Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DIZON COPPER SILVER MINES, INC., Petitioner,	**G.R. No. 183573** Present:
-versus-	CARPIO, *J.*, *Chairperson*, BRION, PEREZ, SERENO, and REYES, *JJ.*
DR. LUIS D. DIZON, Respondent.	Promulgated: JUL 16 2012

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DECISION

PEREZ, *J.*:

For review[1] are the Decision[2] dated 9 May 2008 and Resolution[3] dated 1 July 2008 of the Court of Appeals in CA-G.R. SP No. 99947. In the assailed decision, the Court of Appeals declared as void *ab initio* petitioner's applications for Mineral Production Sharing Agreements (MPSA) but held as valid a similar application of the respondent. The decision was a reversal of the ruling[4] of the Office of the President (OP) in O.P. Case No. 06-C-113 and a reinstatement of

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1 *Via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

2 Penned by Associate Justice Sesinando E. Villon with Associate Justices Remedios A. Salazar-Fernando and Rosalinda Asuncion-Vicente, concurring. *Rollo*, pp. 9-24.

3 Id. at 25.

4 Signed by former Executive Secretary Eduardo R. Ermita under authority of President Gloria Macapagal-Arroyo. Id. at 225-233.

the previous orders[5] issued by the Secretary of the Department of Environment and Natural Resources (DENR). The decretal portion of the decision of the appellate court accordingly reads:[6]

> **WHEREFORE**, the petition is **GRANTED**. The assailed decision dated December 4, 2006 and resolution dated June 20, 2007 of the Office of the President are hereby **REVERSED and SET ASIDE**. The orders dated December 29, 2005 and February 14, 2006 issued by the Secretary of the Department of Environment and Natural Resources are **REINSTATED**.

The antecedents are as follows:

The 57 Mining Claims

On 13 November 1935, Celestino M. Dizon (Celestino) filed with the Office of the Mining Recorder,[7] *Declarations of Location*[8] over fifty-seven (57) mining claims in San Marcelino, Zambales. The 57 mining claims, with an aggregate area of 513 hectares, were thereby recorded in the following manner:[9]

1. Twenty-nine (29) mining claims were registered in the name of Celestino.
2. Twelve (12) mining claims were registered in the name of Maria D. Dizon, the wife of Celestino.
3. Eleven (11) mining claims were registered in the name of Helen D. Dizon, a daughter of Celestino.

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5 The 29 December 2005 Order was issued by former DENR Secretary Michael T. Defensor, while the 14 February 2006 Order was issued by then DENR Acting Secretary Ramon J.P. Paje. Id. at 153-154 and 173-174.

6 Id. at 23.

7 Of Iba, Zambales.

8 The declaration of locations was submitted under Act No. 624 in relation to Section 22 of Act of Congress of 1 July 1902.

9 *Rollo*, p. 536.

4. Three (3) mining claims were registered in the name of the heirs of Eustaquio L. Dizon, who was the father of Celestino.
5. Two (2) mining claims were registered in the name of the heirs of Tiburcia M. Dizon, who was the mother of Celestino.

In 1966, herein petitioner Dizon Copper-Silver Mines, Inc. was organized.[10] Among its incorporators were Celestino and his son, herein respondent Dr. Luis D. Dizon.[11]

On 27 January 1967, Celestino, for himself and as attorney-in-fact of the other registered claim-owners, assigned their 57 mining claims to petitioner.[12]

On 6 September 1975, petitioner entered into an *Operating Agreement*[13] with Benguet Corporation[14] (Benguet). In such agreement, petitioner authorized Benguet to, among others, "*explore, equip, develop and operate*" the 57 mining claims.[15]

In 1977, Celestino died.

In 1978, the 57 mining claims became the subject of a mining lease application[16] with the Bureau of Mines.[17] Consequently, on 1

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10 Id. at 10.
11 Id.
12 The assignment was mentioned and reaffirmed in a document entitled "*Agreement*" dated 8 October 1975 between petitioner and Benguet. Id. at 532-536.
13 Id. at 94-147.
14 Then known as "Benguet Consolidated, Inc."
15 *Rollo*, p. 95.
16 The application was submitted pursuant to Presidential Decree No. 1214, which requires holders of mining claims under the Act of Congress of 1 July 1902, as amended, to file therefor, within one (1) year from the approval of such decree, mining lease applications under Presidential Decree No. 463, or otherwise known as the Mineral Resources Development Decree of 1974 (Section 1 of Presidential Decree No. 1214).
17 Now Mines and Geosciences Bureau (Presidential Decree No. 1281 in relation to Section 15 of Executive Order No. 192 dated 10 June 1987).

February 1980, the government issued five (5) Mining Lease Contracts (MLCs) covering six (6) out of the 57 mining claims. They are:[18]

1. MLC No. MRD-211 – issued in favor of the **heirs of Celestino**;
2. MLC No. MRD-212 – issued in favor of the **heirs of Celestino**;
3. MLC No. MRD-213 – issued in favor of **Maria D. Dizon**;
4. MLC No. MRD-219 – issued in favor of **Helen D. Dizon**;
5. MLC No. MRD-222 – issued in favor of the **heirs of Celestino**.

The MLCs were issued for a term of twenty-five (25) years, or up to *31 January 2005*.[19]

The MPSA Applications

On 4 July 1991, Benguet filed an MPSA application with the DENR.[20] The application, designated as **MPSA-P-III-16**,[21] seeks to place all existing mining claims and interests then operated by Benguet under production sharing agreements in line with Executive Order No. 279 of 25 July 1987.[22] Specifically, MPSA-P-III-16 covers the following mining interests:[23]

1. Forty-two (42) mining claims[24] of the Sagittarius Alpha Realty Corporation;

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18 *Rollo*, pp. 537-576.
19 Id. at 538, 546, 554, 562 and 570.
20 Id. at 10.
21 Formerly denominated as MA-P-III-16.
22 *See* Article 9.1. of DENR Administrative Order No. 57, series of 1989.
23 Originally covers an aggregate area of more than 8,000 hectares, but was subsequently amended to cover just an area of more than 4,000 hectares. Records, pp. 342-343.
24 Covering an area of 3,195.92 hectares. Id. at 342.

2. Two (2) prospecting permits over two (2) parcels of land[25] of the Camalca Mining Corporation; *and*
3. The remaining **51 mining claims of petitioner** are *not* under MLCs.

On 3 March 1995, Republic Act No. 7942, or the Philippine Mining Act of 1995, was enacted.

On 12 December 1997, Benguet and petitioner terminated their *Operating Agreement*. In 2004, Benguet assigned MPSA-P-III-16 in favor of the latter.[26] On 22 October 2004, the DENR Mines and Geosciences Bureau (MGB) Regional Office III signified its acquiescence and recorded MPSA-P-III-16 in the name of petitioner.[27]

On 16 December 2004, petitioner sent a letter to the DENR MGB Regional Office III, requesting the said office to include the 6 mining claims under MLCs in MPSA-P-III-16.[28] On 4 January 2005, the DENR MGB Regional Office III informed[29] the petitioner of its approval of the request and manifested that the 6 mining claims under the MLCs will now be included in MPSA-P-III-16.

Despite the pendency of MPSA-P-III-16, petitioner nonetheless filed with the DENR another MPSA application on 31 January 2005. This time, petitioner's application was designated as **MPSA-P-III-03-**

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25 Covering an area of 1,000 hectares. Id.
26 Thru a "Deed of Assignment." Id. at 12-13.
27 *Rollo*, p. 150.
28 Id. at 440.
29 Id. at 441.

05[30] and covers ***all* 57 of its mining claims, inclusive of the 6 under MLCs**.[31]

On 28 February 2005, respondent filed with the DENR his **MPSA-P-III-05-05**[32]—an MPSA application covering 281.9544 hectares of mineral location in San Marcelino, Zambales. **It includes the 6 mining claims under MLCs**.[33]

Subsequently, the DENR MGB Regional Office III verified that several areas applied for by respondent in MPSA-P-III-05-05 overlaps with those in petitioner's MPSA-P-III-16 and MPSA-III-05-05.[34]

The DENR Orders

On 29 December 2005, the DENR Secretary issued an Order[35] declaring petitioner's MPSA-P-III-16 and MPSA-P-III-03-05 void *ab initio*. In contrast, the order held respondent's MPSA-P-III-05-05 as a valid MPSA application worthy of due course.[36] The dispositive portion of the order thus reads:[37]

> **WHEREFORE**, in view of the foregoing considerations, Benguet Corporation MPSA-III-P-16 [sic] application and Dizon Copper Silver Mines Incorporated Application MP-P-III-03-05 [sic] are declared, as they are, declared VOID AB-INITIO, while Dr. Luis D. Dizons MA-P-III-05-05 [sic] (APSA-0001389-III) is hereby, as it is declared VALID and EXISTING and can be given

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30 Formerly denominated as MA-P-III-03-05. Id. at 11.
31 Records, p. 342.
32 Formerly denominated as MA-P-III-05-05. *Rollo*, p. 11.
33 Records, p. 342-343.
34 Id. at 341-342.
35 The order was issued by former DENR Secretary Michael T. Defensor. *Rollo*, pp. 153-154.
36 Id. at 154.
37 Id.

> due course, subject to strict compliance with the provision of the Philippine Mining Act of 1995 and its Implementing Rules and Regulations.

In nullifying petitioner's applications, the DENR Secretary echoed the findings of the DENR MGB Regional Office III that:

1. **With respect to MPSA-P-III-16**. Benguet has no personality to file MPSA-P-III-16.[38] Benguet, by itself, has no legal personality to file such application because it is a mere operator of petitioner.[39] Moreover, MPSA-P-III-16 was denied *area status and clearance* by the Forest Management Services of DENR Region III.[40]

2. **With respect to MPSA-P-III-03-05**. MPSA-P-III-03-05 was filed at a time when several areas included therein were still *closed* to mining applications.[41] Such areas refer to those subject to the MLCs that, as it turned out, were not yet expired when MPSA-P-III-03-05 was filed.[42]

On 17 January 2006, petitioner filed before the DENR a *Motion for Reconsideration*[43] of the 29 December 2005 order. Petitioner also submitted a *Supplemental Motion for Reconsideration*[44] on 31 January 2006.

On 14 February 2006, the DENR Acting Secretary issued an Order[45] denying petitioner's motion for reconsideration. The motion for reconsideration of the petitioner was dismissed for being moot and

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38 Id. at 153.
39 Id.
40 Id. at 154.
41 Id.
42 Id.
43 Id. at 155-164.
44 Id. at 165-172.
45 The order was issued by then DENR Acting Secretary Ramon J.P. Paje. Id. at 173-174.

academic, on account of the fact that on the day before such motion was filed, or on 17 January 2006, the DENR already approved MPSA-P-III-05-05 and a full-fledged MPSA, designated as **MPSA No. 227-2006-III**,[46] was already issued in favor of the respondent.[47]

Petitioner promptly filed an appeal[48] to the Office of the President.

The OP Ruling

On appeal, the OP completely reversed the DENR Secretary. In its Decision[49] dated 4 December 2006, the OP: (1) overturned the 29 December 2005 and 14 February 2006 orders of the DENR Secretary, (2) cancelled the approval of MPSA-P-III-05-05 into MPSA No. 227-2006-III, and (3) revived petitioner's MPSA-P-III-03-05 for further re-evaluation by the DENR. The *fallo* of the OP ruling reads:[50]

> **WHEREFORE**, premises considered, the DENR Order dated December 29, 2005 declaring MPSA-P-III-16 and MA-P-III-03-05 void *ab initio* and declaring MA-P-III-05-05 as valid and existing, and the DENR ORDER dismissing DCSMI's [petitioner's] motion for reconsideration, are hereby **REVERSED** and **SET ASIDE**. The issuance of MPSA No. 227-2006-III in favor of Dr. Dizon [respondent] is likewise **SET ASIDE**. The Mineral Production Agreement Application of DCMI [petitioner], denominated as MA-P-III-03-05, is hereby **REMANDED** to the DENR for **REEVALUATION** if the same is compliant with the requirements of the law.

Aggrieved, respondent appealed[51] to the Court of Appeals.

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46 Records, pp. 19-40.
47 *Rollo*, p. 174.
48 Id. at 175-200.
49 Signed by former Executive Secretary Eduardo R. Ermita under authority of then President Gloria Macapagal-Arroyo. Id. at 225-233.
50 Id. at 232.
51 *Via* a Petition for Review under Rule 43 of the Rules of Court.

The Decision of the Court of Appeals and This Petition

As earlier intimated, the Court of Appeals reversed the ruling of the OP and reinstated the 29 December 2005 and 14 February 2006 Orders of the DENR Secretary.[52] In doing so, the appellate court substantially agreed with the findings of the DENR.

Hence, the present appeal[53] raising the core issue of whether the Court of Appeals erred in reinstating the 29 December 2005 and 4 February 2006 Orders of the DENR Secretary.

The petitioner, for its part, would like this Court to answer in the affirmative. Petitioner maintains that MPSA-P-III-16 and MPSA-P-III-03-05 were valid MPSA applications.[54] In support thereof, petitioner contradicts the findings of the DENR, as concurred in by the Court of Appeals, and argues that:

1. Benguet has the personality to file MPSA-P-III-16.[55] The authority of Benguet to file mining applications on behalf of petitioner is justified by—

   a. Sections 1.01(b), 1.03, 7.01(j) and 9.04 of the *Operating Agreement* between petitioner and Benguet:

      i. Section 1.01(b)[56] gives Benguet authority for the "*acquisition of other real rights xxx.*"

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52 *Rollo*, pp. 9-23.
53 Id. at 29-72.
54 Id.
55 Id. at 58-62.
56 Id. at 96.

ii. Section 1.03[57] grants Benguet authority to "*apply for patent or lease and/or patent or lease surveys*" with respect to the 57 mining claims.

iii. Section 7.01(j)[58] gives Benguet authority to "*xxx enter into contracts, agreements xxx*."

iv. Section 9.04[59] constitutes Benguet as attorney-in-fact of petitioner, authorized "*to prepare, execute, amend, correct, supplement and register any document relating to or affecting*" the 57 mining claims "*which may be necessary to be executed, amended, corrected, supplemented, filed or registered*."

b. *Letter dated 14 June 1991* of petitioner to Benguet,[60] which was appended in MPSA-P-III-16. In the said letter, petitioner, thru its then president Mr. Juvencio D. Dizon, signified its conformity with the proposal of Benguet to file a production sharing agreement application covering the 57 mining claims.[61]

2. Benguet, by submitting the complete requirements for an MPSA application in MPSA-P-III-16, fully complied with the requirements of Sections 112 and 113 of Republic Act No. 7942.[62] Thus, petitioner still has the preferential right over any other similar

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57 Id. at 97-98.
58 Id. at 112.
59 Id. at 116-117.
60 Id. at 148.
61 Id.
62 Id. at 62-66.

applicants to pursue the area covered by the subject 57 mining claims.[63]

3. While MPSA-P-III-03-05 was filed during the subsistence of the MLCs, such fact does not suffice to totally nullify said application. The claims under the MLCs, which are supposedly *not* open to mining applications, all but occupy only a small portion of the area covered in MPSA-P-III-03-05.[64]

Petitioner also accuses the DENR Secretary of "*hastily*" approving MPSA-P-III-05-05 into MPSA No. 227-2006-III.[65] Petitioner alleges that MPSA-P-III-05-05 was approved despite non-compliance by the respondent with the "*mandatory*" requirements under Sections 37 and 38 of the Implementing Rules and Regulations (IRR) of Republic Act No. 7942.[66]

OUR RULING

We deny the appeal.

MPSA-P-III-16 is Not a Valid MPSA Application

Before discussing the merits of MPSA-P-III-16 as an MPSA application, it is significant to point out that as of 22 December 2005, the DENR Secretary had already issued a *Memorandum*[67] sustaining the denial by the Forest Management Service of DENR Region III to

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63 Id. at 65.
64 Id. at 70.
65 Id. at 46-57.
66 The IRR of Republic Act No. 7942 is DENR Administrative Order No. 96-40. Id. at 46-52.
67 Records, p. 358.

issue an *area status and clearance* for MPSA-P-III-16. Among the reasons set forth by the DENR in refusing to issue such clearance were:[68]

> 1. x x x.
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> 2. The application for clearance was denied two times by the Technical Director of the Forest Management Service of DENR Region III which is the "Government Agency concerned" with the authority in the regions which has jurisdiction over the applied for as far as Forest management is concern [sic]. The first denial was on November 9, 1998 and the second on February 25, 1999.
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> **3. The area is within both a "DENR Project Area" – The President Ramon Magsaysay Reforestation Project of CENRO – Olongapo; and, "The Southern Zambales Forest Reserve established under Republic Act No. 3092" with the latter encompassing most of the entire area of the MPSA application**. (Emphasis supplied).

Verily, the DENR Secretary excluded "*most of the entire area*" originally covered by MPSA-P-III-16 as closed to mining applications for being within the "*President Ramon Magsaysay Reforestation Project of CENRO–Olongapo*" and "*The Southern Zambales Forest Reserve*."[69] The *Memorandum*, as the Court takes it, effectively leaves the mining claims of petitioner as the only point of contention left in MPSA-P-III-16.

Now, to the issue at hand.

As can be culled from the facts, Benguet filed MPSA-P-III-16 in order to place the mining claims and interests operated by it, *which includes those of the petitioner*, under MPSAs. The application, in

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[68] Id.
[69] Id.

effect, seeks to enforce a *right*[70] belonging to holders of existing mining claims and others interests to enter into mineral agreements with the government. As mere operator, therefore, Benguet cannot file MPSA-P-III-16 *in its name* without authorization from the holders of the mining claims and interests included therein.

Petitioner argues in favor of the validity of MPSA-P-III-16, at least insofar as its mining claims are concerned, on the assertion that it duly authorized Benguet to file the application under their *Operating Agreement* and its *Letter dated 14 June 1991*.[71]

We are not convinced.

First. It must be clarified at the outset that the inclusion of the 6 mining claims under MLCs in MPSA-P-III-16 is not valid. The records of this case are definite that the MLCs covering 6 of the subject claims were actually issued by the government in the names of Maria Dizon, Helen Dizon and the heirs of Celestino—*not* in favor of the petitioner.[72] Hence, such mining leases could not be included in MPSA-P-III-16 for possible *conversion* into MPSAs without securing the individual consent of the recognized lessees thereof. Needless to state, authorization by the petitioner in connection with the mining claims covered by the MLCs, if there was any, would not be material.

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[70] Such right was affirmed in Section 113 of Republic Act No. 7942, wherein holders of existing mining claims or lease/quarry applications were given a preferential right to enter into mineral agreements with the government involving their claims or pending applications, to wit:

Section 113. *Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications* – Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.

[71] *Rollo*, pp. 58-62.

[72] Id. at 537-576.

Second. With respect to the remaining 51 mining claims not under MLCs, this Court finds absolutely nothing in the *Operating Agreement* between petitioner and Benguet that can reasonably be construed as giving the latter authority to file an MPSA application thereon. After perusal of the records, this Court finds that the provisions of the *Operating Agreement* relied upon by petitioner in arguing otherwise, were taken out of context:

1. Benguet's authority "*to acquire real rights*" under Section 1.01(b) is actually limited only to such rights "*as indicated in the Development Program*" of the *Operating Agreement*.[73] Unfortunately, an MPSA was never shown to have been contemplated by, much less included in, such Development Program.

2. Section 1.03 only grants Benguet authority to "*apply for patent or lease and/or patent or lease surveys*."[74] However, as will be discussed below, a mining patent, lease or any survey thereof is substantially different from an MPSA.

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[73] Section 1.01(b) of the *Operating Agreement*, in full, provides:
Section 1.01 Work Obligations Prior to Productive Operation.
During the period the Agreement is in force, BENGUET agrees to perform, prior to productive operation, the following in accordance with generally accepted mining and business practices suitable to Philippine conditions:
a. xxx.
b. to spend not less than P5.2 million in the development of the property within one (1) year from the signing of the Operating Agreement. A portion of said amount shall be spent for the construction of roads and the **acquisition of other real rights as indicated in the attached Development Program marked as Annex "B"**. BENGUET may spend more than the amount above-mentioned if deemed necessary by BENGUET. Id. at 95-96. (Emphasis supplied).

[74] Section 1.03 of the *Operating Agreement* significantly states:
Section 1.03. Payment of Taxes: Assessment Work
Application for Patent and/or Lease.
BENGUET shall pay all taxes and other charges assessable, perform and record all assessments work on the PROPERTIES, **apply for patent or lease and/or patent or lease surveys** with respect to such mineral claims constituting the PROPERTIES as, in Benguet's sole opinion, is justified and desirable, and to advance all costs and expenses necessary for these purposes, which costs and expenses are to be charged in General Overhead as defined in this Agreement. The term PROPERTIES include those mineral claims which may subsequently be subjected to this Agreement, and the identical rights and commitments just enumerated shall devolve upon BENGUET in respect of these later claims from the date of their said inclusion. Id. at 97-98. (Emphasis supplied).

3. Section 7.01(j), on the other hand, premises the authority of Benguet to "*enter into contracts, agreements"* on Section 7.03 of the *Operating Agreement* that actually requires prior authorization from petitioner in the event the former enters into any "*major contracts*."[75] An MPSA may be considered as falling under the term "*major contracts*" for the simple reason that it will re-define the very relations between the owners of the existing mining claims and the government with respect to such claims.

In connection with the foregoing, the *Letter dated 14 June 1991*, appended in MPSA-P-III-16, cannot be considered as valid authorization from petitioner. There was no showing that the board of directors of petitioner approved of Benguet's proposal to file an MPSA application.

4. Neither can Section 9.04, which constituted Benguet as attorney-in-fact of petitioner, be construed as sufficient authorization. The said section confines the authority of Benguet "*to prepare, execute, amend, correct, supplement and register any document*"

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[75] Section 7.01(j) in relation to Section 7.03 of the *Operating Agreement* provides:

Section 7.01. Specific Rules, Powers and Privileges.

During the life of this Agreement, unless otherwise herein provided, BENGUET shall have the sole, exclusive and irrevocable power, right and privilege and the sole and exclusive discretion and judgment to do all or any of the following acts or things:

x x x x.

j. **subject to Section 7.03 to enter into contracts, agreements, assignments, conveyances and understandings of any kind with reference to the exploration, development and equipping of the PROPERTIES, and the mining and beneficiation of ore derived therefrom,** and marketing the resulting marketable product; and

x x x x**.**

Section 7.03. Approval by DIZON of Major Contracts.

x x x x .

Appointments of supervisor and assayer, marketing, smelting, and **other similar major contracts** shall be executed by BENGUET during the lifetime of this Agreement **subject to the approval of DIZON**. Id. at 111-113. (Emphasis supplied).

relating to the 57 mining claims, only to those documents "*necessary to carry out the intents and purposes"* of the *Operating Agreement*.[76]

Entering into MPSAs, however, could not have been included in the "*intents and purposes"* of the *Operating Agreement*. It must be pointed out that the *Operating Agreement* was executed way back in 1975, during which Presidential Decree No. 463 still governed mining operations in the country. Presidential Decree No. 463, as previous mining laws before it, sanctioned a system of exploitation of natural resources based on "*license, concession or lease*."[77] **MPSAs, on the other hand, deviate drastically from this system**.

An MPSA is one of the mineral agreements innovated by the 1987 Constitution by which the State takes on a broader and more dynamic role in the exploration, development and utilization of the country's mineral resources.[78] **By such agreements, the government does not become a mere licensor, concessor or lessor of mining resources—but actually assumes "full control and supervision" in the exploration, development and utilization of the concerned mining claims in consonance with Section 2, Article XII of the Constitution**.[79] The policy introduced by the 1987 Constitution,

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[76] Section 9.04 of the Operating Agreement states:
Section 9.04. Execution of Necessary Documents.
At BENGUET's request, **DIZON shall execute any document which may be necessary to carry out the intents and purposes of this Agreement**. If DIZON refuses or fails to comply with BENGUET's requests, **BENGUET shall have the authority to execute *such* document** and, for that purpose, DIZON hereby irrevocably names, appoints and constitutes BENGUET, with full power of substitution, as its true and lawful attorney-in-fact, for DIZON and its successors or assigns, to prepare, execute, amend, correct, supplement and register any document relating to or affecting the PROPERTIES which may be necessary to be executed, amended, corrected, supplemented, filed or registered, hereby ratifying and confirming all that BENGUET or BENGUET's substitute, successors or assigns shall lawfully do or cause to be done by virtue of this authority. Id. at 116-117. (Emphasis supplied).

[77] *Miner's Association of the Philippines, Inc. v. Factoran, Jr.*, G.R. No. 98332, 16 January 1995, 240 SCRA 100, 113-114.

[78] Id. at 114.

[79] Section 2, Article XII of the Constitution provides:

therefore, represents a significant shift in the hitherto existing relations between the government and mining claimants. This considerable change in the former system of mining leases under previous mining laws, in turn, makes it difficult for this Court to fathom that petitioner and Benguet contemplated the execution of MPSAs as part of their *Operating Agreement*. To hold otherwise, would simply stretch the limits of reason and human foresight.

Accordingly, this Court agrees with the finding of the DENR and the Court of Appeals that MPSA-P-III-16 was filed by Benguet without any valid authorization and, therefore, cannot be considered as a valid MPSA application.

Effect of the Invalidity of MPSA-P-III-16

In order to fully understand the effect of the invalidity of MPSA-P-III-16 on the mining claims of the petitioner and its rights thereto, the relevant provisions of Republic Act No. 7942 as well as its IRR must be considered.

Section 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.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

x x x x. (Emphasis supplied).

In so far as the **6 mining claims under MLCs** are concerned, **Section 112** of Republic Act No. 7942 applies. The provision provides for the *non-impairment and continued recognition* of existing valid mining leases, which means that the subject leases will remain valid until their expiration, *i.e.* on 31 January 2005.[80]

On the other hand, the **51 mining claims *not* covered by MLCs** are subject to **Section 113** of Republic Act No. 7942. The said section gives *"holders of existing mining claims, lease or quarry applications"* with *"preferential rights to enter into any mode of mineral agreement with the government"* within two (2) years from the promulgation of the rules and regulations implementing said law.[81]

Section 113 was further clarified by Section 273 of the IRR[82] of Republic Act No. 7942 and by DENR Memorandum Order (M.O.) No. 97-07. The pertinent provisions of DENR M.O. 97-07 states:

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80 Section 112 of Republic Act No. 7942 provides:

> **Section 112**. *Non-impairment of Existing Mining/Quarrying Rights* – **All valid and existing mining lease contracts**, permits/licenses, leases pending renewal, mineral production-sharing agreements granted under Executive Order No. 279, at the date of effectivity of this Act, **shall remain valid, shall not be impaired, and shall be recognized by the Government**: Provided, That the provisions of Chapter XIV on government share in mineral production-sharing agreement and Chapter XVI on incentives of this Act shall immediately govern and apply to a mining lessee or contractor unless the mining lessee or contractor indicates his intention to the Secretary, in writing, not to avail of said provisions: Provided, further, That no renewal of mining lease contracts shall be made after the expiration of its term: Provided, finally, That such leases, production-sharing agreements, financial or technical assistance agreements shall comply with the applicable provisions of this Act and its implementing rules and regulations. (Emphasis supplied).

81 Section 113 of Republic Act No. 7942 provides:

> **Section 113.** *Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications* – Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.

82 Section 273 of the IRR of Republic Act No. 7942 states:

> **Section 273.** *Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications:*
>
> Holders of valid and existing mining claims, lease/quarry applications shall be given **preferential rights** to enter into any mode of Mineral Agreement with the Government **until September 14, 1997**: *Provided*, **That failure on the part of the holders of valid and subsisting mining claims, lease/quarry applications to exercise**

> **Section 4. Date of Deadline Under Sections 272 and 273 of the IRR**
>
> Consistent with pertinent national policy, the September 13, 1997 deadline under Section 272 of the IRR and the September 14, 1997 deadline under Section 273 of the IRR, which fall on a Saturday and Sunday, respectively, shall be imposed on **September 15, 1997**.
>
> x x x x
>
> **Section 8. Claimants/Applicants Required to File Mineral Agreement**
>
> **Only holders of mining claims and lease/quarry applications filed prior to the effectivity of the Act which are valid and existing as defined in Section 5 hereof who have not filed any Mineral Agreement applications over areas covered by such mining claims and lease/quarry applications are required to file Mineral Agreement applications pursuant to Section 273 of the IRR on or before September 15, 1997**; *Provided,* that the holder of such a mining claim or lease/quarry application involved in a mining dispute/ease shall instead file on or before said deadline a Letter of Intent to file the necessary Mineral Agreement application; *Provided, further,* That if the mining claim or lease/quarry application is not determined to be invalid in the dispute/case, the claimant or applicant shall have thirty (30) days from the final resolution of the dispute/case to filed the necessary Mineral Agreement application; ***Provided, finally,* that failure by the claimant or applicant to file the necessary Mineral Agreement application within said thirty (30)-day period shall result in the abandonment of such claim or application, after which, any area covered by the same shall be opened for Mining Applications**.
>
> Holders of such valid and existing mining claims and lease/quarry applications who had filed or been granted applications other than those for Mineral Agreements prior to September 15, 1997 shall have until such date to file/convert to Mineral Agreement applications, otherwise, such previously filed or granted applications shall be cancelled. (Emphasis and underscoring supplied).

Per the above-cited provisions of DENR M.O. No. 97-07, holders of existing mining claims or lease/quarry applications have

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their preferential rights within the said period to enter into any mode of Mineral Agreements shall constitute automatic abandonment of the mining claims, quarry/lease applications and the area thereupon shall be declared open for mining application by other interested parties. (Emphasis and underscoring supplied).

only until **the 15th of September 1997 to file an appropriate mineral agreement application** in the exercise of their "*preferential rights to enter into mineral agreements with the government*" involving their claims. DENR M.O. No. 97-07 also provides that **failure of the said holders to exercise such preferential right is deemed an abandonment of their existing mining claims or applications**.

In the instant case, MPSA-P-III-16 was the *only* MPSA application that was filed before the mandatory deadline. Aside from it, petitioner filed no other *valid* MPSA application covering its mining claims before 15 September 1997.

Given the foregoing, it becomes clear that a finding of invalidity of MPSA-P-III-16 has a profound effect on petitioner's rights as to the **51 mining claims *not* covered by MLCs**:

First. The invalidity of MPSA-P-III-16 necessarily meant that **petitioner was not able to validly exercise its preferential rights under Section 113 of Republic Act No. 7942.** As a result, **petitioner is already deemed to have abandoned its mining claims as of 15 September 1997**.

Second. The assignment of MPSA-P-III-16 in favor of petitioner has also been rendered of no consequence. Such assignment was made by Benguet, and then approved by the DENR, only in 2004—which is well beyond the 15 September 1997 deadline.[83] At that time, petitioner had already lost any legal vested interest it had in the subject mining claims.

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[83] *See Rollo*, p. 150 and Records, pp. 12-13.

Third. Petitioner's MPSA-P-III-03-05, filed on 31 January 2005, is considered as a *new* application insofar as the subject 51 mining claims are concerned. **Petitioner thereby enjoys no preference regarding the said application's approval**.

We now come to the final issue raised.

MPSA-P-III-05-05 over MPSA-P-III-03-05

Petitioner next argues that the Court of Appeals erred in sustaining the DENR's approval of respondent's MPSA-P-III-05-05 into MPSA No. 227-2006-III.[84] Petitioner alleges that the appellate court failed to recognize that the DENR Secretary had adopted a "*hasty*" procedure in assessing the merits of respondent's MPSA-P-III-05-05 and had approved the same without requiring the latter to comply with Sections 37 and 38 of the IRR of Republic Act No. 7942.[85] Petitioner thus asks this Court to set aside MPSA No. 227-2006-III and to order the DENR to instead make a re-evaluation of its own application, MPSA-P-III-03-05.[86]

We are not persuaded.

To begin with, petitioner's postulation that respondent did not comply with Sections 37 and 38 of the IRR of Republic Act No. 7942,[87] raises a factual issue that was never raised in the proceedings

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84 *Rollo*, pp. 46-57.

85 Id.

86 Id. at 71.

87 Sections 37 and 38 of the IRR of Republic Act No. 7942 (DENR Administrative Order No. 96-40) require an MPSA applicant to secure area status and clearances and to publish their applications. They state:

Section 37. *Area Status/Clearance*

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

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

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

Section 38. *Publication/Posting/Radio Announcement of a Mineral Agreement Application*

Within fifteen (15) working days from receipt of the necessary area clearances, the Bureau/concerned Regional Office(s) shall issue to the applicant the Notice of Application for Mineral Agreement for publication, posting and radio announcement which shall be done within fifteen (15) working days from receipt of the Notice. The Notice must contain, among others, the name and complete address of the applicant, duration of the agreement applied for, extent of operation to be undertaken, area location, geographical coordinates/meridional block(s) of the proposed contract area and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

The Bureau/concerned Regional Office(s) shall cause the publication of the Notice once a week for two (2) consecutive weeks in two (2) newspapers: one of general circulation published in Metro Manila and another published in the municipality or province where the proposed contract area is located, if there be such newspapers; otherwise, in the newspaper published in the nearest municipality or province.

The Bureau/concerned Regional Office shall also cause the posting for two (2) consecutive weeks of the Notice on the bulletin boards of the Bureau, the concerned Regional Office(s), PENRO(s), CENRO(s) and in the concerned province(s) and municipality(ies), copy furnished the barangay(s) where the proposed contract area is located. Where necessary, the Notice shall be in a language generally understood in the concerned locality where it is posted.

The radio announcements shall be made daily for two (2) consecutive weeks in a local radio program and shall consist of the name and complete address of the applicant, area location, duration of the agreement applied for and instructions that information regarding such application may be obtained at the Bureau/concerned Regional Office(s). The publication and radio announcements shall be at the expense of the applicant.

Within thirty (30) calendar days from the last date of publication/posting/radio announcements, the authorized officer(s) of the concerned office(s) shall issue a certification(s) that the publication/posting/radio announcement have been complied with. Any adverse claim, protest or opposition shall be filed directly, within thirty (30) calendar days from the last date of publication/posting/radio announcement, with the

a quo. The procedural norm is that factual issues are barred in appeals by *certiorari*, with more reason if such issues are only being raised for the first time before this Court.[88]

Anent the issue regarding the approval of MPSA-P-III-05-05, it must be emphasized herein that under Republic Act No. 7942, the DENR Secretary has been conferred with the exclusive and primary jurisdiction to approve mineral agreements, such as MPSAs.[89] In the seminal case ***Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation***, this Court described such function as purely administrative in nature and one that is fully within the DENR Secretary's competence and discretion. Concededly, it is the DENR Secretary, thru the MGB, who is in the best position to determine to whom mineral agreements are granted.[90]

Accordingly, the doctrine of primary jurisdiction finds application to the case at bench. ***Celestial*** captures the doctrine in the context of mining applications in this wise:

> Settled is the rule that the courts will defer to the decisions of the administrative offices and agencies by reason of their expertise and experience in the matters assigned to them pursuant to the doctrine

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concerned Regional Office or through any concerned PENRO or CENRO for filing in the concerned Regional Office for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days therefrom.

However, previously published valid and existing mining claims are exempted from the publication/posting/radio announcement required under this Section.

No Mineral Agreement shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition thereto is finally resolved by the Panel of Arbitrators.

88 *See* Section 1, Rule 45 of the Rules of Court.

89 *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation,* G.R. No. 169080, 19 December 2007, 541 SCRA 166, 195.

90 Id. at 197.

> of primary jurisdiction. Administrative decisions on matter within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law. **Unless it is shown that the then DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration and similar reasons, this Court cannot look into or review the wisdom of the exercise of such discretion.**[91] (Emphasis supplied).

In the case at bench, this Court finds no such arbitrariness on the part of the DENR Secretary in approving respondent's MPSA-P-III-05-05 at the expense of petitioner's MPSA-P-III-03-05. Contrary to the allegations of petitioner, there was never any "*hasty*" approval of MPSA-P-III-05-05. The records attest that the approval of MPSA-P-III-05-05 by the DENR Secretary came a full ten (10) months after such application was filed[92] and was, in fact, based from the evaluation of the DENR MGB Regional Office III that petitioner's MPSA-P-III-03-05 was filed at a time when the 6 mining claims covered therein were still under subsisting MLCs in favor of the Dizons[93] and, hence, still closed to mining applications.[94]

In choosing to act favorably on MPSA-P-III-05-05, the DENR Secretary merely exercised its rightful discretion to determine who among competing mining applicants is more qualified for a mining agreement. This consideration, aside from the fact that petitioner's MPSA-P-III-03-05 covers areas still closed to mining applications

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91 Id. at 209.

92 Records, pp. 341-342.

93 *Rollo*, p. 153 and Records, pp. 538, 546, 554, 562 and 570; Section 112 of Republic Act No. 7942.

94 Per Section 19(c) of Republic Act No. 7942, which states:

> **Section 19**. *Areas Closed to Mining Applications* - Mineral agreement or financial or technical assistance agreement applications shall not be allowed:
>
> x x x x
>
> (c) In areas **covered by valid and existing mining rights**;
> (Emphasis supplied).

when it was filed, underscores the reasonableness of the orders of the DENR Secretary. This Court finds itself heavy-handed to disturb them.

WHEREFORE, the instant petition is **DENIED**. The appealed Decision dated 9 May 2008 and Resolution dated 1 July 2008 of the Court of Appeals in CA-G.R. SP No. 99047 are hereby **AFFIRMED**.

Costs against petitioner.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

See Dissenting Opinion

ANTONIO T. CARPIO
Associate Justice
Chairperson

See: Concurring Opinion

ARTURO D. BRION
Associate Justice

I join the dissent of J. Carpio.

MARIA LOURDES P.A. SERENO
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)