EN BANC

G.R. No. 248932 (Province of Occidental Mindoro represented by Governor Eduardo B. Gadiano, Petitioner, **v. Agusan Petroleum and Mineral Corporation**, Respondent.)

Promulgated:

January 14, 2025

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CONCURRENCE

LAZARO-JAVIER, *J.*:

In a series of ordinances[1] passed in 2008 and 2009, the Province of Occidental Mindoro declared a 25-year moratorium on all large-scale mining activities within its territorial jurisdiction. The ban of large-scale mining activities included exploration, drilling, excavation, feasibility, development, and utilization activities under Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995.[2] These ordinances were struck down per Order of the Regional Trial Court, Mamburao, Occidental Mindoro, for being unconstitutional and contrary to law.[3]

Before the Court, the Province of Occidental Mindoro maintains that the ordinances were legislated in pursuit of its constitutional mandate to protect and advance the right of the people to a balanced and healthful ecology as well as to promote the right to health of its constituents.[4] More, Republic Act No. 7942 closed off certain areas from any mining activities including "areas expressly prohibited by law." By virtue of these ordinances, Occidental Mindoro has become an area where mining is prohibited by law.[5] The Province of Occidental Mindoro likewise claims that the temporary mining ban is an exercise of the power of local government units to regulate the use of resources within their territories and is a valid exercise of its police power. In any event, these ordinances enjoy the presumption of constitutionality and validity and any doubt on the extent of the local government unit's power to act should be resolved in favor of the devolution of powers.[6]

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1 Decision, pp. 2-3. The Resolution No. 109 approving Ordinance No. 106-2007, s. 2008 of the Municipality of Abra de Ilog, Occidental Mindoro and Resolution No. 140 series of 2009 adopting Provincial Ordinance No. 34-09

2 *Id.* at 2–4.

3 *Id.* at 6.

4 *Id.*

5 *Id.* at 7.

6 *Id.*

The *ponencia* upheld the Order of the trial court and invalidated the assailed Ordinances of the Province of Occidental Mindoro. The exercise by a local government unit of its Constitutionally guaranteed autonomy must be consistent with the provisions of Republic Act No. 7942, which specifically regulates mining.[7] Under the same law, the State has designated the Department of Environment and Natural Resources (DENR) to regulate the exploration, development, and proper use of all its mineral resources. For this purpose, it is the DENR that is similarly authorized to enter into mineral agreements and negotiate financial and technical assistance agreements. This responsibility is carried out in coordination with local government units which are also tasked with the management and maintenance of ecological balance. As such, prior consultations with the affected communities and approval by the *Sanggunian* concerned are required. This joint effort, however, does not permit local government units to impose a blanket prohibition on all large-scale mining activities.[8] As well, local government units cannot close off areas within their territorial jurisdiction from the coverage of Republic Act No. 7942 with the justification that these areas are "expressly prohibited by law" through ordinances they enact because local ordinances cannot be presumed included in the term "laws" under Section 19(d) of Republic Act No. 7942.[9] In any event, the law provides sufficient safeguards for the protection of the community and the environment with the active involvement of local government units.[10]

I concur with the enlightened disquisitions of the good *Ponente*.

It is well established that for an ordinance to be valid, it must not only be enacted within the corporate powers of the local government unit, in accordance with the procedure prescribed by law, but must also conform to the following substantive requirements:

(1) It must not contravene the constitution or any statute;
(2) It must not be unfair or oppressive;
(3) It must not be partial or discriminatory;
(4) It must not prohibit but may regulate trade;
(5) It must be general and consistent with public policy; and
(6) It must not be unreasonable.[11]

A perusal of the assailed ordinances readily reveals that these issuances not only contravened Republic Act No. 7942 but also sought to prohibit trade.

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7 *Id.* at 15–16.
8 *Id.* at 17–22.
9 *Id.* at 22–23.
10 *Id.* at 25–26.
11 *City of Manila et al. v. Laguio*, 495 Phil 289 (2005) [Per J. Tinga, *En Banc*]. Citations omitted.

In *Batangas CATV, Inc. v. Court of Appeals*,[12] the Court nullified a Resolution enacted by the *Sangguniang Panlungsod* for contravening the provisions of general law, viz.:

> Resolution No. 210 is an enactment of an LGU acting only as agent of the national legislature. Necessarily, its act must reflect and conform to the will of its principal...
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> ...In *De la Cruz vs. Paraz*, we laid the general rule "that ordinances passed by virtue of the implied power found in the general welfare clause must be reasonable, consonant with the general powers and purposes of the corporation, and not inconsistent with the laws or policy of the State."
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> The apparent defect in Resolution No. 210 is that it contravenes E.O. No. 205 and E.O. No. 436 insofar as it permits respondent *Sangguniang Panlungsod* to usurp a power exclusively vested in the NTC, i.e., the power to fix the subscriber rates charged by CATV operators. As earlier discussed, the fixing of subscriber rates is definitely one of the matters within the NTC's exclusive domain.
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> In this regard, **it is appropriate to stress that where the state legislature has made provision for the regulation of conduct, it has manifested its intention that the subject matter shall be fully covered by the statute, and that a municipality, under its general powers, cannot regulate the same conduct.** In *Keller vs. State*, it was held that: "Where there is no express power in the charter of a municipality authorizing it to adopt ordinances regulating certain matters which are specifically covered by a general statute, a municipal ordinance, insofar as it attempts to regulate the subject which is completely covered by a general statute of the legislature, may be rendered invalid. . . . Where the subject is of statewide concern, and the legislature has appropriated the field and declared the rule, its declaration is binding throughout the State." A reason advanced for this view is that such ordinances are in excess of the powers granted to the municipal corporation.
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> Since E.O. No. 205, a general law, mandates that the regulation of CATV operations shall be exercised by the NTC, an LGU cannot enact an ordinance or approve a resolution in violation of the said law.
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> It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. **An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law**[.][13] (Emphasis supplied, citations omitted)

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12 482 Phil. 544 (2004) [Per J. Sandoval-Gutierrez, *En Banc*].

13 *Id.* at 564.

The same principles in *Batangas CATV, Inc.* were applied by the Court in *City of Batangas v. Philippine Shell Petroleum Corporation,*[14] where the Court underscored the extent of local autonomy as follows:

> The policy of ensuring the autonomy of local governments was not intended to create an *imperium in imperio* and install intra-sovereign political subdivisions independent of the sovereign state. **As agents of the state, local governments should bear in mind that the police power devolved to them by law must be, at all times, exercised in a manner consistent with the will of their principal.**[15] (Emphasis supplied, citations omitted)

As it currently stands, it is the State's policy to promote the rational exploration, development, utilization, and conservation of all mineral resources through the combined efforts of the government and the private sector.[16] At the heart of this policy is the principle of sustainable development which aims to meet "the needs of the present without compromising the ability of the future generations to meet their own needs, with the view of improving the total quality of life, both now and in the future."[17] Mining activities are required to adhere to the best practices in environmental management and must be undertaken with due and equal emphasis on economic and environmental considerations as well as health, safety, social, and cultural concerns.[18]

Evidently, large-scale mining and exploration of resources are legally permissible activities subject to compliance with the exacting regulations imposed by Republic Act No. 7942 and its implementing rules and regulations. What the national government has sanctioned, the local government, as its agent, may not simply disallow. While the local government may have basis to object to the proposed mining activities of a holder of mining agreement or a financial or technical assistance agreement during the required consultations, that point has yet to be reached in this case. As succinctly expressed by the erudite Senior Associate Justice Marvic Mario Victor F. Leonen, the legal framework allows local government units to prohibit *specific*, and *not all*, mining projects within its area of control based on its assessment of each mining project's environmental, social, and economic impact. In enacting the assailed ordinances, the Province of Occidental Mindoro not only acted prematurely, but also *ultra vires*.

Further, in *City of Manila v. Laguio,*[19] the Court elucidated on the power to regulate vis-à-vis the power to prohibit:

> Clearly, with respect to cafes, restaurants, beerhouses, hotels, motels, inns, pension houses, lodging houses, and other similar

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14 810 Phil. 566 (2017) [Per J. Caguioa, First Division].
15 *Id.* at 569.
16 Administrative Order No. 2010-21 (2010), Chapter 1, sec. 2.
17 Administrative Order No. 2010-21 (2010), Chapter 1, sec. 3.
18 Administrative Order No. 2010-21 (2010), Chapter 1, sec. 3(a)(2)-(4).
19 495 Phil. 289 (2005) [Per J. Tinga, *En Banc*].

> establishments, the only power of the City Council to legislate relative thereto is to regulate them to promote the general welfare. The Code still withholds from cities the power to suppress and prohibit altogether the establishment, operation and maintenance of such establishments. It is well to recall the rulings of the Court in *Kwong Sing v. City of Manila* that:
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> **The word "regulate," as used in subsection (l), section 2444 of the Administrative Code, means and includes the power to control, to govern, and to restrain; but "regulate" should not be construed as synonymous with "suppress" or "prohibit."** Consequently, under the power to regulate laundries, the municipal authorities could make proper police regulations as to the mode in which the employment or business shall be exercised.
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> And in *People v. Esguerra*, wherein the Court nullified an ordinance of the Municipality of Tacloban which prohibited the selling, giving and dispensing of liquor ratiocinating that the municipality is empowered only to regulate the same and not prohibit. The Court therein declared that:
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> [A]s a general rule when a municipal corporation is specifically given authority or power to regulate or to license and regulate the liquor traffic, power to prohibit is impliedly withheld.[20] (Emphasis supplied, citations omitted)

In no case may the 25-year moratorium on all large-scale mining activities be construed as a mere form of regulation. In fact, as discussed above, there is nothing to regulate in relation to respondent Agusan Petroleum and Mineral Corporation as it has yet to commence with its exploration activities.

Plainly, the outright ban of all large-scale mining activities fails to surpass the test of a valid ordinance.

Even as a measure of police power, the assailed ordinances do not satisfy the requirements. Police power requires the concurrence of the following requisites: (1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive upon individuals.[21]

In *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*,[22] the Court struck down ordinances legislated by the *Sangguniang Panglungsod* of Lucena City which sought to ease the worsening traffic conditions by granting a 25-year exclusive franchise for the establishment of a permanent common terminal for buses and jeepneys. Consequently, the maintenance of other terminals within the city was prohibited. Though the ordinances satisfied the

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20 *Id.* at 330-331.

21 *Social Justice Society et al. v. Atienza*, 568 Phil. 658 (2008) [Per J. Corona, First Division].

22 492 Phil. 314 (2005) [Per J. Carpio-Morales, *En Banc*].

first requisite for the exercise of police power, the Court found that the means employed were not reasonable:

> The questioned ordinances having been enacted with the objective of relieving traffic congestion in the City of Lucena, they involve public interest warranting the interference of the State. The first requisite for the proper exercise of police power is thus present.
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> . . . .
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> This leaves for determination the issue of whether the means employed by the Lucena Sangguniang Panlungsod to attain its professed objective were reasonably necessary and not unduly oppressive upon individuals.
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> With the aim of localizing the source of traffic congestion in the city to a single location, the subject ordinances prohibit the operation of all bus and jeepney terminals within Lucena, including those already existing, and allow the operation of only one common terminal located outside the city proper, the franchise for which was granted to petitioner. The common carriers plying routes to and from Lucena City are thus compelled to close down their existing terminals and use the facilities of petitioner.
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> In *De la Cruz v. Paras*, this Court declared unconstitutional an ordinance characterized by overbreadth. In that case, the Municipality of Bocaue, Bulacan prohibited the operation of all night clubs, cabarets and dance halls within its jurisdiction for the protection of public morals. Held the Court:
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> > **It cannot be said that such a sweeping exercise of a lawmaking power by Bocaue could qualify under the term reasonable. The objective of fostering public morals, a worthy and desirable end[,] can be attained by a measure that does not encompass too wide a field. Certainly, the ordinance on its face is characterized by overbreadth. The purpose sought to be achieved could have been attained by reasonable restrictions rather than by an absolute prohibition.**
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> > The admonition in Salaveria should be heeded: "The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation." It is clear that in the guise of a police regulation, there was in this instance a clear invasion of personal or property rights, personal in the case of those individuals desirous of patronizing those night clubs and property in terms of the investments made and salaries to be earned by those therein employed. (Underscoring supplied)
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> In *Lupangco v. Court of Appeals*, this Court, in declaring unconstitutional the resolution subject thereof, advanced a similar consideration. That case involved a resolution issued by the Professional Regulation Commission which prohibited examinees from attending review classes and receiving handout materials, tips, and the like three days before the date of examination in order to preserve the integrity and purity of the

licensure examinations in accountancy. Besides being unreasonable on its face and violative of academic freedom, the measure was found to be more sweeping than what was necessary, *viz*:

> Needless to say, the enforcement of Resolution No. 105 is not a guarantee that the alleged leakages in the licensure examinations will be eradicated or at least minimized. Making the examinees suffer by depriving them of legitimate means of review or preparation on those last three precious days when they should be refreshing themselves with all that they have learned in the review classes and preparing their mental and psychological make-up for the examination day itself — **would be like uprooting the tree to get rid of a rotten branch. What is needed to be done by the respondent is to find out the source of such leakages and stop it right there.** If corrupt officials or personnel should be terminated from their loss, then so be it. Fixers or swindlers should be flushed out. Strict guidelines to be observed by examiners should be set up and if violations are committed, then licenses should be suspended or revoked. … (Emphasis and underscoring supplied)

As in *De la Cruz* and *Lupangco*, the ordinances assailed herein are characterized by overbreadth. They go beyond what is reasonably necessary to solve the traffic problem. Additionally, since the compulsory use of the terminal operated by petitioner would subject the users thereof to fees, rentals and charges, such measure is unduly oppressive, as correctly found by the appellate court. What should have been done was to determine exactly where the problem lies and then to stop it right there.

. . . .

As for petitioner's claim that the challenged ordinances have actually been proven effective in easing traffic congestion: **Whether an ordinance is effective is an issue different from whether it is reasonably necessary. It is its reasonableness, not its effectiveness, which bears upon its constitutionality.** If the constitutionality of a law were measured by its effectiveness, then even tyrannical laws may be justified whenever they happen to be effective.[23] (Emphasis supplied and in the original, citations omitted)

The same is true in the present case. Laudable as the commitment of the Province of Occidental Mindoro may be to the protection of the environment, its constituents, as well as the promotion of their health, such good intentions may not be executed through means that are overly broad. A complete ban on mining may be considered by the Province of Occidental Mindoro as the most effective way to achieve these objectives. As in *Lucena Grand Central Terminal, Inc.*, however, the perceived effectiveness of the policy is not the measure of constitutionality. Be that as it may, the best interests of the people of the Province of Occidental Mindoro may still be upheld by its local government's observance of the same rigor, as it had

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[23] *Id.*

demonstrated in this case, in evaluating and approving respondent's proposed mining activities.

Thus, I vote to **DENY** the Petition.

AMY C. LAZARO-JAVIER
Associate Justice