Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DELFIN R. PILAPIL, JR.,
Petitioner,

- *versus* -

LYDIA Y. CU,
Respondent.

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PEOPLE OF THE PHILIPPINES,
Petitioner,

- *versus* -

LYDIA Y. CU,
Respondent.

x----------x

G.R. No. 228608

G.R. No. 228589

Present:

PERALTA, *C.J.*, *Chairperson*,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:

AUG 2 7 2020

D E C I S I O N

PERALTA, *C.J.*:

For decision are the petitions[1] assailing the Decision[2] dated June 10, 2016 and the Resolution[3] dated December 2, 2016 of the Court of Appeals (*CA*) in CA-G.R. SP No. 133253.

The facts are as follows:

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1 Filed under Rule 45 of the Rules of Court.

2 *Rollo* (G.R. No. 228589), pp. 16-26. Penned by Associate Justice Danton Q. Bueser, with the concurrence of Associate Justices Apolinario D. Bruselas, Jr. and Renato C. Francisco.

3 *Id.* at 79-82.

Prelude

The Bicol Chromite and Manganese Corporation (*BCMC*) is the holder of Mineral Production Sharing Agreement (*MPSA*) No. 211-2005-V. The MPSA granted unto BCMC the right to mine a specific site located in Barangay Himagtocon, Lagonoy, Camarines Sur.

In 2009, BCMC entered into an Operating Agreement[4] with Prime Rock Philippines Company (*Prime Rock*) allowing the latter to, among others, operate the aforesaid mining site.

However, on January 31, 2011, the Mines and Geosciences Bureau – Regional Office 5 (*MGB RO5*) issued a Cease and Desist Order (*CDO*)[5] against Prime Rock enjoining the latter from engaging in any mining activities.

Inspection of the Mining Site

Around six (6) months after the issuance of the CDO, petitioner Delfin R. Pilapil, Jr. (*Mayor Pilapil*)—then mayor of the municipality of Lagonoy—received reports about the existence of an illegal mining operation in Barangay Himagtocon.[6] Mayor Pilapil supposedly also received reports that Prime Rock had filed an appeal against the CDO.[7] To verify these reports and to ensure that the CDO is not being violated, petitioner decided to conduct an ocular inspection of the mining site operated by BCMC and Prime Rock.[8]

On August 24, 2011, petitioner, accompanied by a team of eight (8) policemen and two (2) barangay captains, entered the mining site.[9] While inspecting the site's premises, Barangay Captain (*BC*) Roger Pejedoro—one of the companions of petitioner—happened upon an open stockroom that contained numerous bags of what appeared to be explosives.[10] BC Pejedoro reported his discovery to another member of the inspection team, Senior Police Officer 2 (*SPO2*) Rey H. Alis, who, in turn, informed Mayor Pilapil. Mayor Pilapil forthwith ordered the seizure of the said bags.[11]

Inventory of the seized items yielded 41 sacks of explosives, with an aggregate weight of 1,061 kilos, and 4½ rolls of safety fuses (*subject explosives*).[12] The subject explosives were then kept at the Explosive

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4 CA *rollo*, pp. 205-208.
5 *Rollo* (G.R. No. 228589), p. 121.
6 *Id.* at 125-126.
7 *Id.*
8 *Id.* at 126.
9 *Id.*
10 *Id.* at 124.
11 *Id.* at 126.
12 *Id.* at 130.

Magazine, Provincial Public Safety Management Company in Tigaon, Camarines Sur, for safekeeping.[13]

On August 26, 2011, the Camarines Sur Police Provincial Office of the Philippine National Police issued a Certification stating that, as per the records in its office, no permit to *transport* or *withdraw* explosives had been issued to Prime Rock.[14]

Proceedings in the RTC

On the basis of the foregoing events, an Information[15] for illegal possession of explosives[16] was lodged before the Regional Trial Court (*RTC*) in Camarines Sur against certain officers and employees of BCMC and Prime Rock. Among those accused in the said Information were respondent Lydia Cu, the president of BCMC,[17] and one Manuel Ley, the president of Prime Rock.[18] The accusatory portion of the Information reads:

> That on or about the 24th day of August 2011 in Sitio Benguet, Barangay Himagtocon, Municipality of Lagony (*sic*), Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable

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13 *Id.*

14 *Id.* at 131.

15 *Id.* at 134-135. The Information was docketed as Criminal Case No. T-3754.

16 As punished under Section 3 of Presidential Decree (*PD*) No. 1866, as amended by Republic Act RA No. 9516. The said section reads:

> Section 3. *Unlawful Manufacture, Sales, Acquisition, Disposition, Importation or Possession of an Explosive or Incendiary Device.* - The penalty of *reclusion perpetua* shall be imposed upon any person who shall willfully and unlawfully manufacture, assemble, deal in, acquire, dispose, import or possess any explosive or incendiary device, with knowledge of its existence and its explosive or incendiary character, where the explosive or incendiary device is capable of producing destructive effect on contiguous objects or causing injury or death to any person, including but not limited to, hand grenade(s), rifle grenade(s), "pillbox bomb", "molotov cocktail bomb", "fire bomb", and other similar explosive and incendiary devices.
>
> *Provided*, That mere possession of any explosive or incendiary device shall be *prima facie* evidence that the person had knowledge of the existence and the explosive or incendiary character of the device.
>
> *Provided, however*, That a temporary, incidental, casual, harmless, or transient possession or control of any explosive or incendiary device, without the knowledge of its existence or its explosive or incendiary character, shall not be a violation of this Section.
>
> *Provided, Further*, That the temporary, incidental, casual, harmless, or transient possession or control of any explosive or incendiary device for the sole purpose of surrendering it to the proper authorities shall not be a violation of this Section.
>
> *Provided, finally*, That in addition to the instances provided in the two (2) immediately preceding paragraphs, the court may determine the absence of the intent to possess, otherwise referred to as "*animus possidendi*", in accordance with the facts and circumstances of each case and the application of other pertinent laws, among other things, Articles 11 and 12 of the Revised Penal Code, as amended.

17 CA *rollo*, p. 330.

18 *Rollo* (G.R. No. 228589), pp. 126-127. The other accused were Benny Go, Jr., Enrique Loo and Li Chuntong. Go, Loo and Chuntong were the employees of Prime Rock who acted as caretakers of the mining site after the MGB RO5 issued the CDO and who were present thereat during the ocular inspection made by Mayor Pilapil and his team.

> Court, the above-named accused, with intent to possess, conspiring, confederating and helping one another, did then and there, willfully, illegally and knowingly have in their possession, custody and control, forty one (41) sacks of explosives and four (4) and half (1/2) rolls of safety fuse which is breakdown (*sic*):
>
> | | SACKS | KILO |
> |---|---|---|
> | | 7 sacks | 200 |
> | | 7 sacks | 190 |
> | | 7 sacks | 200 |
> | | 7 sacks | 140 |
> | | 7 sacks | 175 |
> | | 6 sacks | 156 |
> | TOTAL | 41 sacks | 1,061 kilos |
>
> without any authority in law nor permit to carry and possess the same, to the prejudice of the Republic of the Philippines.[19]

The Information was docketed as Criminal Case No. T-3754 and was raffled to Branch 58 of the RTC of San Jose, Camarines Sur.

On September 28, 2012, the RTC issued warrants of arrest against Cu and Ley, and their other co-accused in Criminal Case No. T-3754.[20]

Both Cu and Ley filed motions[21] questioning, among others, the existence of probable cause to justify the issuance of warrants of arrest against them. There, they raised qualm regarding the admissibility in evidence of the subject explosives, arguing that the same had been seized by Mayor Pilapil in violation of the constitutional proscription against unreasonable searches and seizures.

On October 23, 2012, the RTC issued an order holding in abeyance the implementation of *all* warrants of arrest in order to review the evidence on record and determine the existence of probable cause to justify the issuance of such warrants.[22]

On November 27, 2012, the RTC issued an order suspending the proceedings in Criminal Case No. T-3754.[23]

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19 *Id.* at 134-135.

20 CA *rollo*, pp. 409-413.

21 *Rollo* (G.R. No. 228589), pp. 93-94. On October 16, 2012, Ley filed a motion for judicial determination of probable cause and the recall of the warrant of arrest against him. On November 5, 2012, Cu filed her own motion asking for the lifting of the warrant of arrest against her and the suspension of the proceedings in Criminal Case No. T-3754 in light of the petition for review she filed before the Department of Justice.

22 *Id.* at 35.

23 *Id.* at 35-36.

On January 4, 2013, the prosecution filed an omnibus motion assailing the November 27, 2012 order of the RTC and seeking the implementation of the warrants of arrest.[24]

On October 22, 2013, the RTC issued an Order[25] finding probable cause to hold Cu, Ley, Go, Loo and Chuntong for trial, and reinstating the September 28, 2012 warrants of arrest against them.

Proceedings in the CA

Cu challenged the latest order of the RTC with the CA *via* a petition for *certiorari*.[26] Cu impleaded the presiding judge[27] of the RTC and Mayor Pilapil as respondents in such petition.

On January 8, 2014, the CA required the inclusion of petitioner People of the Philippines (*the People*) as a respondent in her *certiorari* petition.[28]

On March 4, 2014, Cu filed a supplement to her petition reiterating as an issue the supposed defect of the subject explosives for having been procured through a warrantless, hence illegal, raid of the mining site operated by BCMC and Prime Rock.[29] She postulated that the seized explosives were "*fruits of a poisonous tree*" that could not be the basis of a finding of probable cause against her.

On June 10, 2016, the CA rendered a Decision[30] favoring the above postulation of Cu. The CA thus decreed the setting aside of the October 22, 2013 Order of the RTC, the dismissal of the information in Criminal Case No. T-3754, and the quashal of the warrant of arrest against Cu. The dispositive portion of the CA's Decision reads:

> **WHEREFORE**, in view of the foregoing, the Order dated October 22, 2013 is hereby **SET ASIDE**. The Information charging [Cu] of violation of Section 3, Republic Act No. 9516, being based on a "*fruit of a poisonous tree*" is **DISMISSED**. Accordingly, the Warrant of Arrest against [Cu] is ordered **QUASHED**.[31] (Emphases in the original)

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24 *Id.* at 36.
25 *Id.* at 91-106. The order was penned by Presiding Judge Ma. Angela Acompañado-Arroyo.
26 *Id.* at 83-90.
27 *Supra* note 25.
28 CA *rollo*, p. 51.
29 *Id.* at 64-74.
30 *Supra* note 2.
31 *Id.* at 26.

The People and Mayor Pilapil (collectively, petitioners) filed their respective motions of reconsideration, but the CA remained steadfast.[32] Hence, the present petitions.[33]

The petitioners claim that the CA erred in subscribing to Cu's position. They insist on the competence of the subject explosives as evidence and claim that the same have been seized legally. They argue that while Mayor Pilapil's ocular inspection of the mining site was conducted without a search warrant, the consequent taking of the subject explosives may nonetheless be justified under the *plain view doctrine*.[34]

OUR RULING

Mayor Pilapil's seizure of the subject explosives is illegal and cannot be justified under the plain view doctrine. The warrantless ocular inspection of the mining site operated by BCMC and Prime Rock that preceded such seizure, and which allowed Mayor Pilapil and his team of police officers and barangay officials to catch a view of the subject explosives, finds no authority under any provision of any law. In addition, established circumstances suggest that the incriminating nature of the subject explosives could not have been immediately apparent to Mayor Pilapil and his inspection team.

The subject explosives were thus seized in violation of the constitutional proscription against unreasonable searches and seizures. As such, they were correctly regarded by the CA as "*fruits of a poisonous tree*" subject to the *exclusionary principle*. Fittingly, they cannot be considered as valid bases of a finding of probable cause to arrest and detain an accused for trial.

Hence, we deny the petitions.

Section 2, Article III of the Constitution ordains the right of the people against *unreasonable* searches and seizures by the government. The provision reads:

> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

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32 *Supra* note 3.
33 *Rollo* (G.R. No. 228589), pp. 31-60; and *rollo* (G.R. No. 228608), pp. 26-53.
34 *Id.*

Fortifying such right is the *exclusionary principle* adopted in Section 3(b), Article III of the Constitution. The principle renders any evidence obtained through unreasonable search or seizure as inadmissible for any purpose in any proceeding, *viz.*:

> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

What then are unreasonable searches and seizures as contemplated by the cited constitutional provisions?

The rule of thumb, as may be deduced from Section 2, Article III of the Constitution itself, is that searches and seizures which are undertaken by the government outside the auspices of a valid search warrant are considered unreasonable.[35] To be regarded reasonable, government-led search and seizure must generally be sanctioned by a judicial warrant issued in accordance with requirements prescribed in the aforementioned constitutional provision.

The foregoing rule, however, is not without any exceptions. Indeed, jurisprudence has recognized several, though very specific, instances where warrantless searches and seizures can be considered reasonable and, hence, not subject to the exclusionary principle.[36] Some of these instances, studded throughout our case law, are:[37]

1. Consented searches;[38]
2. Searches incidental to a lawful arrest;[39]
3. Searches of a moving vehicle;[40]
4. Seizures of evidence in plain view;[41]
5. Searches incident of inspection, supervision and regulation sanctioned by the State in the exercise of its police power;[42]
6. Customs searches;[43]
7. Stop and Frisk searches;[44] and
8. Searches under exigent and emergency circumstances.[45]

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35 *People v. Evaristo*, 290-A Phil. 194, 200 (1992).
36 *Id.*
37 See De Leon, Hector S. and De Leon, Hector M., Jr., *Philippine Constitutional Law Principles and Cases* (2017 edition), pp. 389-397.
38 See *People v. Kagui Malasugui*, 63 Phil. 221 (1936).
39 See *Alvero v. Dizon*, 76 Phil. 637 (1946).
40 See *Mustang Lumber, Inc. v. CA*, 327 Phil. 214 (1996).
41 See *People v. Evaristo, supra* note 35.
42 See *City of Manila v. Laguio, Jr.*, 495 Phil. 289 (2005). See also *United States v. Biswell*, 406 U.S. 311 (1972); and *Donovan v. Dewey*, 452 U.S. 594 (1981).
43 See *Papa, et al. v. Mago, et al.*, 130 Phil. 886 (1968).
44 See *Manalili v. Court of Appeals*, 345 Phil. 632 (1997).
45 See *People v. De Gracia*, 304 Phil. 118 (1994).

The instance of particular significance to the case at bench is the so-called seizures pursuant to the *plain view doctrine.*

Under the plain view doctrine, objects falling within the plain view of a law enforcement officer, who has a right to be in a position to have that view, may be validly seized by such officer without a warrant and, thus, may be introduced in evidence.[46] An object is deemed in plain view when it is "*open to eye and hand*"[47] or is "*plainly exposed to sight.*"[48] In *Miclat, Jr. v. People*,[49] we identified the three (3) requisites that must concur in order to validly invoke the doctrine, to wit:

> The "plain view" doctrine applies when the following requisites concur: **(a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure**.

Guided by the foregoing principles, we now address the issues at hand.

I

The established facts betray the claim of petitioners that the plain view doctrine justifies the warrantless seizure of the subject explosives. The first and third requisites necessary to validly invoke the said doctrine are not present in the instant case.

A

The first requisite of the plain view doctrine assumes that the law enforcement officer has "*a prior justification for an intrusion or is in a position from which he can view a particular area*[.]"[50] This means that the officer who made the warrantless seizure must have been in a *lawful* position when he discovered the target contraband or evidence in plain view. Here, it was established that Mayor Pilapil and his team of police officers and barangay officials were able to view the subject explosives during the course of their ocular inspection on the mining site operated by BCMC and Prime Rock. Hence, in order to ascertain the existence of the first requisite of the doctrine in the case at bench, an inquiry into the legality of such inspection is necessary.

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46 *Miclat, Jr. v. People*, 672 Phil. 191, 206 (2011).

47 Cruz, Isagani A. and Cruz, Carlo L., *Constitutional Law* (2015 edition), p. 372, citing *Harris v. U.S.*, 390 U.S. 234 (1968).

48 *Miclat, Jr. v. People of the Philippines*, *supra* note 46, at 207.

49 *Id.* at 206 (emphasis in the original).

50 *Id.*

Mayor Pilapil And His Inspection Team Were Not In A Lawful Position When They Discovered The Subject Explosives

In the case at bench, it is undisputed that Mayor Pilapil and his team entered and conducted an ocular inspection on the mining site of BCMC and Prime Rock without any judicial warrant. As petitioners concede, Mayor Pilapil was moved to carry out such entry and inspection solely by reports which suggest that Prime Rock was engaging in mining activities, in violation of the CDO issued by the MGB RO5.[51] Upon reaching the mining site, however, Mayor Pilapil and his inspection team actually encountered no active mining operations.[52] What they were able to chance upon were the subject explosives which, at the time, were kept in bags and stored inside a room, albeit one whose door was ajar.[53]

The foregoing facts clearly establish that Mayor Pilapil and his inspection team were not in a lawful position when they discovered the subject explosives. The intrusion and inspection of the mining site of BCMC and Prime Rock, which afforded Mayor Pilapil and his team the opportunity to view the subject explosives, were illegal as they were not sanctioned by a warrant. Moreover, there is nothing in the facts which indicate that such entry and inspection fall within any of the recognized instances of valid warrantless searches.

Mayor Pilapil Has No Statutory Authority To Conduct A Warrantless Inspection Of The Mining Site Operated By BCMC And Prime Rock

The petitioners would insist, however, that Mayor Pilapil was authorized to enter and undertake a warrantless inspection of the mining site operated by BCMC and Prime Rock by virtue of the following provisions of the law and executive regulations:[54]

1. **Section 444(b)(3)(iv) of Republic Act (*RA*) No. 7160 or the Local Government Code of 1991 (*LGC*),**[55] which gives

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51 *Rollo* (G.R. No. 228589), p. 126.

52 The fact that Prime Rock was engaged in mining activities in violation of the CDO of the MGB RO5 was not established in the facts of the case. On the other hand, the affidavits executed by Mayor Pilapil (*id.* at 126-127), BC Pejedoro (*id.* at 124) and a certain SPO3 Romulo Peñero (*id.* at 128) were curiously silent as to whether they caught Prime Rock engaged in any form of mining activity.

53 *Id.* at 126 and 136-137.

54 *Id.* at 48-53.

55 **Section 444.** *The Chief Executive: Powers, Duties, Functions and Compensation.* –

x x x x

municipal mayors the power to issue business licenses and permits. Citing the case of *Hon. Lim v. Court of Appeals*,[56] the petitioners argue that such power effectively gives a municipal mayor the power to conduct warrantless inspections and investigations of private commercial establishments for any violation of the conditions of their licenses and permits;[57]

2. **Section 8(e) of DENR[58] Administrative Order No. 2010-21 or the Revised Implementing Rules and Regulations (*RIRR*) of RA No. 7942**[59] which allows local government units to participate in the monitoring of any mining activity as a member of the Multipartite Monitoring Team (*MMT*) described under Section 185 of the RIRR of the Philippine Mining Act of 1995 (*Mining Act*); and

3. **Sections 80, 87 and 94 of the RIRR of RA No. 7942** which grant unto the governor or mayor the authority to inspect quarry, sand and gravel, guano, and gemstone gathering areas.

The scatter-shot citation of legal provisions does not impress. None of them justify Mayor Pilapil's warrantless entry and inspection of the mining site of BCMC and Prime Rock.

To begin with, Section 444(b)(3)(iv) of the LGC does not—whether expressly or impliedly—authorize a municipal mayor to conduct warrantless inspections of mining sites. The petitioners, in that sense, misconstrued the case of *Hon. Lim v. Court of Appeals*.[60] The power of a mayor "*to inspect and investigate private commercial establishments for any violation of the conditions of their* [business] *licenses and permits*,"[61] which was recognized in *Lim*, could not extend to searches of mining sites in view of the unique inspection scheme over such sites established under RA No. 7942, or the Mining Act, and its RIRR.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for [a]gro-industrial development and country-wide growth and progress, and relative thereto, shall:

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance[.]

56 435 Phil. 857 (2002).

57 *Rollo* (G.R. No. 228589), p. 49.

58 Department of Environment and Natural Resources.

59 **Section 8.** *Role of Local Government*

Subject to Section 8 of the Act and pursuant to the Local Government Code and other pertinent laws, the LGUs shall have the following roles in mining projects within their respective jurisdictions:

x x x x

e. To participate in the monitoring of any mining activity as a member of the Multipartite Monitoring Team referred to in Section 185 hereof[.]

60 *Supra* note 56.

61 *Id.* at 867.

Mining operations in the country are principally regulated by the Mining Act and its RIRR.[62] As part and parcel of their regulatory thrust, the said act and executive rule did allow the government—**through particular agencies or officials, for specific purposes and subject to definite limitations or conditions**—to enter and conduct inspections in mining sites and areas. These administrative inspections, duly authorized and reasonably limited by statute and regulation, are examples of *inspections sanctioned by the State in the exercise of its police power* that, as aforementioned, may be considered as among the instances of valid warrantless searches.[63]

As they now stand, however, the Mining Act and its RIRR do not confer any authority upon a municipal mayor to conduct any kind of inspection on any mining area or site. A rundown of the administrative inspections sanctioned by the said act and executive rule makes this clear:

1. Section 66[64] of the Mining Act, in relation to Section 145[65] of the RIRR, allows the conduct of a **safety inspection of all installations** in a mining or quarrying site. Such inspection, which must be carried out at reasonable hours of the day or night and in a manner that will not impede or obstruct the work of the

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62 See Section 15 of RA No. 7942.

63 In the American case of *Donovan v. Dewey* (452 U.S. 594 [1981]), the United States Supreme Court explained the rationale behind this consideration:

> [U]nlike searches of private homes, which generally must be conducted pursuant to a warrant in order to be reasonable under the Fourth Amendment, legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment. x x x. **The greater latitude to conduct warrantless inspections of commercial property reflects the fact that the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity accorded an individual's home, and that this privacy interest may, in certain circumstances, be adequately protected by regulatory schemes authorizing warrantless inspections.**
>
> **The interest of the owner of commercial property is not one in being free from any inspections. Congress has broad authority to regulate commercial enterprises engaged in or affecting interstate commerce, and an inspection program may in some cases be a necessary component of federal regulation.** Rather, the Fourth Amendment protects the interest of the owner of property in being free from **unreasonable** intrusions onto his property by agents of the government. x x x.
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> x x x x
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> [***Colonnade Catering Corp. v. United States*** and ***United States v. Biswell***] **make clear that a warrant may not be constitutionally required when Congress has reasonably determined that warrantless searches are necessary to further a regulatory scheme and the federal regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.** (Emphases supplied, citations omitted)

64 Section 66. *Mine Inspection.* - The regional director shall have exclusive jurisdiction over the safety inspection of all installations, surface or underground, in mining operations at reasonable hours of the day or night and as much as possible in a manner that will not impede or obstruct work in progress of a contractor or permittee.

65 Section 145. *Mine/Quarry Safety Inspection and Audit*

The Regional Director or his/her duly authorized representative shall have exclusive jurisdiction over the conduct of safety inspection of all installations, surface or underground, in mining/quarrying operations and monitoring of the safety and health program in a manner that will not impede or obstruct work in progress of a Contractor/Permittee/Lessee/Permit Holder and shall submit to the Director a quarterly report on their inspection and/or monitoring activities: *Provided*, That the Director shall undertake safety audit annually or as may be necessary to assess the effectiveness of the safety and health program.

mining contractor or permittee, can only be conducted by **a regional director of the MGB or his duly authorized representative**.

2. As part of the terms and conditions of an Exploration Permit, Section 22(d)[66] of the RIRR sanctions the semi-annual **inspection of mining exploration sites in order to verify the exploration work program report** submitted by the permittee. This inspection can only be conducted by the **MGB or a regional office thereof**.

3. As part of the terms and conditions of a Quarry Permit and of a Sand and Gravel Permit, Section 80(a)(5)[67] of the RIRR allows the **inspection and examination of the permit area** by the **regional director of the MGB, or by the provincial governor or city mayor concerned**.

4. As part of the terms and conditions of a Government Gratuitous Permit, Section 80(b)(6)[68] of the RIRR allows the **inspection and examination of the permit area** by the **regional director of the MGB, or by the provincial governor or city mayor concerned**.

5. As part of the terms and conditions of a Guano Permit, Section 87(d)[69] of the RIRR allows the **inspection and examination of**

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66 Section 22. *Terms and Conditions of an Exploration Permit*
An Exploration Permit shall contain the following terms and conditions:

x x x x

d. The Permittee shall submit to the Bureau/Regional Office concerned within thirty (30) calendar days after the end of each semester a report under oath of the Exploration Work Program implementation and expenditures showing discrepancies/deviations including the results of the survey, laboratory reports, geological reports/maps subject to semiannual inspection and verification by the Bureau/Regional Office concerned at the expense of the Permittee: *Provided*, That any expenditure in excess of the yearly budget of the approved Exploration Work Program may be carried forward and credited to the succeeding years covering the duration of the Permit[.]

67 Section 80. *Specific Terms and Conditions of a Quarry or Commercial/ Industrial Sand and Gravel or Government Gratuitous Permit*
In addition to those mentioned in Section 79 hereof, the following specific terms and conditions shall be incorporated in the Quarry or Commercial/Industrial Sand and Gravel or Government Gratuitous Permit:

a. For Quarry or Commercial/Industrial Sand and Gravel Permit:

x x x x

5. The Permit/permit area can be inspected and examined at all times by the Regional Director/Provincial Governor/City Mayor concerned[.]

68 Section 80. *Specific Terms and Conditions of a Quarry or Commercial/ Industrial Sand and Gravel or Government Gratuitous Permit*
In addition to those mentioned in Section 79 hereof, the following specific terms and conditions shall be incorporated in the Quarry or Commercial/Industrial Sand and Gravel or Government Gratuitous Permit:

x x x x

b. For Government Gratuitous Permit:

x x x x

6. The Permit/permit area can be inspected and examined at all times by the Regional Director/Provincial Governor/City Mayor concerned[.]

69 Section 87. *Specific Terms and Conditions of a Guano Permit*
In addition to those mentioned in Section 79 hereof, the following specific terms and conditions shall be incorporated in the Commercial/Industrial Guano Permit:

x x x x

d. The Permit/permit area can be inspected and examined at all times by the Regional Director/Provincial Governor/City Mayor concerned[.]

the permit area by the **regional director of the MGB, or by the provincial governor or city mayor concerned**.

6. As part of the terms and conditions of a Gemstone Gathering Permit, Section 94(g)[70] of the RIRR allows **the inspection and examination of the permit area** by the **regional director of the MGB, or by the provincial governor or city mayor concerned**.

7. As part of the terms and conditions of a Mineral Processing Permit, Section 113(c)[71] of the RIRR allows **inspection of mineral processing sites in order to validate activity reports** submitted by the permittee. This inspection can only be conducted by the **Director or a regional director of the MGB**.

8. As part of the conditions of an Electrical or Mechanical Installation Permit, Section 152(a)[72] of the RIRR authorizes the **inspection of a newly installed mechanical or electrical installation** in any mining or quarrying site. Such inspection, which must be done prior to regular operation, is conducted by **a regional director of the MGB or his duly authorized representative**.

9. Section 158[73] of the RIRR sanctions the **field inspection of storage facilities for explosives** of a mining contractor or permittee. Such inspection, which must be done immediately after the mining contractor or permittee files a purchaser's permit application, **can only be conducted by a regional director of the MGB**.

10. Section 174[74] of the RIRR subjects every mining operation to an **environmental monitoring and audit** in order to determine a

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70 Section 94. *Specific Terms and Conditions of a Gemstone Gathering Permit*

In addition to those mentioned in Section 79 hereof, the following specific terms and conditions shall be incorporated in the Gemstone Gathering Permit:

x x x x

g. The Permit/permit area can be inspected and examined at all times by the Regional Director/Provincial Governor/City Mayor concerned[.]

71 Section 113. *Terms and Conditions of a Mineral Processing Permit*

x x x x

c. The Permit Holder shall submit to the Bureau/Regional Office concerned production and activity reports prescribed in Chapter XXIX of these implementing rules and regulations. The Director/Regional Director concerned may conduct an on-site validation of the submitted reports: *Provided*, That the Permit Holder shall be charged verification and inspection fees thereof[.]

72 Section 152. *Conditions of an Electrical/ Mechanical Installations Permit*

a. Upon completion of installation but prior to regular operation, an inspection shall be conducted by the Regional Director concerned or his/her duly authorized representative[.]

73 Section 158. *Field Inspection of Proposed Storage Facilities (Magazines) and Verification of Blasting Scheme*

Immediately after the filing of application for Purchaser's License, the Regional Director concerned shall authorize the conduct of field inspection of storage facilities to determine whether or not the location and specifications of magazines are in accordance with those prescribed under Department Administrative Order No. 2000-98 and to verify the proposed blasting scheme(s). The applicant shall bear all expenses in the field verification and the cost of transportation of the field investigators from their Official Station to the mine/quarry site and return.

74 Section 174. *Environmental Monitoring and Audit*

mining contractor's or permittee's compliance with the approved Environmental Protection and Enhancement Program or the Annual Environmental Protection and Enhancement Program required under Section 69 of the Mining Act, and Sections 169 and 171 of the RIRR. Such monitoring and audit are conducted semi-annually by the MMT, described under Section 185 of the RIRR.

The MMT is composed of the following: (a) a representative from the MGB regional office, (b) a representative from the DENR regional office, (c) a representative from the Environmental Management Bureau regional office, (d) a representative of the mining contractor or permittee, (e) a representative from the affected community or communities, (f) a representative from the affected indigenous cultural community or communities, if any, and (g) a representative from an environmental non-government organization.[75]

11. As part of the terms and conditions of a Mineral Agreement or a Financial or Technical Assistance Agreement (*FTAA*), Section 228(c)[76] of the RIRR subjects the premises of mining contractors who availed of the benefits under Sections 222 to 227 of the RIRR to the **visitorial powers** of the MGB. The power allows **duly authorized representatives of the MGB** to conduct **inspection and examination of the books of accounts and other pertinent records and documents** of such contractors in order to ascertain a contractor's compliance with the Mining Act and its RIRR, as well as the terms and conditions of the Mineral Agreement or FTAA.

12. As part of the terms and conditions of a Drilling Lease Agreement, Section 248(h)[77] of the RIRR allows the **inspection of the drilling operations** of the lessee. The said inspection, which may be done at any time during the subsistence of the drilling lease agreement,

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To ensure and check performance of and compliance with the approved EPEP/AEPEP by the Contractors/Permit Holders, an MMT, as described in Section 185 hereof, shall monitor every quarter, or more frequently as may be deemed necessary, the activities stipulated in the EPEP/AEPEP. The expenses for such monitoring shall be chargeable against the Monitoring Trust Fund of the MRF as provided for in Section 181 hereof. The environmental monitoring reports shall be submitted by the MMT to the MRF Committee and shall serve as part of the agenda during its meetings as mentioned in Section 184 hereof. Said reports shall also be submitted to the CLRF Steering Committee to serve as one of the bases for the annual environmental audit it shall conduct.

[75] Section 185 of the RIRR.

[76] Section 228. *Conditions for Availment of Incentives*

The Contractor's right to avail of incentives under Sections 222 to 227, shall be subject to the following conditions:

x x x x

c. Visitorial powers - The Contractor shall allow the duly authorized representatives of the Bureau to inspect and examine its books of accounts and other pertinent records and documents to ascertain compliance with the Act and its implementing rules and regulations and the terms and conditions of the Mineral Agreement or FTAA[.]

[77] Section 248. *Terms and Conditions of the Drilling Lease Agreement*

The terms and conditions of the Drilling Lease Agreement are the following:

x x x x

h. The Director or his/her duly authorized representative may conduct an inspection of the drilling operation at any time during the term of the lease at the expense of the lessee[.]

> can only be conducted by the **Director of the MGB or his duly authorized representative**.

As can be observed, most of the administrative inspections sanctioned under the Mining Act and its RIRR fall under the exclusive responsibility of the MGB—either through its Director, one of its regional directors or an authorized representative of the said officials.[78] There are only two outliers to this norm—the *first* is the environmental monitoring and audit of mining sites under Section 174 of the RIRR, and the *second* is the inspection of mining permit areas that are covered by a Quarry, Sand and Gravel, Government Gratuitous, Guano, or Gemstone Gathering Permit pursuant to Sections 80(a)(5), 80(b)(6), 87(d) and 94(a) of the same regulation. The first has to be carried out by an MMT as described under Section 185 of the RIRR. The second, on the other hand, may be conducted by a provincial governor or city mayor, in addition to the regional director of the MGB.

Verily, Mayor Pilapil's intrusion and warrantless inspection on the mining site operated by BCMC and Prime Rock find absolutely no justification under the Mining Act and its RIRR. A municipal mayor—*on his own and acting by himself*—has no authority to order and conduct any of the administrative inspections sanctioned under the said act and executive rule. In this respect, we no longer perceive any need to dwell into petitioners' invocation of Sections 8(e), 80, 87 and 94 of the RIRR as grounds for Mayor Pilapil's actions; the same simply has no merit.

Mayor Pilapil's zeal to curb illegal mining activities within his municipality is commendable. However, that zeal can never justify taking a course of action that is not authorized under the law, much less be an excuse to flout basic constitutional rights of the people. Upon receiving the reports that Prime Rock was allegedly engaged in illegal mining, Mayor Pilapil could have simply applied for a judicial warrant to search the mining site of BCMC and Prime Rock for the purpose of verifying such report. Yet, he did not. Instead, Mayor Pilapil, on his own initiative, assembled a team of police officers and barangay officials, and led them in a raid that is not sanctioned by any provision of law. Under such circumstances, we cannot but make the conclusion that the warrantless ocular inspection conducted by Mayor Pilapil and his team on the mining site operated by BCMC and Prime Rock was illegal.

The illegality of the aforesaid ocular inspection means that Mayor Pilapil and his team were not in a lawful position when they were able to view the subject explosives. By this, the first requisite for a valid invocation of the plain view doctrine cannot be considered satisfied. Accordingly, Mayor

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[78] The pervasive role accorded to the MGB in the conduct of administrative inspections of the country's mining sites and areas echoes its status as the bureau primary responsible with the implementation of the Mining Act and entrusted with "*direct charge in the administration x x x of* [the country's] *mineral lands and mineral resources[.]*" (See Section 9 of RA No. 7942.)

Pilapil and his team's subsequent warrantless seizure of the subject explosives is not reasonable and runs against the constitutional proscription against unreasonable searches and seizures.

B

Assuming for the sake of argument that Mayor Pilapil's prior intrusion and inspection of the mining site operated by BCMC and Prime Rock had been lawful, the warrantless seizure of the subject explosives still cannot be sustained. The third requisite of the plain view doctrine—that the incriminating character of the item seized must have been immediately apparent to the officer who made the seizure—is just the same absent in the case at bench.

Even in the midst of a valid intrusion by a law enforcement officer, the plain view doctrine cannot be used to justify the indiscriminate seizure of any item that happens to fall within such officer's open view.[79] A contrary rule is nothing short of allowing government agents to conduct general exploratory searches of evidence – a scenario precisely condemned by the Constitution.[80] Thus, as conceived in jurisprudence, only items whose *incriminating character is immediately apparent* to the law enforcement officer may be seized pursuant to the plain view doctrine.[81]

In *United Laboratories, Inc. v. Isip,*[82] we laid down the test to determine when the "*incriminating character*" of a seized item may be considered as "*immediately apparent*" for purposes of applying the plain view doctrine:

> The immediately apparent test does not require an unduly high degree of certainty as to the incriminating character of evidence. **It requires merely that the seizure be presumptively reasonable assuming that there is probable cause to associate the property with criminal activity; that a nexus exists between a viewed object and criminal activity**.
>
> Incriminating means the furnishing of evidence as proof of circumstances tending to prove the guilt of a person.
>
> Indeed, probable cause is a flexible, common sense standard. **It merely requires that the facts available to the officer would warrant a man of reasonable caution and belief that certain items may be contrabanded or stolen property or useful as evidence of a crime**. It does not require proof that such belief be correct or more likely than true. A practical, non-traditional probability that incriminating evidence is involved is all that is required. The evidence thus collected must be seen and verified

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79 See *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).
80 *Id.*
81 See *Dimal v. People*, G.R. No. 216922, April 18, 2018, 862 SCRA 62, 95-96.
82 500 Phil. 342 (2005).

> as understood by those experienced in the field of law enforcement.[83] (Emphases supplied, citations omitted).

Stated otherwise, in order to satisfy the third requisite of the plain view doctrine, it must be established that the seized item—*on the basis of the attending facts and surrounding circumstances*—reasonably appeared, to the officer who made the seizure, as a contraband or an evidence of a crime.

As said, this requisite was not met in this case.

Taking another look at the established facts, we are convinced that the incriminating character of the subject explosives—if indeed they have one—was not immediately apparent to Mayor Pilapil and his inspection team. The facts attending and surrounding the discovery and seizure of the subject explosives could not have engendered a reasonable belief on the part of Mayor Pilapil and his team that the subject explosives were contraband or evidence of a crime, *viz.*:

1. The presence of the explosives within a mining site is not unusual. Even the Mining Act recognizes the necessity of explosives in certain mining operations and, by this reason, confers a *conditional* right on the part of a mining contractor or permittee to possess and use explosives, provided they procure the proper government licenses therefor.[84] Hence, the mere possession of explosives, especially by a mining contractor in a mining site, cannot be instantly characterized as illegal *per se*.

2. At the time they were first discovered by a member of Mayor Pilapil's inspection team, the subject explosives were not being used or even being prepared to be used. They were kept in bags which, in turn, were stored inside an open room.[85] Thus, no inference that such explosives were evidence of any alleged illegal mining can be drawn.

The foregoing circumstances clearly contradict any notion that there was any observable illegality in the subject explosives. Mayor Pilapil and his inspection team seized the subject explosives without any probable cause, nay without any reason, apart from the subject explosives being exposed to their sight. Such seizure, therefore, is arbitrary and seems to have been made only

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83 *Id.* at 363.

84 Section 74 of the Mining Act provides:

Section 74. *Right to Possess Explosives.* – A contractor/exploration permittee [has] the right to possess and use explosives within his contract/permit area as may be necessary for his mining operations upon approval of an application with the appropriate government agency in accordance with existing laws, rules and regulations promulgated thereunder: Provided, That the Government reserves the right to regulate and control the explosive accessories to ensure safe mining operations.

85 *Rollo* (G.R. No. 228589), pp. 126 and 136-137.

in the hopes that the subject explosives would subsequently prove to be a contraband or an evidence of a crime. The seizure, in other words, is nothing but a veiled fishing expedition of evidence.

Their incriminating character not being immediately apparent, the subject explosives—even if discovered in plain view—are not items that may be validly seized without a warrant pursuant to the plain view doctrine. Accordingly, Mayor Pilapil and his team's warrantless seizure of the subject explosives is not reasonable and runs against the constitutional proscription against unreasonable searches and seizures.

II

Since the subject explosives have been unequivocally seized in violation of the constitutional proscription against unreasonable searches and seizures, they are properly regarded by the CA as "*fruits of a poisonous tree*" subject to the *exclusionary principle* set forth in Section 3(b), Article III of the Constitution. The subject explosives are inadmissible and may not be considered as evidence for any purpose in any proceeding[86]—including as bases for a finding of probable cause to arrest and detain an accused for trial.

Without the subject explosives, the indictment for illegal possession of explosives and, ultimately, the warrant of arrest against Cu will have no leg to stand on.

With that, we must deny the present petitions.

WHEREFORE, premises considered, the consolidated petitions are **DENIED**. The Decision dated June 10, 2016 and the Resolution dated December 2, 2016 of the Court of Appeals in CA-G.R. SP No. 133253 are **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Chief Justice

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86 CONSTITUTION, Section 3(b) of Article III.

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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