing Agreements provides:
2.19 Force Majeure means acts or circumstances beyond the reasonable control of Contractor including, but not limited to, war, rebellion, insurrection, riots, civil disturbances, blockade, sabotage, embargo, strike, lockout, any dispute with surface owners, and other labor disputes, epidemic, earthquake, storm, flood or other adverse weather conditions, explosion, fire, adverse action by Government or by any instrumentality or subdivision thereof, Act of God, or any public enemy and any cause as herein described over which the affected party has no reasonable control.

72 Id. at 933. Republic Act No. 7942 (1995), sec. 3(s) provides:
(s) Force Majeure means acts or circumstances beyond the reasonable control of Contractor including, but not limited to, war, rebellion, insurrection, riots, civil disturbances, blockade, sabotage, embargo, strike, lockout, any dispute with surface owners, and other labor disputes, epidemic, earthquake, storm, flood or other adverse weather conditions, explosion, fire, adverse action by Government or by any instrumentality or subdivision thereof, Act of God, or any public enemy and any cause as herein described over which the affected party has no reasonable control.

73 Id. at 933. Department Administrative Order No. 96-40, sec. 5(ai) provides:
ai. "Force Majeure" means acts or circumstances beyond the reasonable control of Contractor including, but not limited to, war, rebellion, insurrection, riots, civil disturbances, blockade, sabotage, embargo, strike, lockout, any dispute with surface owners, and other labor disputes, epidemic, earthquake, storm, flood or other adverse weather conditions, explosion, fire, adverse action by Government or by any instrumentality or subdivision thereof, Act of God, or any public enemy and any cause as herein described over which the affected party has no reasonable control.

74 Id. at 935.

75 Id. at 935–936.

76 Id. at 936.

77 Id. at 937.

78 Id. at 938.

79 Id. at 946–947.

80 Id. at 949.

Respondent adds that the Agreement's cancellation would be counter-productive, as it would cause undue delay to the prejudice of the government for wasting all the significant progress made. If another contractor would be awarded the contract, it would allegedly take a significant amount of time to complete the activities that had already been undertaken by respondent.[81]

Lastly, respondent argues that the principle of non-estoppel does not apply, since the Department of Environment and Natural Resources' previous findings were not alleged to be mistaken or irregular. It repeats that Secretary Atienza's cancellation order was unfounded.[82]

The issues for this Court's resolution are the following:

First, whether or not questions of fact may be resolved in this Petition for Review;

Second, whether or not petitioner Maximo Awayan has the legal standing to assail the Agreement; and

Third, whether or not the Court of Appeals erred in finding that the Agreement's cancellation is proper. Subsumed under this issue are the following:

a. Whether or not the Mines and Geosciences Bureau's recommendation is necessary for the Environment Secretary's cancellation of a mineral agreement;

b. Whether or not Secretary Atienza gravely abused his discretion in ordering the cancellation of the Agreement; and

c. Whether or not the previous findings of the former Secretaries bind Secretary Atienza.

I

Under the Rules of Court, only questions of law may be raised in a Rule 45 petition.[83] This Court is not a trier of facts.[84] Generally, we will not entertain questions of fact because the "factual findings of the appellate courts are final, binding, or conclusive on the parties and upon this [C]ourt

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81 Id. at 950.
82 Id. at 946.
83 RULES OF COURT, Rule 45, sec. 1
84 *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

when supported by substantial evidence."[85] Nevertheless, this rule admits certain exceptions, subject to this Court's discretion.

In *Medina v. Mayor Asistio, Jr.*,[86] this Court outlined 10 recognized exceptions, thus:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[87] (Citations omitted)

These "exceptions must be alleged, substantiated, and proved by the parties" to allow the resolution of questions of fact in a petition for review.[88]

In claiming that this Court may resolve his Petition, petitioner invokes several exceptions: (1) that the Court of Appeals committed grave abuse of discretion; (2) that its findings of facts are conflicting; and (3) that its findings conflict with those of the Department of Environment and Natural Resources.

Here, petitioner sufficiently established that the Court of Appeals' findings are contrary to the those of the Department of Environment and Natural Resources. The Court of Appeals essentially overturned the Department's ruling that the cancellation of the Agreement was warranted. This exception alone allows the cognizance of the Petition.

Moreover, petitioner alleged that the Court of Appeals committed grave abuse of discretion in reversing the findings of the Department of Environment and Natural Resources.

Considering that the exceptions invoked are present here, this Court shall review the Petition.

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85 Id. at 182.
86 269 Phil. 225 (1990) [Per J. Bidin, Third Division].
87 Id. at 232.
88 *Pascual v. Burgos*, 776 Phil. 167, 169 (2016) [Per J. Leonen, Second Division].

II

Rule 3, Section 2 of the Rules of Court requires that every action must be prosecuted or defended in the name of the real party in interest, unless otherwise authorized by law or the rules. A real party in interest is defined as "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."[89]

A party's interest must be direct, substantial, and material.[90] It must be "a present substantial interest, not a mere expectancy, or a future, contingent, subordinate, or consequential interest."[91] *Stronghold Insurance Company, Inc. v. Cuenca*[92] explains:

> Where the plaintiff is not the real party in interest, the ground for the motion to dismiss is lack of cause of action. The reason for this is that the courts ought not to pass upon questions not derived from any actual controversy. Truly, a person having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. Nor does a court acquire jurisdiction over a case where the real party in interest is not present or impleaded
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> . . . Such a rule is intended to bring before the court the party rightfully interested in the litigation so that only real controversies will be presented and the judgment, when entered, will be binding and conclusive and the defendant will be saved from further harassment and vexation at the hands of other claimants to the same demand.[93] (Citations omitted)

Petitioner is a real party in interest. As a surface owner, he has shown personal and substantial interest on whether the Agreement complies with the government safeguards, and is bound to be injured by its continuing implementation should the Agreement prove to be noncompliant. Moreover, petitioner invokes his right to protect his property and, consequently, the full enjoyment of his rights as an owner. Thus, contrary to respondent's argument, petitioner is not a mere nominal party. He has standing to file the Petition before this Court.

III

Canceling mineral agreements is executive in nature, an exercise of the Department of Environment and Natural Resources' administrative

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89 RULES OF COURT, Rule 3, sec 2.

90 *Alliance for Rural and Agrarian Reconstruction, Inc. v. Commission on Elections*, 723 Phil. 160 (2013) [Per J. Leonen, En Banc].

91 *Stronghold Insurance Co., Inc. v. Cuenca*, 705 Phil. 441, 454 (2013) [Per J. Bersamin, First Division].

92 705 Phil. 441 (2013) [Per J. Bersamin, First Division].

93 Id. at 455–456.

power. Courts accord great respect and finality to the factual findings of administrative agencies, as they are presumed to have the knowledge and expertise over matters within their jurisdiction.[94]

In *Republic v. Express Telecommunication Company, Inc.*,[95] this Court held that, generally, it will not interfere with purely administrative and discretionary functions, thus:

> (T)he powers granted to the Secretary of Agriculture and Commerce (natural resources) by law regarding the disposition of public lands such as granting of licenses, permits, leases and contracts, or approving, rejecting, reinstating, or canceling applications, are all executive and administrative in nature. It is a well recognized principle that purely administrative and discretionary functions may not be interfered with by the courts. In general, courts have no supervising power over the proceedings and actions of the administrative departments of the government. This is generally true with respect to acts involving the exercise of judgement or discretion and findings of fact.[96]

Despite the general rule, this Court may set aside an administrative action if it is shown that "the issuing authority has gone beyond its statutory authority, has exercised unconstitutional powers or has clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion."[97] This also holds true where the administrative agency's findings are clearly shown to have been arrived at arbitrarily or in disregard of the evidence on record.[98]

Thus, in resolving whether the Agreement's cancellation is proper, this Court must determine the statutory authority conferred on the Secretary of the Department of Environment and Natural Resources and the Mines and Geosciences Bureau. Then, we determine if this authority was exercised without grave abuse of discretion.

The authority of the Department of Environment and Natural Resources can be traced back to 1863, when the Spanish authorities created *Inspeccion General de Montes*, which was tasked to protect the forests and regulate timber cutting.[99] On the other hand, the Mines and Geosciences Bureau was first instituted through the *Inspeccion General de Minas*, which was mainly in charge of the administration and disposition of minerals and mineral lands. However, in 1886, the *Inspeccion General de Minas* was

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94 *Espiritu v. Del Rosario*, 745 Phil. 566, 579 (2014) [Per J. Leonen, Second Division].

95 424 Phil. 372 (2002) [Per J. Ynares-Santiago, First Division],

96 Id. at 401 citing *Lacuesta v. Herrera*, 159 Phil. 133 (1975) [Per J. Teehankee, First Division].

97 *Liwat-Moya v. Ermita*, 828 Phil. 43, 61 (2018) [Per J. Martires, Third Division].

98 *Maya Farms Employees Organization v. National Labor Relations Commission*, 309 Phil. 465 (1994) [Per J. Kapunan, First Division].

99 Department of Environment and Natural Resources National Capital Region, *DENR Through History, available at* <http://ncr.denr.gov.ph/index.php/about-us/organizational-profile> (last accessed on November 9, 2020).

abolished and its functions were transferred to the General Directorate of Civil Administration.[100]

In 1900, under the reorganization during the American Regime, the Mining Bureau was created[101] and *Inspeccion General de Montes* was renamed as the Forestry Bureau.[102] A year later, the Forestry Bureau was replaced by the Department of Interior. In 1916, its functions were transferred to the Department of Agriculture and Natural Resources, now vested with supervisory powers over the Bureaus of Agriculture, Forestry, Lands, Science, and Weather.[103] In 1932, the Department of Agriculture and Natural Resources was renamed as the Department of Agriculture and Commerce.[104] In 1935, the Mining Bureau, renamed Bureau of Mines, was reorganized under the same Department.[105]

In 1974, the Department was split into the Department of Agriculture and the Department of Natural Resources, with the latter absorbing the Bureau of Mines, among other line bureaus. The Department of Natural Resources was later renamed as the Ministry of Natural Resources, following the shift to a parliamentary form of government.[106]

After the EDSA Revolution, Executive Order No. 131 was issued to abolish the Ministry and, in its stead, the Department of Energy, Environment, and Natural Resources was created. It was later reorganized to what is now the Department of Environment and Natural Resources.[107]

Executive Order No. 292, or the Administrative Code of 1987, mandated the Department of Environment and Natural Resources to "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."[108] On the other hand, the Mines and Geosciences Bureau was tasked to advise the Environment Secretary on

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100 Mines and Geosciences Bureau, *MGB: More than a century of championing sustainability in mining and geosciences*, <http://www.mgb.gov.ph/about-us/brief-history> (last accessed on November 9, 2020).

101 Id.

102 Department of Environment and Natural Resources National Capital Region, *DENR Through History*, <http://ncr.denr.gov.ph/index.php/about-us/organizational-profile> (last accessed on November 9, 2020).

103 Id.

104 Id.

105 Mines and Geosciences Bureau, MGB: *More than a century of championing sustainability in mining and geosciences,* <http://www.mgb.gov.ph/about-us/brief-history> (last accessed on November 9, 2020).

106 Department of Environment and Natural Resources National Capital Region, DENR Through History, <http://ncr.denr.gov.ph/index.php/about-us/organizational-profile> (last accessed on November 9, 2020).

107 Department of Environment and Natural Resources National Capital Region, DENR Through History, <http://ncr.denr.gov.ph/index.php/about-us/organizational-profile> (last accessed on November 9, 2020).

108 Executive Order No. 292 (1987), Book IV, Title XIV, Ch. 1, sec. 2(2).

matters "pertaining to geology and mineral resources exploration, development, utilization and conservation[.]"[109]

In 1995, Republic Act No. 7942, or the Philippine Mining Act, was enacted. Subsequently, its implementing rule, Administrative Order No. 40-96, was issued.

Both the law and its implementing rules are silent on the procedure for canceling mineral agreements, as recognized in *Celestial Nickel Mining Exploration Corporation v. Marcoasia Corporation*,[110] where this Court traced the history and development of statutes pertaining to the Environment Secretary's power to cancel mineral agreements.

In *Celestial*, this Court, citing the Administrative Code of 1987, found that the Environment Secretary's authority springs from their administrative authority, supervision, management, and control over mineral resources. Title XIV of Book IV of the Administrative Code of 1987 states:

> CHAPTER 1 — General Provisions
>
> SECTION 1. Declaration of Policy. — (1) The State shall ensure, for the benefit of the Filipino people, the full exploration and development as well as the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources . . . .
>
> SECTION 2. Mandate. — (1) The Department of Environment and Natural Resources shall be primarily responsible for the implementation of the foregoing policy. (2) It shall, subject to law and higher authority, 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.
>
> SECTION 4. Powers and Functions. — The Department shall:
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> . . . .
>
> (2) Formulate, implement and supervise the implementation of the government's policies, plans, and programs pertaining to the management, conservation, development, use and replenishment of the country's natural resources;
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> . . . .
>
> (4) Exercise supervision and control over forest lands, alienable and disposable public lands, mineral resources . . .
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> . . . .

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[109] Executive Order No. 292 (1987), Title XIV, Ch. 3, sec. 16.
[110] 565 Phil. 466 (2007) [Per J. Velasco, Jr., Second Division].

> (12) Regulate the development, disposition, extraction, exploration and use of the country's forest, land, water and mineral resources;
>
> (13) Assume responsibility for the assessment, development, protection, licensing and regulation as provided for by law, where applicable, of all energy and natural resources; the regulation and monitoring of service contractors, licensees, lessees, and permit for the extraction, exploration, development and use of natural resources products; . . .
>
> . . . .
>
> (15) Exercise exclusive jurisdiction on the management and disposition of all lands of the public domain . . .
>
> CHAPTER 2 — The Department Proper
>
> SECTION 8. The Secretary. — The Secretary shall:
>
> . . . .
>
> (3) Promulgate rules, regulations and other issuances necessary in carrying out the Department's mandate, objectives, policies, plans, programs and projects.
> (4) Exercise supervision and control over all functions and activities of the Department;
> (5) Delegate authority for the performance of any administrative or substantive function to subordinate officials of the Department[.]

Reading these provisions, this Court in *Celestial* held that the Environment Secretary's power to cancel or cause to cancel mineral agreements is corollary to their power to approve mineral agreements. Thus:

> It is the DENR, through the Secretary, that manages, supervises, and regulates the use and development of all mineral resources of the country. It has exclusive jurisdiction over the management of all lands of public domain, which covers mineral resources and deposits from said lands. It has the power to oversee, supervise, and police our natural resources which include mineral resources. Derived from the broad and explicit powers of the DENR and its Secretary under the Administrative Code of 1987 is the power to approve mineral agreements and necessarily to cancel or cause to cancel said agreements.[111]

This Court also cited in *Celestial* the Environment Secretary's statutory authority based on Section 44 of the implementing rules of Presidential Decree No. 463. It then held that since Section 44 was not repealed by the Philippine Mining Act of 1995, the Environment Secretary retains the authority to cancel mining agreements, thus:

> Sec. 4 of EO 279 provided that the provisions of PD 463 and its implementing rules and regulations, not inconsistent with the executive order, continue in force and effect.

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[111] Id. at 493.

> When RA 7942 took effect on March 3, 1995, there was no provision on who could cancel mineral agreements. However, since the aforequoted Sec. 44 of the [Consolidated Mines Administrative Order] implementing PD 463 was not repealed by RA 7942 and DENR AO 96-40, not being contrary to any of the provisions in them, then it follows that Sec. 44 serves as basis for the DENR Secretary's authority to cancel mineral agreements.
>
> Since the DENR Secretary had the power to approve and cancel mineral agreements under PD 463, and the power to cancel them under the [Consolidated Mines Administrative Order] implementing PD 463, EO 211, and EO 279, then there was no recall of the power of the DENR Secretary under RA 7942. Historically, the DENR Secretary has the express power to approve mineral agreements or contracts and the implied power to cancel said agreements.
>
> It is a well-established principle that in the interpretation of an ambiguous provision of law, the history of the enactment of the law may be used as an extrinsic aid to determine the import of the legal provision or the law. History of the enactment of the statute constitutes prior laws on the same subject matter. Legislative history necessitates review of "the origin, antecedents and derivation" of the law in question to discover the legislative purpose or intent. It can be assumed "that the new legislation has been enacted as continuation of the existing legislative policy or as a new effort to perpetuate it or further advance it."
>
> We rule, therefore, that based on the grant of implied power to terminate mining or mineral contracts under previous laws or executive issuances like PD 463, EO 211, and EO 279, RA 7942 should be construed as a continuation of the legislative intent to authorize the DENR Secretary to cancel mineral agreements on account of violations of the terms and conditions thereof.[112] (Citation omitted)

This Court then briefly discussed in *Celestial* the Environment Secretary's authority in relation to the Mines and Geosciences Bureau's functions. It held that under the Philippine Mining Act, the Environment Secretary's power of control and supervision over the Mines and Geosciences Bureau "to cancel or recommend cancellation of mineral rights clearly demonstrates the authority of the [Environment] Secretary to cancel or approve the cancellation of mineral agreements."[113] It further explained:

> Corollary to the power of the MGB Director to recommend approval of mineral agreements is his power to cancel or recommend

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[112] Id. at 495–496.

[113] Id. at 496 citing Republic Act No. 7942 (1995), sec. 9, which provides:
SECTION. 9. *Authority of the Bureau.* — The Bureau shall have direct charge in the administration and disposition of mineral lands and mineral resources and shall undertake geological, mining, metallurgical, chemical, and other researches as well as geological and mineral exploration surveys. The Director shall recommend to the Secretary the granting of mineral agreements to duly qualified persons and shall monitor the compliance by the contractor of the terms and conditions of the mineral agreements. The Bureau may confiscate surety, performance and guaranty bonds posted through an order to be promulgated by the Director. The Director may deputize, when necessary, any member or unit of the Philippine National Police, barangay, duly registered nongovernmental organization (NGO) or any qualified person to police all mining activities.

> cancellation of mining rights covered by said agreements under Sec. 7 of DENR AO 96-40, containing the revised Implementing Rules and Regulations of RA 7942. . . .
>
> . . . .
>
> It is explicit from the foregoing provision that the DENR Secretary has the authority to cancel mineral agreements based on the recommendation of the MGB Director. As a matter of fact, the power to cancel mining rights can even be delegated by the DENR Secretary to the MGB Director. Clearly, it is the Secretary, not the POA, that has authority and jurisdiction over cancellation of existing mining contracts or mineral agreements.[114]

Nevertheless, *Celestial* did not clearly delineate the authority between the Environment Secretary and the Mines and Geosciences Bureau. In that case, the issue was who between the Environment Secretary and the Panel of Arbitrators had the authority to cancel mineral agreements. In ruling that the Environment Secretary rightfully possessed the authority, this Court cited the Mines and Geosciences Bureau's power to cancel mineral agreements under Section 7 of Administrative Order 94-60. It then concluded that as the Mines and Geosciences Bureau is under the Environment Secretary's supervision, "the logical conclusion is that it is the [Environment] Secretary who can cancel the mineral agreements and not the [Panel of Arbitrators]."[115]

Here, the question is not who are the persons authorized to cancel, but on the proper procedure for cancellation. The primary issue is whether the Environment Secretary can cancel a mineral agreement without a recommendation from the Mines and Geosciences Bureau Director.

We find that the Environment Secretary has the statutory authority to cancel mineral agreements even without the recommendation of the Mines and Geosciences Bureau Director.

First, a review of how our mining laws developed shows that the Environment Secretary was originally conferred the authority to cancel mineral agreements upon showing that the licensee failed to comply with the terms of the agreement. This authority is not qualified by a prior recommendation from the Mines and Geosciences Bureau Director.

Commonwealth Act No. 137, or the Mining Act of 1936, was the first mining law enacted in the Philippines, and had been in force until 1974.[116] It mandated the then Department of Agriculture and Commerce Secretary to

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[114] Id. at 496–497.

[115] Id. at 498.

[116] Mines and Geosciences Bureau, *MGB: More than a century of championing sustainability in mining and geosciences,* <http://www.mgb.gov.ph/about-us/brief-history> (last accessed on November 9, 2020).

cancel mineral lease contracts when the lessee fails to comply with the law. Its Section 84 provided:

> SECTION 84. Whenever the lessee fails to comply with any provisions of this Act or the rules and regulations promulgated thereunder, or with any of the provisions of the lease contract, *the lease may be forfeited and cancelled by the Secretary of Agriculture and Commerce or by appropriate proceeding in a court of competent jurisdiction*, if necessary, and the lessee shall be liable for all unpaid rentals and royalties due the Government on the lease up to the time of its cancellation. (Emphasis supplied)

In 1974, Presidential Decrees No. 461 and 463 were passed. Under Presidential Decree No. 461, the Bureau of Mines was transferred under the Department of Natural Resources. On the other hand, Presidential Decree No. 463 amended Commonwealth Act No. 137 with respect to the administration and disposition of mineral lands.

In implementing Presidential Decree No. 463, the Consolidated Mines Administrative Order was issued. Section 44 of this Order provides:

> SECTION 44. Procedure for Cancellation. — Before any mining lease contract is cancelled for any cause enumerated in Section 43 above, the mining lessee shall first be notified in writing of such cause or causes, and shall be given an opportunity to be heard, and to show cause why the lease shall not be cancelled.
>
> *If, upon investigation, the Secretary shall find the lessee to be in default, the former may warn the lessee, suspend his operations or cancel the lease contract.* (Emphasis supplied)

Presidential Decree Nos. 1385 and 1677, which subsequently amended Presidential Decree No. 463, were silent as to the procedure for canceling mineral agreements.

Finally, Republic Act No. 7942 was enacted, and its implementing rule, Administrative Order No. 40-96, was subsequently issued.

It is clear that none of these subsequent laws repealed Presidential Decree No. 463. It follows that the Environment Secretary's authority under Commonwealth Act No. 137 and Presidential Decree No. 463 was neither removed nor amended through subsequent laws and eventually with the enactment of Republic Act No. 9742.

Second, the Environment Secretary has direct control and supervision "over the exploration, development, utilization, and conservation of the

country's natural resources."[117] The Environment Secretary is mandated to regulate the disposition, extraction, and exploration of mineral resources,[118] to "[a]ssume responsibility for the assessment, development, protection, licensing and regulation" of all energy and natural resources,[119] and to regulate and monitor "service contractors, licensees, lessees, and permit for the extraction, exploration, development and use of natural resources products[.]"[120]

Given the broad and explicit power and functions, the Environment Secretary, as the head of the Department of Environment and Natural Resources, can monitor and determine whether a licensee violated any provision of the mineral agreement. The Environment Secretary need not wait for a recommendation from the Mines and Geosciences Bureau Director to cancel the agreement.

Thus, in this case, Secretary Atienza's cancellation order cannot be annulled solely because it lacks a recommendation from the Mines and Geosciences Bureau Director. While Section 7(e) of Administrative Order No. 40-96 authorizes the Mines and Geosciences Bureau to cancel and to recommend the cancellation of mineral agreements, this does not prohibit the Environment Secretary to make their own determination and, if warranted, order the cancellation of a mineral agreement.

IV

The doctrine of primary administrative jurisdiction precludes courts from resolving matters that are within an administrative body's exclusive jurisdiction.[121] A court cannot "arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence."[122] In *Ligtas v. People*:[123]

> Findings of fact of administrative agencies in the exercise of their quasi-judicial powers are entitled to respect if supported by substantial evidence. This court is not tasked to weigh again "the evidence submitted before the administrative body and to substitute its own judgment [as to] the sufficiency of evidence."[124] (Citations omitted)

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117 Executive Order No. 292 (1987), Book IV, Title XIV, Ch. 1, sec. 2(2).
118 Executive Order No. 292 (1987), Book IV, Title XIV, Ch. 1, sec. 4(12).
119 Executive Order No. 292 (1987), Book IV, Title XIV, Ch. 1, sec. 4(13).
120 Executive Order No. 292 (1987), Book IV, Title XIV, Ch. 1, sec. 4(13).
121 *Department of Finance v. Dela Cruz, Jr.*, 767 Phil. 611 (2015) [Per J. Carpio, Second Division].
122 Id. at 651 citing *Catipon, Jr., v. Japson*, 761 Phil. 205 (2015) [Per J. del Castillo, Second Division].
123 766 Phil. 750 (2015) [Per J. Leonen, Second Division].
124 Id. at 768.

Nevertheless, this Court may reverse administrative decisions if it finds that these decisions are tainted with grave of abuse of discretion. In *Director of Lands v. Court of Appeals*:[125]

> The Court has consistently held that "acts of an administrative agency must not casually be overturned by a court, and a court should as a rule not substitute its judgment for that of the administrative agency acting within the parameters of its own competence," unless "there be a clear showing of arbitrary action or palpable and serious error."[126] (Citations omitted)

Hence, this Court's judicial review will "not go as far as evaluating the evidence as the basis of their determinations, but is confined to issues of jurisdiction or grave abuse of discretion[.]"[127]

In this case, we find that Secretary Atienza's cancellation of the Agreement was not tainted with grave abuse of discretion. His cancellation order and finding of violations was supported by substantial evidence.

In his cancellation order, Secretary Atienza noted how the Department of Environment and Natural Resources has verified that, indeed, respondent has not applied to renew the exploration period of the Agreement since it expired in 2000, in violation of Section 5.1 of the Agreement. Respondent also failed to submit the Declaration of Mining Project Feasibility during the exploration period from 1998 to 2000 and other required reports, violating Sections 5.5 and 5.6 of the Agreement.[128]

Faced with these findings, respondent argues that it was excused from complying with its obligations under the Agreement due to *force majeure*. In so claiming, he cites Section 16.4 of the Agreement, which states:

> 16.4 Suspension of Obligation
>
> a. Any failure or delay on the part of any party in the performance of its obligation or duties hereunder shall be excused to the extend attributable to Force Majeure.
> b. **If Mining Operations are delayed, curtailed, or prevented by such Force Majeure causes, then the time for enjoying the rights and carrying out the obligations thereby affected, the terms of this Agreement and all rights and obligations hereunder shall be extended for a period equal to the period involved.**
> c. The party whose ability to perform its obligation shall promptly give Notice to the other hand in writing of any such delay or failure of performance, the expected duration thereof, and its anticipated effect on the Party expected to perform and shall use its efforts to remedy

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125 272 Phil. 50 (1991) [Per J. Sarmiento, Second Division].
126 Id. at 56.
127 *Ajejandro v. Court of Appeals*, 269 Phil. 736, 747 (1990) [Per J. Sarmiento, Second Division].
128 *Rollo*, p. 319.

> such delay, except that neither Party shall be under any obligation to settle a labor dispute.[129] (Emphasis in the original)

The contention is untenable.

Under Article 1174 of the New Civil Code, *force majeure* refers to those extraordinary events that "could not be foreseen, or which, though foreseen, were inevitable."

To successfully invoke *force majeure*, the following requisites must concur:

> (a) the cause of the unforeseen and unexpected occurrence, or the failure of the debtors to comply with their obligations, must have been independent of human will; (b) the event that constituted the [*force majeure*] must have been impossible to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner; and (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor.[130] (Citation omitted)

When the event is found to be partly the result of a party's participation—whether by active intervention, neglect, or failure to act—the incident is humanized and removed from the ambit of *force majeure*.[131] Hence, there must be no human intervention[132] that caused or aggravated the event, or at the very least, it must be beyond the obligor's will.[133]

In this case, respondent failed to avail of the remedies to resolve its dispute with the surface owners. Under Section 76 of the Agreement, respondent can ensure that it would be allowed entry to the areas by posting a bond, which would answer any damage that may be caused to the surface owners' properties. Moreover, respondent disregarded the Mines and Geosciences Bureau's recommendation[134] to bring the dispute before the Panel of Arbitrators to determine the reasonable compensation rate and right-of-way charges to be paid to the surface owners.

Respondent cannot claim that the dispute with the surface owners is a *force majeure*, as it failed to implement recommendations and available remedies to immediately resolve the dispute. The dispute partly resulted

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[129] Id. at 927.

[130] *Lea Mer Industries Inc. v. Malayan Insurance Co. Inc.*, 508 Phil. 656, 665 (2006) [Per J. Panganiban, Third Division].

[131] *Asset Privatization Trust v. T.J. Enterprises*, 605 Phil. 563, 571–572 (2009) [Per J. Tinga, Second Division].

[132] *Mindex Resources Development v. Morillo*, 428 Phil. 934, 945 (2002) [Per J. Panganiban, Third Division].

[133] *Tugade v. Court of Appeals*, 174 Phil. 475 (1978) [Per J. Fernando, Second Division].

[134] *Rollo*, p. 504.

from respondent's neglect and failure to remedy the situation. Its persistent inaction and refusal to employ the remedies provided in the Agreement operate against it. Mining companies should endeavor to deal with surface owners by utilizing various remedies available to them; after all, in such disputes, the surface owners stand to suffer the most.

Accordingly, the automatic period extension under Section 16.4 of the Agreement does not apply. Since respondent failed to comply with the reportorial requirements and to apply for extension, which constitute violations of the Agreement, there is nothing arbitrary and erroneous in Secretary's Atienza's cancellation order.

V

Under the principle of non-estoppel of the government, the State cannot be estopped by the mistakes or errors of its officials or agents.[135] *Republic v. Sandiganbayan*[136] clarified that this immunity refers "to acts and mistakes of its officials, especially those which are irregular[.]"[137] Nevertheless, while estoppel against the State is not a favored policy, it may still be invoked in extraordinary circumstances, thus:

> Estoppel against the public are (sic) little favored. They should not be invoked except in rare and unusual circumstances and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . . , the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.[138] (Citation omitted)

Here, petitioner avers that Secretary Atienza is not estopped by the contrary findings of previous Secretaries and officials of the Mines and Geosciences Bureau. He concludes that the previous Secretaries' findings that there was *force majeure*, as well as their orders extending the Agreement, may be overturned by Secretary Atienza.

We find that the previous finding of *force majeure* by then Secretary Gozun was correctly overturned by Secretary Atienza. As discussed, the earlier finding of *force majeure* is flawed because respondent's inaction contributed to the persistence of the dispute with the surface owners. It is

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[135] *Republic v. Court of Appeals*, 361 Phil. 319, 330 (1999) [Per J. Panganiban, Third Division].
[136] 297 Phil. 348 (1993) [Per J. Melo, En Banc].
[137] Id. at 360.
[138] *Republic v. Court of Appeals*, 361 Phil. 319, 329 (1999) [Per J. Panganiban, Third Division].

also notable that then Secretary Defensor's Order does not state any evaluation of the Agreement with respondent.

In sum, nothing shows that Secretary Atienza's cancellation of the Agreement was tainted with grave abuse of discretion. He acted within his authority and without arbitrariness, and for that, this Court will not interfere with his actions. Again, the Agreement's cancellation was an administrative agency's exercise of judgment, which is executive in nature. Absent grave abuse of discretion, this Court will not interfere with the findings of the Department of Environment and Natural Resources.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED.** The August 6, 2011 Decision and February 2, 2012 Resolution in CA-G.R. SP No. 114553 are **REVERSED.**

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

On official leave
HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

RICARDO R. ROSARIO
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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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.

DIOSDADO M. PERALTA
Chief Justice