Republic of the Philippines
Supreme Court
Baguio City

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 05 2019

THIRD DIVISION

DIAMOND DRILLING CORPORATION OF THE PHILIPPINES,
Petitioner,

G.R. No. 201785

- versus -

CRESCENT MINING AND DEVELOPMENT CORPORATION,
Respondent.
x----------x

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,
Petitioner,

- versus -

DIAMOND DRILLING CORPORATION OF THE PHILIPPINES,
Respondent.

G.R. No. 207360

Present:

PERALTA, *J.*,
Chairperson,
LEONEN,
A. REYES, JR.,
HERNANDO, and
CARANDANG,* *JJ.*

Promulgated:

April 10, 2019

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DECISION

REYES, A., JR., *J.*:

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* Designated as additional Member per Special Order No. 2624 dated November 28, 2018.

Can the Department of Environment and Natural Resources (DENR), through a court order, be compelled to amend a Mineral Production Sharing Agreement (MPSA) to reflect the acquisition by judicial sale of a partial interest therein? This is the question posed by these petitions, which stem from the Order[1] dated August 31, 2011 issued by the Regional Trial Court (RTC) of Makati City, Branch 133, in Civil Case No. 00-055. The said order directed the Secretary of Environment and Natural Resources to amend MPSA No. 057-96-CAR by appending the name of Diamond Drilling Corporation of the Philippines (DDCP) as joint contractor thereto with forty percent (40%) ownership therein. The validity of the order was questioned in two separate petitions for *certiorari* filed before the Court of Appeals (CA), resulting in two conflicting decisions: one upholding,[2] and another annulling[3] the order. The Court is now asked to resolve the conflict.

The Facts[4]

On October 27, 1993, Crescent Mining and Development Corporation (Crescent), a Filipino corporation, and Pacific Falkon Resources Corporation (PFRC), a Canadian corporation, entered into a Joint Venture Agreement (JVA) in preparation for the formation of a joint venture to undertake copper and gold mining operations within a 534-hectare area in Guinaoang and Bulalacao, Mankayan, Benguet (the Guinaoang Project).

On November 12, 1996, the Republic of the Philippines, through then DENR Secretary Victor Ramos, and by virtue of Republic Act (R.A.) No. 7942[5] (Mining Act) and DENR Administrative Order No. 96-40, awarded MPSA No. 057-96-CAR to Crescent. Under the agreement, Crescent was granted the exclusive right to conduct initial exploration and possible development and commercial utilization of minerals that may be found within the Guinaoang Project area.

On August 5, 1997, Crescent and PFRC executed a Letter-Agreement amending the JVA. Under their new arrangement, PFRC acquired a 40% stake in the Guinaoang Project. A copy of the Letter-Agreement was then sent by the parties to, and recorded in, the Regional Office of the Mines and Geosciences Bureau (MGB) in Baguio City.

On January 11, 2000, DDCP, PFRC's drilling contractor, filed a Complaint for collection of sum of money with damages and prayer for the issuance of a writ of preliminary attachment against PFRC before the RTC of Makati City.

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1 Rendered by Presiding Judge Elpidio R. Calis; *rollo* (G.R. No. 201785), pp. 82-87.
2 CA-G.R. SP No. 124038.
3 CA-G.R. SP No. 121603.
4 *Rollo* (G.R. No. 201785), pp. 31-36; *rollo* (G.R. No. 207360), pp. 64-69.
5 Also known as the *Philippine Mining Act of 1995*. Approved on March 3, 1995.

peyes

After *ex parte* presentation of evidence, the trial court issued an Order dated January 28, 2011 granting the application for the issuance of a preliminary attachment.[6] PFRC's 40% share in the Guinaoang Project was attached and levied upon through a Notice of Attachment/Levy which was served upon the office of the MGB of the Cordillera Autonomous Region (CAR), where the 40% share is officially recorded.

After PFRC failed to file its responsive pleading within the reglementary period, the trial court issued an Order dated January 5, 2001 declaring PFRC in default.[7]

On April 23, 2001, the trial court rendered a Decision[8] holding PFRC liable to DDCP in the amount of US $307,726.00 for aggregate unpaid billings, interest, and attorney's fees, as well as for the amount of ₱300,000.00 as exemplary damages.

On October 19, 2001, Entry of Judgment was issued in the case and, at DDCP's instance, a writ of execution was issued by the trial court. By virtue thereof, the 40% interest of PFRC in the Guinaoang Project was levied. Thereafter, a Notice of Levy on Execution over the said 40% interest was served on, and caused to be recorded with, the MGB-CAR.

On December 31, 2001, PFRC's interest in the Guinaoang Project was publicly auctioned whereupon DDCP came out as the highest bidder. Thereafter, a Certificate of Sale was issued by the Sheriff of the RTC of Makati City in favor of DDCP. The sale was duly registered with the MGB-CAR. Hence, DDCP became the 40% equitable owner.

In 2008, DDCP requested the MGB to record its 40% interest in the Guinaoang Project. The request was denied by then DENR-MGB Director Horacio C. Ramos (Director Ramos) on the ground that DDCP has not acquired any interest in MPSA No. 057-96-CAR since the said Agreement is between the government and Crescent; that PFRC has no equity in Crescent; and, that the decision in Civil Case No. 00-055 only involves PFRC, and not Crescent.

The MGB, through Director Ramos, also ratiocinated that the JVA between PFRC and Crescent as regards the Guinaoang Project is a private matter between the said corporations such that the conveyance by PFRC to DDCP of its interest therein is not within the DENR Secretary's authority to approve.

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6 *Rollo* (G.R. No. 201785), p. 32.

7 Id. at 33.

8 Rendered by Judge Napoleon E. Inoturan; id. at 155-156.

In view of the denial, DDCP filed a Motion dated June 2, 2011 praying that an order be issued directing the DENR Secretary, thru the MGB Director, to amend MPSA No. 057-96-CAR by incorporating the 40% ownership of DDCP therein. The DENR Secretary and the MGB Acting Director filed their Comment and Vehement Opposition to the Motion, *etc.* dated August 12, 2011 on the grounds that they cannot be bound by any issuance of the court as they are not parties in the proceedings; that the amendment of MPSA No. 057-96-CAR can only be made by the mutual agreement of the parties thereto, that is, the Government of the Philippines and Crescent; and, that DDCP has not presented any compelling reason for the amendment of MPSA No. 057-96-CAR.

After the parties' submissions, the trial court issued the assailed Order[9] on August 31, 2011 granting DDCP's motion. The decretal portion of the issuance reads:

> **WHEREFORE**, the Secretary of the [DENR], thru the Director of the [MGB], is hereby **DIRECTED** to **AMEND** [MPSA] No. [0]57-96-CAR by **APPENDING** the name of [DDCP] as joint contractor thereto with forty percent (40%) ownership therein, subject to compliance with nationality and other qualification requirements of [R.A.] No. 7942, or the Philippine Mining Act of 1995, and its implementing Rules and Regulations.
>
> **SO ORDERED**.[10] (Emphases in the original)

Its motion for reconsideration having been denied, the DENR filed a petition for *certiorari* with the CA, which was docketed as CA-G.R. SP No. 124038. Crescent also assailed the order through another petition for *certiorari*, which was docketed as CA-G.R. SP No. 121603.

Rulings of the CA

CA-G.R. SP No. 121603

On January 30, 2012, the CA 17th Division rendered a Decision[11] in favor of Crescent, disposing thus:

> **WHEREFORE**, premises considered, the Petition is **GRANTED**. The Order dated 31 August 2011 of the [RTC], National Capital Judicial Region, Makati City, Branch 133, in Civil Case No. 00-055 is **ANNULLED**; and all the respondents, as well as any person/s acting for and on their behalf, are **ENJOINED** from enforcing or implementing the same. Public respondent is hereby ordered to **immediately desist** from

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9 Id. at 82-87.

10 Id. at 87.

11 Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Elihu A. Ybañez and Danton Q. Bueser concurring; id. at 31-45.

> conducting further proceedings in connection with the Motion dated 02 June 2011 filed by private respondent in Civil Case No. 00-055. Costs against private respondent.
>
> **SO ORDERED.**[12] (Emphases in the original)

The CA 17th Division agreed with Crescent's assertion that the trial court no longer had jurisdiction to issue the assailed order, as DDCP's motion to amend MPSA No. 057-96-CAR is essentially a motion for execution of the Decision dated April 23, 2001 which was filed beyond the five-year period within which a decision may be executed by motion. The CA 17th Division also held that the relief granted by the assailed order is not a part of the execution proceedings, and is therefore outside the ambit of the trial court's general supervisory control over the execution process.

CA-G.R. SP No. 124038

In its Decision[13] dated December 14, 2012, the CA 2nd Division ruled against DENR and in favor of DDCP, disposing thus:

> **WHEREFORE**, the instant petition is **DENIED**. The assailed issuances **STAND**. No costs.
>
> **SO ORDERED.**[14]

Relying on Section 30 of R.A. No. 7942 and Section 46 of DENR Administrative Order No. 20-21, the CA 2nd Division held that the assignment of the 40% share in the Guinaoang Project in favor of PFRC should be deemed automatically approved, since the DENR failed to act on the registration of the JVA between Crescent and PFRC. Therefore, PFRC became the absolute owner of a 40% share in MPSA No. 057-96-CAR. This contractual interest being a form of property, it was liable to levy and execution upon a judgment, as was done by the Sheriff of the RTC of Makati City, Branch 133 in favor of DDCP. Adopting the reasoning of the trial court, the CA further held that the order did not constitute an intrusion into the power and prerogatives of the DENR-MGB under R.A. No. 7942 because it was merely a consequence of Crescent's voluntary divestment of the 40% share in favor of PFRC and the subsequent judicial proceedings which led to the transfer of such share to DDCP. Notably, the CA 2nd Division viewed the order as part of the execution proceedings, such that the court's "general supervisory control" over the execution process remains applicable.

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12 Id. at 43.

13 Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios concurring; *rollo* (G.R. No. 207360), pp. 64-77.

14 Id. at 76.

The DENR and DDCP filed their respective motions for reconsideration which were both denied by the appellate court. Aggrieved, both sought recourse to this Court. DDCP's petition for review was filed on June 25, 2012 and was docketed as G.R. No. 201785;[15] while the DENR's petition for review was filed on June 24, 2013 and was docketed as G.R. No. 207360.[16] In a Resolution[17] dated August 7, 2013, the Court granted the Solicitor General's motion to consolidate the two cases.

The Issues

DDCP raises the following issues in G.R. No. 201785:

A. THE HONORABLE CA GRAVELY ERRED WHEN IT RULED THAT THE COURT *A QUO* ACTED IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION, IN GRANTING DDCP'S MOTION TO DIRECT THE DENR/MGB TO AMEND THE MPSA; and

B. THE HONORABLE CA SHOULD HAVE OUTRIGHTLY DISMISSED THE PETITION FOR *CERTIORARI* AND PROHIBITION BECAUSE CRESCENT HAD OTHER PLAIN, SPEEDY AND ADEQUATE REMEDIES IN THE ORDINARY COURSE OF LAW THAT IT INEXPLICABLY FAILED TO AVAIL OF.[18]

The DENR raised the following issues in its petition:

I. WHETHER THE DENR CAN BE BOUND BY THE TERMS OF THE TRIAL COURT'S DECISION IN CIVIL CASE NO. 00-055 WITHOUT BEING A PARTY THERETO;

II. WHETHER THE TERMS OF A FINAL AND EXECUTORY DECISION CAN BE MODIFIED DURING ITS EXECUTION STAGE;

III. WHETHER OR NOT THE ORDER OF THE TRIAL COURT DIRECTING THE AMENDMENT OF THE MPSA TO INCLUDE DDCP AS A NEW JOINT CONTRACTOR CONTRAVENED THE PROVISIONS OF THE PHILIPPINE MINING ACT OF 1995, ITS

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15 *Rollo* (G.R. No. 201785), pp. 9-30.
16 *Rollo* (G.R. No. 207360), pp. 30-62.
17 Id. at 197.
18 *Rollo* (G.R. No. 201785), p. 18.

IMPLEMENTING RULES AND REGULATIONS (IRR), AND THE TERMS OF MPSA NO. 057-96-CAR ITSELF;

IV. WHETHER OR NOT THE AMENDMENT OF THE MPSA IS A DISCRETIONARY FUNCTION ON THE PART OF THE DENR, WHOSE PERFORMANCE CANNOT BE DIRECTED BY JUDICIAL ORDER; and

V. WHETHER THE ACQUISITION BY DDCP OF PFRC'S 40% INTEREST IN THE GUINAOANG PROJECT COVERED BY MPSA NO. 057-96-CAR, CONSTITUTES A CONVEYANCE BY ASSIGNMENT UNDER R.A. NO. 7942.[19]

The core issue raised by these petitions is the existence of grave abuse of discretion in the issuance of the Order dated August 31, 2011.

Ruling of the Court

The petitions assail the Order on both procedural and substantive grounds. The Court, therefore, groups the issues accordingly and discusses them *ad seriatim*.

In G.R. No. 201785, DDCP puts in issue: 1) the propriety of Crescent's resort to *certiorari*; and 2) the appellate court's finding that the order was issued beyond the reglementary period for executing a decision by motion. In G.R. No. 207360, the DENR puts in issue: 1) its subjection to the order despite not being a party to DDCP's collection case; and 2) the effect of the order on the final and executory decision in DDCP's collection case.

Propriety of resort to certiorari

The Court is not obliged to tackle this issue, as DDCP did not raise it before the appellate court. In *Dimaandal v. PO2 Ilagan, et al.*,[20] the Court said:

> At the outset, we reiterate the well-settled rule that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency, or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time is barred by [estoppel].

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19 *Rollo* (G.R. No. 207360), pp. 42-43.

20 802 Phil. 546 (2016).

> Note that this principle forbids parties from changing their theory of the case. A party, after all, is bound by the theory he adopts and by the cause of action he stands on, and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.[21] (Citations omitted)

Propriety of execution by motion

"It is axiomatic that after a judgment has been *fully satisfied*, the case is deemed terminated once and for all."[22] "[I]t is when the judgment has been *satisfied* that the same passes beyond review, for *satisfaction thereof is the last act and end* of the proceedings."[23] In *Vda. de Paman v. Judge Señeris*,[24] the Court held that "[a] case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit. There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution."[25] The Court, therefore, allowed the enforcement of the employer's subsidiary liability in the criminal proceeding for reckless imprudence resulting in homicide because at that point the judgment had not yet been fully satisfied. Likewise, in *Seavan Carrier v. GTI Sportswear*,[26] where execution had already commenced but the certificate of sale issued by the deputy sheriff in favor of the prevailing parties did not cover the full amount of the judgment, the Court ordered the trial court to conduct a hearing to determine the exact amount still owing to the judgment creditors, on the ground that the trial court continued to exercise the power to control the execution of its decision, since the judgment had not yet been fully satisfied.

Also, Rule 39, Section 6 of the Rules of Court limits the time within which a writ of execution may be issued; but it does not prescribe a period when the sale at public auction shall take place after the issuance of such writ and a valid levy made pursuant thereto. The execution sale simply carries out the execution writ and the levy which, when issued, were valid.[27] Accordingly, the Court has held that a valid execution issued and levy made during the lifetime of the writ of execution may be enforced by a sale thereafter, *i.e.*, a sale made even beyond the lifetime of the writ of execution, provided such sale is made within ten (10) years from the entry of judgment. This rule rests upon the principle that the levy is the essential act by which

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21 Id. at 551-552.

22 *Freeman, Inc. v. Securities and Exchange Commission*, 304 Phil. 139, 147 (1994).

23 *Seavan Carrier v. GTI Sportswear*, 222 Phil. 103, 109 (1985), citing II Moran, Comments on the Rules of Court 405 (1979 ed.).

24 201 Phil. 290 (1982).

25 Id. at 296-297.

26 222 Phil. 103 (1985).

27 II Moran, Comments on the Rules of Court 327-328 (1996 ed.).

the property is set apart for the satisfaction of the judgment and taken into custody of the law.[28]

Applying these principles to the case at bar, the Court holds that the judgment in favor of DDCP should be deemed fully satisfied at the time it filed the motion to amend the MPSA. The trial court had already lost jurisdiction by the time it issued the assailed order, for upon the acquisition by judicial sale of DDCP of PFRC's 40% interest in the Guinaoang Project, DDCP had already acquired property of its judgment debtor which stands as payment for the judgment debt.

DDCP's assertion that the assailed order is a mere continuation of the execution proceedings is unavailing. It must be noted that PFRC was a foreign corporation whose only attachable property in this jurisdiction was its 40% share in the Guinaoang Project. Under the JVA between Crescent and PFRC, the 40% share in the Guinaoang Project pertained to the "Assets" of the Project,[29] defined as "the Claims, **Mineral Production Agreement**, Other Tenements, Facilities, Mineral Products and Supplies and all other assets acquired or held by the parties with respect thereto or pursuant to this Agreement as the same may exist from time to time."[30] In turn, the Letter-Agreement dated August 5, 1997 referred to the "*execut[ion of] the necessary and recordable transfer documents to evidence the ownership of PFRC of Forty Per Cent (40%) interest in the Guinaoang Project and the* ***1996 Mineral Production Sharing Agreement***."[31] By the execution sale, DDCP became subrogated to all the rights of PFRC under the JVA and the Letter-Agreement dated August 5, 1997. The right to demand the amendment of the MPSA to reflect the 40% interest therein is only one among the bundle of rights that DDCP had acquired in the execution sale. These rights constitute property which may stand as payment for the judgment debt. As regards the share in the MPSA, at this point, the remedy of DDCP no longer lays with the trial court but with the DENR Secretary, because the approval of an amendment to an MPSA to reflect a transfer or assignment of rights therein is a power and function of the DENR Secretary under Section 30 of the Mining Act – which brings us to the substantive issues of the case.

Principle of state control over mining agreements; Nature of DENR Secretary's power to approve transfers or assignments of MPSA rights

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28 *First Integrated Bonding & Insurance Co., Inc. v. Court of Appeals*, 329 Phil. 950, 969-970 (1996).

29 *Rollo* (G.R. No. 207360), p. 155.

30 Id. at 147.

31 *Rollo* (G.R. No. 201785), p. 80.

DDCP asseverates that it is entitled to be designated as co-contractor in the MPSA. Both the DENR and Crescent counter that the MPSA cannot be amended to reflect such designation without their consent. The DENR further asserts that it cannot be bound by the provisions of the JVA, therefore, it cannot be compelled to amend the MPSA in accordance with the said JVA.

The Court sustains the position of the government. An MPSA can only be amended to include a new co-contractor if the government, through the DENR, approves the amendment; and the requirements set by law are complied with; as this is tantamount to a transfer of a mineral agreement right.

Article XII, Section 2 of the Constitution states in part:

> **SEC. 2. All** lands of the public domain, waters, **minerals, coal, petroleum, and other mineral oils**, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, **and other natural resources are owned by the State**. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State** may directly undertake such activities, or it **may enter into** co-production, joint venture, or **production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens.** Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. (Emphases Ours)

To implement this Constitutional provision, Congress passed R.A. No. 7942, or the Mining Act, which governs the exploration, development, utilization and processing of all mineral resources.[32] Section 4 of the Mining Act provides:

> **SEC. 4**. *Ownership of Mineral Resources.* — **Mineral resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision**. The State may directly undertake such activities or it may enter into mineral agreements with contractors. (Emphasis Ours)

Accordingly, the Court held in *Hon. Alvarez v. PICOP Resources, Inc.*[33] that:

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32 *R.A. No. 7942*, Sec. 15.

33 621 Phil. 403 (2009).

> All projects relating to the exploration, development and utilization of natural resources are projects of the State. While the State may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by these citizens x x x, **the projects nevertheless remain as State projects and *can never be purely private endeavors.***
>
> **Also, despite entering into co-production, joint venture, or production-sharing agreements, the State remains in full control and supervision over such projects.** x x x.[34] (Italics in the original and emphases and underscoring Ours)

The Mining Act fleshes out the power of the state over mineral agreements. Section 8 of said law vests in the DENR the primary responsibility "for the conservation, management, development, and proper use of the State's mineral resources including those in reservations, watershed areas, and lands of the public domain." Pursuant to this responsibility, the DENR is given the following powers:

> a. To promulgate rules and regulations as may be necessary to implement the intent and provisions of the Act;
> b. To enter into Mineral Agreements on behalf of the Government or recommend Financial or Technical Assistance Agreement (FTAA) to the President upon endorsement of the Director;
> c. To enforce applicable related laws such as the Administrative Code, the Civil Code, *etc.*; and
> d. To exercise such other authority vested by the Act and as provided for in these IRR.

To implement the principle of state control over the mineral resource utilization, the Mining Act utilizes MPSAs as a mode of enlisting private sector participation in mining operations. MPSAs under the Mining Act are in the nature of production sharing agreements. This type of agreement was first developed and used in Indonesia in the mid-1960s as a means for the state to gain greater control over the extraction and utilization of natural resources.[35] The Regalian doctrine is an integral premise of production sharing agreements, for in such agreements, the state is explicitly recognized as the owner of all mineral resources within its territory. Through such an arrangement, the government is able to tap into the resources of the private sector without relinquishing control over the resources to be extracted.[36] Accordingly, the Mining Act vests in the Secretary the following powers with respect to MPSAs:

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34 Id. at 484.

35 James Lloyd Loftis, Robert Reyes Landicho and Francesca Fraser, *Complexity and Commercial Disputes in Production Sharing Contracts*. In James M. Gaitis (ed.), The Leading Practitioners' Guide to International Oil & Gas Arbitration 585-604 (2015). *See also* Robert Fabrikant, *Production Sharing Contracts in the Indonesian Petroleum Industry*, 16 HARV. INT'L. L. J. 303 (1975).

36 *See* Ernest E. Smith, *From Concessions to Service Contracts*, 27 TULSA L. J. 493, 513-519 (2013).

1. Power to enter into mineral agreements on behalf of the Government;[37]
2. Power to approve applications for mineral agreements;[38]
3. Power to promulgate the IRR, including the rules for processing applications for mining rights;[39]
4. Power to approve assignments or transfers of mineral agreements other than FTAAs;[40] and
5. Authority to approve the cancellation or withdrawal of mining agreements.[41]

In turn, the MGB has been given "direct charge in the administration and disposition of mineral lands and mineral resources."[42] It was also given additional powers and duties such as:

1. Authority to determine if an applicant for a mineral agreement possesses a satisfactory environmental track record;[43]
2. Authority to receive applications for mineral agreements covering areas within mineral reservations;[44]
3. Duty to undertake geological, mining, metallurgical, chemical, and other researches, as well as geological and mineral exploration surveys;[45]
4. Duty of the MGB Director to recommend to the Secretary the granting of mineral agreements to duly qualified persons and to monitor the compliance by the contractor of the terms and conditions of the mineral agreements;[46]
5. Power to confiscate surety, performance and guaranty bonds posted through an order to be promulgated by the MGB Director;[47]
6. Power of the MGB Director to deputize, when necessary, any member or unit of the Philippine National Police, barangay, duly registered non-governmental organization or any qualified person to police all mining activities;[48] and

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37 *R.A. No. 7942*, Section 8.
38 Id. at Section 29.
39 Id. at Sections 8 and 11
40 Id. at Section 30.
41 Id. at Section 31. *See also Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*, 565 Phil. 466, 488-504 (2007).
42 Id. at Section 8.
43 Id. at Section 27.
44 Id. at Sections 29 and 36.
45 Id. at Section 9.
46 Id.
47 Id.
48 Id.

7. Powers of the Secretary as delegated to the MGB Director.[49]

The IRR of the Mining Act states that an MPSA is an agreement wherein the Government grants to a contractor the exclusive right to conduct mining operations within, but not title over, the contract area and shares in the production whether in kind or in value as owner of the minerals therein, with the Contractor providing the necessary financing, technology, management and personnel to conduct the mining operations.[50] Section 3(ab) of the Mining Act places MPSAs under the class of mineral agreements, which are explicitly defined as contracts between the government and a contractor. It is, therefore, clear that under the Mining Act, an MPSA is a contract whereby the State, through the DENR, grants to a private party the exclusive right to conduct mining operations within a specified area, in exchange for a share in the proceeds of the operations.

The assailed order is particularly aimed at Paragraph 2.11 of MPSA No. 057-96-CAR, which reads:

> 2.11 Contractor means CRESCENT MINING AND DEVELOPMENT CORPORATION under this Agreement provided such assignment of any such interest is accomplished pursuant to the provision hereof.[51]

DDCP seeks to have this provision amended to reflect its asserted status as co-contractor. The Court rules that this is not possible under the facts of this case, for the principle of state control in the Mining Act mandates that the addition of a new contractor to an MPSA by virtue of a transfer of mineral agreement rights must be made with the consent of the government, as manifested by the approval of the DENR Secretary; and in compliance with the requirements set forth by the Mining Act and its IRR. DDCP has failed to prove compliance with both requisites.

DDCP anchors its right to become a co-contractor on its acquisition by judicial sale of PFRC's 40% interest in the Guinaoang Project. PFRC's right to this 40% interest is, in turn, based on the Letter-Agreement dated August 5, 1997 between it and Crescent. These transactions, through which Crescent and PFRC successively "disposed of or parted with an asset or an interest in an asset,"[52] both constitute transfers of rights in the MPSA.

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49 DENR Administrative Order No. 96-40, Section 6.

50 DENR Administrative Order No. 21-10, Section 31(a).

51 *Rollo* (G.R. No. 201785), p. 132.

52 Black's Law Dictionary defines a "transfer" as "[a]ny mode of disposing of or parting with an asset or an interest in an asset, including a gift, the payment of money, release, lease, or creation of a lien or other encumbrance. - The term embraces every method - direct or indirect, absolute or conditional, voluntary or involuntary - of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption." Black's Law Dictionary, 9th ed., p. 1636 (2009).

Reyes

Transfers of rights in an MPSA are governed by Section 30 of the Mining Act and Section 46 of its IRR, *viz.*:

> **SEC. 30**. *Assignment/Transfer*. — Any assignment or transfer of rights and obligations under any mineral agreement except a financial or technical assistance agreement shall be subject to the prior approval of the Secretary. Such assignment or transfer shall be **deemed automatically approved** if not acted upon by the Secretary within thirty (30) working days from official receipt thereof, unless patently unconstitutional or illegal.
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> **SEC. 46**. *Transfer or Assignment of Mineral Agreement*. — A Contractor may file an application for the total or partial transfer or assignment of its Mineral Agreement to a Qualified Person(s) upon payment of an application fee (Annex 5-A) with the Bureau/concerned Regional Office for evaluation. No application shall be accepted for filing unless accompanied by the pertinent Deed of Assignment that shall contain, among others, a stipulation that the transferee/assignee assumes all obligations of the transferor/assignor under the Agreement. Any transfer or assignment of rights and obligations under any Mineral Agreement shall be subject to the approval of the Secretary upon the recommendation of the Director: Provided, That any transfer or assignment of a Mineral Agreement shall not be approved unless the transferor/assignor or Contractor has complied with all the terms and conditions of the Agreement and the provisions of the Act and these implementing rules and regulations at the time of transfer/assignment: Provided, further, That any transfer or assignment shall be **deemed automatically approved** if not acted upon by the Secretary within thirty (30) calendar days from official receipt thereof, unless patently unconstitutional, illegal or where such transfer or assignment is violative of pertinent rules and regulations: Provided, finally, That the transferee assumes all the obligations and responsibilities of the transferor/assignor under the Mineral Agreement.
>
> If circumstances warrant and upon the recommendation of the Director, the Secretary may impose additional conditions for the approval of transfer/assignment of the Mineral Agreement.

Under these provisions, the requisites for a valid transfer or assignment of rights in an MPSA are as follows:

1. An application for transfer or assignment filed by the contractor named in the MPSA;
2. Payment of application fee with the MGB or concerned DENR Regional Office;
3. Submission of a Deed of Assignment with a stipulation that the transferee/assignee assumes all obligations of the transferor/assignor under the Agreement;
4. Proof of compliance by the transferor/assignor or Contractor with all the terms and conditions of the Agreement and the provisions of the Mining Act and its IRR at the time of transfer/assignment;
5. Approval of the DENR Secretary; and

6. Assumption by the transferee/assignee of all the obligations and responsibilities of the transferor/assignor under the Mineral Agreement.

DDCP admits that the Letter-Agreement dated August 5, 1997 between Crescent and PFRC is not compliant with these requisites.[53] Instead, it claims that pursuant to the automatic approval clause in Section 30 of the Mining Act, the transfer should be deemed approved because the DENR failed to act on the said Letter-Agreement within 30 days after its registration therewith.

DDCP is mistaken.

As correctly pointed out by the Solicitor General, the Letter-Agreement dated August 5, 1997 cannot operate to transfer any rights under MPSA No. 057-96-CAR because such Letter-Agreement is not compliant with Section 46 of the Mining Act's IRR. Furthermore, in view of the principle of state control permeating the Mining Act, the Court holds that the automatic approval clause applies only to applications which satisfy all the requisites laid down in Section 46 of the Mining Act's IRR. A contrary view would render inutile the DENR Secretary's power to approve assignments or transfers of rights in MPSAs, for it would mean that applications not acted upon by the Secretary within the prescribed period would be deemed approved regardless of compliance with the requisites set forth in Section 46 of the IRR.

Moreover, given the powers and the mandate vested in the DENR and the MGB with respect to mineral agreements, it is evident that the DENR Secretary's power to approve transfers and assignments of mineral agreements and mineral agreement rights is discretionary in nature and therefore outside the reach of the trial court's orders.[54] In determining whether or not to approve an assignment or transfer of mineral agreement rights, the DENR Secretary determines if the assignee/transferee is a "qualified person" under the definition of the Mining Act. This process includes *inter alia* a determination of the party's "technical and financial capability to undertake mineral resources development,"[55] and of the transferor, assignor or contractor's compliance with all the terms and conditions of the MPSA and the provisions of the Mining Act and its IRR at the time of transfer/assignment:[56] a process which requires the Secretary to evaluate the facts and circumstances of each application and make a judgment as to whether or not the applicant satisfies the standards set by the statute and its implementing rules.

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53 *Rollo* (G.R. No. 207360), p. 218.

54 *See Meralco Securities Corp. v. Judge Savellano*, 203 Phil. 173, 181-184 (1982).

55 *R.A. No. 8742*, Section 3(aq).

56 DENR Administrative Order No. 96-40, Section 46.

Considering that the transfer of the 40% interest in the Guinaoang Project to PFRC was invalid, the levy and subsequent sale thereof to DDCP did not transfer any right in MPSA No. 057-96-CAR in favor of DDCP that would entitle it to an amendment thereof. The DENR's assertion that the assailed order cannot be executed against it is therefore justified, since there was no valid transfer of mineral agreement rights that would necessitate its involvement in the proceedings.

To conclude, the Court reiterates the long-standing doctrine that the buyer in an execution sale only acquires the right of the judgment debtor.[57] Therefore, DDCP could only have acquired those rights and interests which may legally be held by its debtor, PFRC, under the law and the JVA with Crescent. The right to be included in MPSA No. 057-96-CAR as a co-contractor is not among those rights.

WHEREFORE, premises considered, the petition in G.R. No. 207360 is hereby **GRANTED**. The Decision dated December 14, 2012 and Resolution dated May 16, 2013 of the Court of Appeals in CA-G.R. SP No. 124038 are hereby **REVERSED** and **SET ASIDE.** The petition in G.R. No. 201785 is hereby **DENIED**. The Decision dated January 30, 2012 and Resolution dated May 7, 2012 of the Court of Appeals in CA-G.R. SP No. 121603 are hereby **AFFIRMED**.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

MARVIC M.V.F. LEONEN
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

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57 *Northern Motors v. Judge Coquia*, 160-A Phil. 1017, 1021 (1975).

ROSMARI D. CARANDANG
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.

DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third 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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 05 2019