Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MONCAYO INTEGRATED SMALL-SCALE MINERS ASSOCIATION, INC. [MISSMA], Petitioner, -versus- **SOUTHEAST MINDANAO GOLD MINING CORP., JB. MGT. MINING CORP., PICOP RESOURCES, INC., MT. DIWATA UPPER ULIP MANDAYA TRIBAL COUNCIL, INC. AND BALITE INTEGRATED SMALL-SCALE MINING CORP., (BISSMICO),** Respondents.	**G.R. No. 149638**
x----------x	**G.R. No. 149916**
HON. ANTONIO H. CERILLES, IN HIS CAPACITY AS SECRETARY OF DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, Petitioner, -versus- **SOUTHEAST MINDANAO GOLD MINING CORPORATION (SMGMC) AND BALITE INTEGRATED SMALL-SCALE MINING CORP., (BISSMICO),** Respondents.	Present: CARPIO, *J., Chairperson,* DEL CASTILLO, VILLARAMA, JR.,* MENDOZA, and LEONEN, *JJ.* **Promulgated:** DEC 10 2014

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* Designated Acting Member per Special Order No. 1888 dated November 28, 2014.

DECISION

LEONEN, *J.*:

These two consolidated cases involve the "Diwalwal Gold Rush Area" in Mt. Diwata, Mindanao that has been embroiled in controversies since the mid-1980's.[1] The instant controversy focuses on the 729-hectare portion excluded from respondent Southeast Mindanao Gold Mining Corporation's Mineral Production Sharing Agreement application, and declared as People's Small Scale Mining Area. Due to supervening events, we declare the petitions moot and academic.

Before us are two petitions for review[2] assailing the Court of Appeals' August 27, 2001 amended decision[3] that annulled and set aside the Department of Environment and Natural Resources (DENR) Secretary's September 20, 1999 decision[4] for having been issued with grave abuse of discretion in excess of his discretion.

Moncayo Integrated Small-Scale Miners Association, Inc. (MISSMA) filed the first petition[5] docketed as G.R. No. 149638. Then DENR Secretary Antonio H. Cerilles filed the second petition docketed as G.R. No. 149916.[6]

The facts as summarized by the Court of Appeals follow:[7]

On July 1, 1985, the Bureau of Forest Development issued to Marcopper Mining Corporation (Marcopper) a prospecting permit (Permit to Prospect No. 755-123185) covering 4,941 hectares within the Agusan-Davao-Surigao Forest Reserve. This forest reserve was instituted by Proclamation No. 369 issued by then Governor General Dwight F. Davis on February 27, 1931.

On March 10, 1986, the Bureau of Mines and Geo-Sciences issued to Marcopper a permit to explore (EP 133) covering the same area.

On February 16, 1994, Marcopper assigned EP 133 to Southeast

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1 *See Southeast Mindanao Gold Mining Corporation v. Balite Portal Mining Cooperative et al.*, 429 Phil. 668, 673 (2002) [Per J. Ynares-Santiago, First Division].

2 The petitions were filed pursuant to Rule 45 of the Rules of Court.

3 *Rollo* (G.R. No. 149638), pp. 79–86. The amended decision was penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Eugenio S. Labitoria (Chair), Portia Aliño Hormachuelos, and Bernardo P. Abesamis. Associate Justice Andres B. Reyes, Jr. penned a concurring opinion.

4 Id. at 154–165.

5 Id. at 56–78.

6 Id. at 517–544.

7 Id. at 201–202; *Rollo* (G.R. No. 149916), pp. 85–90.

Mindanao Gold Mining Corporation (SMGMC).

On December 19, 1995, the Mines and Geo-Sciences Bureau director ordered the publication of SMGMC's application for Mineral Production Sharing Agreement (MPSA No. 128) for the 4,941 hectares covered by EP 133.

JB Management Mining Corporation, Davao United Miners Cooperative, Balite Integrated Small Scale Miners Cooperative, MISSMA, PICOP, Rosendo Villaflor, et al., Antonio G. Dacudao, Puting Bato Gold Miners Cooperative, and Romeo Altamera, et al. filed adverse claims against MPSA No. 128.[8]

The adverse claims were anchored on DENR Administrative Order No. 66[9] (DAO No. 66) issued on December 27, 1991, declaring 729 hectares of the Agusan-Davao-Surigao Forest Reserve as forest land open for small-scale mining purposes, subject to existing and valid private rights.

The DENR constituted a panel of arbitrators pursuant to Section 77 of the Philippine Mining Act of 1995 tasked to resolve the adverse claims against MPSA No. 128.

The panel of arbitrators, in its decision dated June 13, 1997, reiterated the validity of EP 133 and dismissed all adverse claims against MPSA No. 128. The adverse claimants appealed to the Mines Adjudication Board.

The Mines Adjudication Board (MAB), in its decision[10] dated January 6, 1998, vacated the decision of the panel of arbitrators:

> **WHEREFORE, PREMISES CONSIDERED**, the decision of the Panel of Arbitrators dated 13 June 1997 is hereby **VACATED** and a new one entered in the records of the case as follows:
>
> 1. SEM's MPSA application is hereby given due course subject to the full and strict compliance of the provisions of the Mining Act and its Implementing Rules and Regulations.
>
> 2. The area covered by DAO 66, series of 1991, actually occupied and actively mined by the small-scale miners on or before August 1, 1987 as determined by the Provincial Mining Regulatory Board ("PMRB"), ***is hereby excluded from the area applied for by SEM*****;** (Emphasis supplied)

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8 *Rollo* (G.R. No. 149916), p. 90. *See South Mindanao Gold Mining Corporation v. Balite Portal Mining Cooperative*, 429 Phil. 668, 675 (2002) [Per J. Ynares Santiago, First Division].

9 DAO No. 66 was issued by then DENR Secretary Fulgencio Factoran, Jr.

10 *Rollo* (G.R. No. 149916), pp. 82–107. The decision was signed by Chairman Victor O. Ramos and members Virgilio Q. Marcelo and Horacio C. Ramos.

> 3. A moratorium on all mining and mining-related activities, is hereby imposed until such time that all necessary procedures, licenses, permits and other requisites as provided for by RA 7076, the Mining Act and its Implementing Rules and Regulations and all other pertinent laws, rules and regulations are complied with, and the appropriate environmental protection measures and safeguards have been effectively put in place.
>
> 4. Consistent with the spirit of RA 7076, the Board encourages SEM and all small-scale miners to continue to negotiate in good faith and arrive at an agreement beneficial to all. In the event of SEM's strict and full compliance with all the requirements of the Mining Act and its Implementing Rules and Regulations, and the concurrence of the small-scale miners actually occupying and actively mining the area, SEM may apply for the inclusion of portions of the areas segregated under paragraph 2 hereof, to its MPSA application. In this light, subject to the preceding paragraph, the contract between JB and SEM is hereby recognized.
>
> **SO ORDERED.**[11]

Both SMGMC and the adverse claimants questioned the Mines Adjudication Board's decision before this court. These petitions were remanded to the Court of Appeals as CA-G.R. SP Nos. 61215-16, later elevated to this court as G.R. No. 152613, G.R. No. 152628, G.R. Nos 152619-20, and G.R. Nos. 152870-71.[12]

Meanwhile, independent of the MAB decision and the appeals to the Court of Appeals and this court, the Provincial Mining Regulatory Board of Davao proposed to declare a People's Small Scale Mining Area in accordance with the MAB decision.[13]

On February 24, 1992, the notice for the proposed declaration was approved and issued for publication to notify any and all oppositors or protestors.[14] Those who filed oppositions included SMGMC, Picop Resources Incorporated, Mt. Diwata-Upper Ulip Mandaya Tribal Council, and JB Management Mining Corporation.[15]

The Provincial Mining Regulatory Board (PMRB), in its decision[16] dated March 30, 1999, dismissed the oppositions for lack of merit, then segregated and declared the 729-hectare gold rush area as People's Small Scale Mining Area:

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11 Id. at 106–107.
12 *Rollo* (G.R. No. 149638), p. 688.
13 Id. at 148.
14 Id.
15 Id.
16 Id. at 148–153. The decision was signed by members Placido R. Alcomendras, III, Florencio A. Bayalas, Jr., and Alberto B. Cavan. Chairman Constancio A. Paye, Jr. concurred in the findings and legal basis but with modified decision. Member Benedicto T. Jalandoon penned a separate resolution.

> WHEREFORE, in view of the foregoing premises, the instant protest/opposition of herein Oppositors are hereby DISMISSED for lack of merit. This Board hereby segregates and declares the 729-hectare gold rush area in Mt. Diwalwal actually occupied and actively mined on or before August 1, 1987 as People's Small-Scale Mining Area. Thereafter, the concerned local government unit through the recommendation of this Board shall issue/execute the necessary small-scale mining contract to qualified applicants upon compliance of the requisites for small scale mining under R.A. 7076 and its implementing rules and regulations.
>
> SO ORDERED.[17]

Then DENR Secretary Antonio H. Cerilles, in his decision dated September 20, 1999, affirmed with modification the Provincial Mining and Regulatory Board decision:[18]

> **WHEREFORE**, premises considered, the Decision of the PMRB of Compostela Valley dated March 30, 1999 is hereby **AFFIRMED**, subject to the following modifications:
>
> 1. For effective management and equitable utilization of resources, the two main areas of operations as described above of the 729 hectares shall be delineated and embodied in a Memorandum of Agreement (MOA) among the stakeholders concerned to ensure recognition of delineated boundaries and rational operation of the concerned areas.
>
> 2. These two areas are divided as follows: a) **Block I** [Balete-Nang Area], composed of Sub-Block A and Sub-Block B, intended for Blucor and Helica Group of Tunnels, representing MISSMA, and for various qualified Small-Scale Miners who are actually occupying and actively mining in the area and b) **Block II** [Buenas-Tinago Area], intended for JB Management, and other qualified Small-Scale Miners who are actually occupying and actively mining in the area.
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> 3. Qualified Small-Scale Miners in each area, as maybe determined by the PMRB, shall apply for Small Scale Mining Contracts with option thereafter to apply for an MPSA.
>
> 4. Consistent with the provisions of DENR Memorandum Order No. 99-02, mineral processing plants in the Diwalwal area shall be relocated to processing zones duly designated by the DENR where appropriate tailings disposal systems have been put in place.
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> 5. The Natural Resources Development Corporation (NRDC), the corporate arm of the DENR, shall extend the necessary technical expertise and supervision over all mining and milling

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17 Id. at 153.

18 Id. at 63. A copy of the DENR decision is attached as Annex D of the petition.

> operations in the area, environmental clean-up and rehabilitation activities, and the identification of alternative livelihood activities for the families of small-scale miners and other residents in the area.
>
> **SO ORDERED**.[19] (Emphasis and underscoring in the original)

The DENR Secretary denied reconsideration on February 2, 2000. SMGMC filed a petition under Rule 43 before the Court of Appeals.

The Court of Appeals, in its decision[20] dated July 31, 2000, denied the petition.

The Court of Appeals discussed that since "there being no injunction from the Supreme Court which would prevent the enforcement of the MAB decision, respondent DENR Secretary acted with propriety in issuing the assailed decision which affirmed the PMRB's declaration of a People's Small Scale Mining Area."[21] It also denied the petition based on *litis pendencia*, considering that the pending case before this court assailing the MAB decision involved a prejudicial question.[22]

SMGMC and Balite Integrated Small-Scale Mining Corp. (BISSMICO) filed separate motions for reconsideration.

The Court of Appeals, in its amended decision[23] dated August 27, 2001, granted the motions for reconsideration and, consequently, set aside and annulled the DENR Secretary's decision for having been issued with grave abuse of discretion in excess of his jurisdiction.[24]

The Court of Appeals limited its discussion on the propriety of the DENR Secretary's decision.

It cited at length a memorandum dated March 27, 1998 by then DENR Undersecretary, Antonio La Viña, to support its finding that SMGMC "may apply and be entitled to a particular area within the 729 hectares potential coverage of the People's Small-Scale Mining Area, subject to the fulfilment

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19 Id. at 164–165.

20 *Rollo* (G.R. No. 149638), pp. 200–208. The decision was penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Angelina Sandoval Gutierrez and Bernardo P. Abesamis. Associate Justice Eugenio S. Labitoria (Chair) penned a dissenting opinion. Associate Justice Andres S. Reyes, Jr. penned a separate dissenting opinion.

21 Id. at 203.

22 Id. at 205.

23 *Rollo* (G.R. No. 149916), pp. 38–46. The amended decision was penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Eugenio S. Labitoria (Chair), Portia Aliño Hormachuelos, and Bernardo P. Abesamis. Associate Justice Andres B. Reyes, Jr. penned a concurring opinion.

24 Id. at 45.

of several conditions."[25]

The Court of Appeals found that the "DENR Secretary's outright delineation of the subject area in favor of certain entities contravenes the mandate of the MAB Decision and the purpose of RA 7076 (People's Small-Scale Mining Act of 1991), inasmuch as it disenfranchises the petitioner and other small-scale miners who may apply for and be awarded small-scale mining contracts by the local government units upon recommendation of the PMRB after the fulfilment of necessary conditions set forth in the law."[26]

Hence, these two petitions for review were filed assailing the Court of Appeals' amended decision.

Petitioner MISSMA[27] argues that the Court of Appeals should not have amended its decision considering it already found SMGMC guilty of forum shopping and *litis pendencia*.[28]

Petitioner MISSMA contends that the petition docketed as G.R. No. 132475 assailing the portion of the MAB's decision that excluded the 729-hectare area covered by DAO No. 66 from SMGMC's Mines Production Sharing Agreement application[29] involves the same issues as the present cases. MISSMA submits that "the ultimate objective of the two cases is [SMGMC] to solely obtain all mining rights over the subject 729 hectare gold rush area, to the exclusion of MISSMA and other claimants thereon."[30]

Petitioner MISSMA also argues that "[i]n carrying out the function of declaring and segregating gold rush areas for small-scale mining purposes [pursuant to Republic Act No. 7076], both the PMRB, and upon review, the DENR Secretary, may well act independently of the MAB, which, on the other hand is a quasi-judicial body tasked to settle mining conflicts, disputes or claims[.]"[31] Moreover, the DENR Secretary's decision only delineated and identified areas available for small-scale mining contract applications. The decision did not make actual awards.[32]

Petitioner Hon. Antonio H. Cerilles, in his capacity as then DENR Secretary,[33] similarly argues that the Court of Appeals should have maintained its earlier decision dismissing the case due to forum shopping

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25 Id. at 43.
26 Id. at 45.
27 The petition was docketed as G.R. No. 149638.
28 *Rollo* (G.R. No. 149638), p. 687.
29 Id. at 688.
30 Id. at 689.
31 Id. at 693.
32 Id.
33 The petition was docketed as G.R. No. 149916.

and *litis pendencia*.[34]

In any event, petitioner DENR Secretary argues that he acted within authority in modifying the PMRB's decision, citing Sections 24 and 26 of Republic Act No. 7076 on the DENR Secretary's power of "direct supervision and control."[35]

Petitioner DENR Secretary adds that "[t]he division into two areas of the segregated portion of 729-hectares small-scale mining area does not contravene the mandate of the MAB decision and the purpose of R.A. No. 7076, since there is no award yet of any license or permit made to any qualified small-scale miner."[36]

Lastly, petitioner DENR Secretary contends that these petitions have been mooted by (1) then President Macapagal-Arroyo's issuance of Proclamation No. 297 excluding an area from Proclamation No. 369 and declaring this as a mineral reservation and as an environmentally critical area, and (2) this court's decision dated June 23, 2006 in G.R. Nos. 152613, 152628, 152619-20, 152870-71 declaring DAO No. 66 as void, declaring EP 133 as expired, and underscoring the Executive's power of supervision and control over the exploration, development, and utilization of the country's mineral resources.[37]

Respondent SMGMC counters that no forum shopping or *litis pendencia* exists as the present petitions "emanated from the decision of the PMRB declaring the 729 hectares of timberland as People's Small-Scale Mining Area, while G.R. No. 132475 emanated from the decision of the MAB on the MPSA Application of [SMGMC]."[38] Records also show that the case docketed as G.R. No. 132475 was made known to this court.[39]

Respondent SMGMC quoted at length DENR Undersecretary La Viña's memorandum on the scope of the MAB decision.[40]

Respondent SMGMC submits that the DENR Secretary's decision "practically abandoned the MAB decision and fashioned his own formula for disaster," such as mentioning the Blucor and Helica groups which were never parties before the PMRB.[41]

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34 *Rollo* (G.R. No. 149638), p. 728.
35 Id. at 732–733.
36 Id. at 736–737.
37 Id. at 738–739.
38 Id. at 657.
39 Id. at 664.
40 Id. at 659–661.
41 Id. at 661.

Respondent BISSMICO admits and adopts respondent SMGMC's memorandum.[42]

Respondent PICOP discusses the difference between "forest reserves" and "forest reservations" under Presidential Decree No. 705,[43] and pursuant to Republic Act No. 3092[44] enacted on June 17, 1961, stating that "a law should now be passed by Congress in order to reclassify areas in forest reserve to another use."[45]

Even Executive Order No. 318 issued on June 9, 2004 on guiding principles in Promoting Sustainable Forest Management in the Philippines provides that "[c]onversions of forestlands into non-forestry uses shall be allowed only through an act of Congress and upon the recommendation of concerned government agencies."[46] Consequently, the PMRB has no authority to declare the 729 hectares within the forest reserve as a People's Small-Scale Mining Area.[47]

Respondent PICOP also argues that Proclamation No. 297 by then President Macapagal-Arroyo was without congressional concurrence as required by Republic Act No. 3092, thus, revocable.[48] Its memorandum also includes arguments on how Proclamation No. 297 was the first step in a series of constitutional violations such as an agreement with ZTE –NBN involving the gold rush area.[49]

By resolution[50] dated March 4, 2013, the parties were required to file manifestations on "subsequent developments that may help this court in the immediate disposition of these cases, or that may render the cases moot and academic."[51]

Petitioner DENR Secretary, through its counsel Office of the Solicitor General, filed its compliance on May 16, 2013.[52]

Petitioner DENR Secretary submitted a copy of the letter[53] dated April 24, 2013 of the Philippine Mining Development Corporation (PMDC), the government office in charge of the Diwalwal area, containing details of the

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42 Id. at 756.
43 Id. at 837. Pres. Decree No. 705, otherwise known as the Revised Forestry Code of the Philippines (1975).
44 An Act to Amend Certain Sections of the Revised Administrative Code and for Other Purposes (1961).
45 *Rollo* (G.R. No. 149638), p. 838.
46 Id. at 839.
47 Id. at 840.
48 Id. at 842–843.
49 Id. at 843–849.
50 Id. at 800.
51 Id.
52 Id. at 810.
53 Id. at 813–817.

latest development in the area. The letter[54] provides a brief background, followed by an enumeration of developments:

> ***I. PMDC 729 Area in the Diwalwal Mineral Reservation***
>
> . . . The Terms of Reference (TOR) for the 729 Bidding [partner of PMDC in the exploration and development of the project area] was approved by the Board on 3 March 2010.
>
> On October 25, 2011, PMDC received an order from the Regional Trial Court . . . enjoining [it] from bidding the Victory Tunnel and the 729-Area. PMDC filed a Motion for Reconsideration [which] is still pending . . .
>
> ***II. Tribal Mining Area (TRIMA) in the Diwalwal Mineral Reservation***
>
> On 26 June 2009, an Operating Agreement was entered into by PMDC and the Indigenous Cultural Community (ICC) belonging to the Mandaya, Manobo, Manguangan and Dibabawon tribes covering 2 parcels in the Diwalwal Mineral Reservation having a total land area of 950 hectares.
>
> . . . .
>
> PMDC requested NCIP to settle the issues of the tribal leadership and representation with finality in order to guide PMDC and its operators/partners, as well as other parties interested in assisting the tribe.
>
> PMDC is still awaiting the final decision of NCIP. FF Cruz & Co., Inc. is still actively pursuing its aforesaid Agreement with the ICC.
>
> ***III. Other Areas in the Diwalwal Mineral Reservation***
>
> A. Upper Ulip Property
>
> . . . area of One Thousand Six Hundred Twenty hectares (1,620 has.) has been awarded, after a public bidding, to Paraiso Consolidated Mining Corporation (PACOMINCO) on June 2009.
>
> On 1 March 2012, the PMDC Board approved the extension of the period for exploration activities for the Upper Ulip-Paraiso Parcel.
>
> B. Letter V
>
> . . . area of One Thousand Two Hundred Ninety Six hectares (1,296 has.) has been awarded, after public bidding, to Black Stone Mineral Resources Inc. (Blackstone) on March 2010.
>
> Blackstone is currently in the process of securing the Free and Prior-Informed Consent of the ICC in the Area with the assistance

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[54] Id. The letter was signed by Atty. Lito A. Mondragon, President and CEO of Philippine Mining Development Corporation.

> of NCIP. On 5 March 2013, Blackstone entered into a Memorandum of Agreement with the Mandaya tribe for the development of the Letter V parcel within the [sic] their ancestral domain.
>
> C. Higanteng Bato
>
> . . . area of One Thousand Three Hundred Fifty Nine hectares (1,359 has.) has been awarded, after a public bidding, to Carrascal Nickel Corporation (CNC) on March 2010.
>
> On 19 July 2012, the PMDC Board approved the assignment of the Rights and Obligations of CNC in the Joint Operating Agreement to Giant Stone Corporation.
>
> ***IV. NRDC Area (729 Area, 600m asl)***
>
> [PMDC has] received reports that NRDC has awarded approximately 400 hectares of the area under their administration to JBMMC. However, despite several requests for information relative to the aforementioned reports, the NRDC has yet to provide PMDC of any official documents . . .[55]

Respondent SMGMC filed an explanation, manifestation, and compliance discussing that on June 23, 2006, this court's First Division rendered a decision in the consolidated petitions of Apex (G.R. Nos. 152613 and 152628), Balite Communal Portal Cooperative (G.R. Nos. 152619-20), and MAB (G.R. Nos. 152870-71) ruling that EP 133 has expired by its non-renewal, that its transfer to SMGMC was void, and that DAO No. 66 was illegal for having been issued in excess of the DENR Secretary's authority.[56] On November 20, 2009, this court En Banc denied reconsideration, and this decision became final and executory.[57]

Respondent SMGMC also manifested that (a) the above decision and resolution, (b) the issuance of Proclamation No. 297 dated November 25, 2002, excluding 8,100 hectares in Moncayo, Compostela Valley and proclaiming this area as a mineral reservation and as an environmentally critical area, and (c) DAO No. 2002-18, are supervening developments that rendered moot and academic the issues raised in the present petitions.[58]

Counsel for respondent MISSMA filed a manifestation stating that he has exerted diligent efforts to communicate with MISSMA in relation to the March 4, 2013 resolution but this proved futile. Counsel is not in a position to manifest to this court on subsequent developments, but he will continue his attempt to communicate with MISSMA, and will submit the required

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55 Id. at 815–817.
56 Id. at 889–896.
57 Id. at 896.
58 Id. at 897.

manifestation should he succeed.[59]

Counsel for respondent PICOP filed a similar explanation/compliance.[60]

The issues for resolution may be summarized as follows:

I. Whether the Court of Appeals can set aside the issue of forum shopping and *litis pendencia* (SMGMC's petition in G.R. No. 132475), and dwell on the merits;

II. Whether the DENR Secretary's decision went beyond the PMRB's decision, otherwise, whether the DENR Secretary can modify the PMRB's decision; and

III. Whether the DENR Secretary's modification to divide the 729 hectares into two areas contravened the mandate of the MAB decision and the purpose of Republic Act No. 7076.

Subsequent developments

Developments after these petitions had been filed in 2001 mooted this case. The parties recognized these developments in their recent submissions.

Petitioner DENR Secretary raised that the petitions were mooted by (a) then President Macapagal-Arroyo's issuance of Proclamation No. 297, excluding an area from Proclamation No. 369 and declaring this area as a mineral reservation and as an environmentally critical area, and (b) this court's decision dated June 23, 2006 in G.R. Nos. 152613, 152628, 152619-20, and 152870-71 declaring DAO No. 66 as void, declaring EP 133 as expired, and underscoring the Executive's power of supervision and control over the exploration, development, and utilization of the country's mineral resources.[61]

Respondent SMGMC similarly manifested that Proclamation No. 297 dated November 25, 2002 and this court's 2006 decision and 2009 resolution in G.R. Nos. 152613 and 152628, G.R. Nos. 152619-20 and G.R. Nos. 152870-71 mooted the present cases.[62]

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59 Id. at 807.
60 Id. at 821–823.
61 Id. at 738–739. *See also* MISSMA memorandum, *rollo* (G.R. No. 149638), pp. 681–682 and 687–689, mentioning the decision in the consolidated cases promulgated by this court's first division, and arguing that *litis pendencia* exists.
62 Id. at 897.

Proclamation No. 297 dated November 25, 2002 excluded an area of 8,100 hectares in Moncayo, Compostela Valley as a mineral reservation and as an environmentally critical area:

PROCLAMATION NO. 297

EXCLUDING A CERTAIN AREA FROM THE OPERATION OF PROCLAMATION NO. 369 DATED FEBRUARY 27, 1931, AND DECLARING THE SAME AS MINERAL RESERVATION AND AS ENVIRONMENTALLY CRITICAL AREA

WHEREAS, Article XII, Section 2 of the Constitution provides that the exploration, development, and utilization of natural resources shall be under the full control and supervision of the State;

WHEREAS, by virtue of Proclamation No. 369, series of 1931, certain tracts of public land situated in the then provinces of Davao, Agusan and Surigao, with an area of approximately 1,927,400 hectares, were withdrawn from settlement and disposition, excluding, however, those portions which had been certified and/or shall be classified and certified as non-forest lands;

WHEREAS, gold deposits have been found within the area covered by Proclamation No. 369, in the Municipality of Monkayo, Compostela Valley Province, and unregulated small to medium-scale mining operations have, since 1983, been undertaken therein, causing in the process serious environmental, health, and peace and order problems in the area;

WHEREAS, it is in the national interest to prevent the further degradation of the environment and to resolve the health and peace and order spawned by the unregulated mining operations in the said area;

WHEREAS, these problems may be effectively addressed by rationalizing mining operations in the area through the establishment of a mineral reservation;

WHEREAS, after giving due notice, the Director of Mines and Geosciences conducted public hearings on September 6, 9 and 11, 2002 to allow the concerned sectors and communities to air their views regarding the establishment of a mineral reservation in the place in question;

WHEREAS, pursuant to the Philippine Mining Act of 1995 (RA 7942), the President may, upon the recommendation of the Director of Mines and Geosciences, through the Secretary of Environment and Natural Resources, and when the national interest so requires, establish mineral reservations where mining operations shall be undertaken by the Department directly or thru a contractor;

> WHEREAS, as a measure to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection, the President may, pursuant to Presidential Decree No. 1586, as amended, proclaim and declare certain areas in the country as environmentally critical;
>
> NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, upon recommendation of the Department of Environment and Natural Resources (DENR), and by virtue of the powers vested in me by law, do hereby exclude certain parcel of land located in Monkayo, Compostela Valley, and proclaim the same as mineral reservation and as environmentally critical area, with metes and bound as defined by the following geographical coordinates; . . . .
>
> . . . .
>
> with an area of Eight Thousand One Hundred (8,100) hectares, more or less.
>
> Mining operations in the area may be undertaken either by the DENR directly, subject to payment of just compensation that may be due to legitimate and existing claimants, or thru a qualified contractor, subject to existing rights, if any.
>
> The DENR shall formulate and issue the appropriate guidelines, including the establishment of an environmental and social fund, to implement the intent and provisions of this Proclamation.

Subsequently, DENR Administrative Order No. 2002-18 declared an emergency situation on the Diwalwal gold rush area and ordered the stoppage of all mining operations in the area.

Then President Macapagal-Arroyo issued Executive Order No. 217 dated June 17, 2003, creating the National Task Force Diwalwal to address the situation in the Diwalwal gold rush area.

On June 23, 2006, this court promulgated *Apex Mining v. SMGMC*,[63] ruling on the petitions for review by Apex, Balite, and the MAB. This court declared that EP 133 expired on July 7, 1994, and that its subsequent transfer to SMGMC on February 16, 1994 was void.[64] This court also affirmed the Court of Appeals' decision declaring DAO No. 66 as illegal for having been issued in excess of the DENR Secretary's authority.[65]

On November 20, 2009, this court En Banc denied reconsideration in *Apex Mining v. SMGMC* for lack of merit.[66] This court reiterated that

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63 525 Phil. 436 (2006) [Per J. Chico-Nazario, First Division].
64 Id. at 472.
65 Id.
66 620 Phil. 100 (2009) [Per J. Chico-Nazario, En Banc]. The ponencia was concurred in by Chief Justice

Marcopper's assignment of EP 133 to SMGMC violated Section 97 of Presidential Decree No. 463 and the terms and conditions in the permit.[67]

This court also clarified that its June 23, 2006 decision did not overturn its July 16, 1991 decision in *Apex Mining v. Garcia*[68] for the following reasons:[69]

First, the 1991 case of *Apex Mining v. Garcia* involved conflicting mining claims between Apex and Marcopper over the 4,941 hectares disputed area in Moncayo, Mindanao.[70]

This court in *Apex Mining v. Garcia* ruled that the disputed areas, "being clearly within a forest reserve, are not open to mining location,"[71] citing Sections 8 and 13 of Presidential Decree No. 463, as amended by Presidential Decree No. 1385.[72] This court found that "procedural requisites were complied with and undertaken by MARCOPPER after it had ascertained that its mining claims were found to be within the Agusan-Davao-Surigao Forest Reserve. On the other hand, the mining claims and SSMPs of Apex being located within said forest reserve are in violation of the law and therefore result in a failure to validly acquire mining rights."[73]

Second, the 1991 *Apex Mining v. Garcia* case "was decided on facts and issues that were not attendant in [*Apex Mining v. SMGMC*], such as the expiration of EP 133, the violation of the condition embodied in EP 133 prohibiting its assignment, and the unauthorized and invalid assignment of EP 133 by [Marcopper] to [SMGMC], since this assignment was effected without the approval of the Secretary of DENR."[74]

This court also mentioned that in the November 26, 1992 resolution in *Apex Mining v. Garcia*, this court clarified that its ruling was "conclusive only between the parties with respect to the particular issue herein raised and under the set of circumstances herein prevailing[.]" [75]

Forum shopping and litis pendencia

Puno and Associate Justices Carpio, Carpio Morales, Leonardo-de Castro, Brion, Del Castillo, Abad, and Villarama, Jr. Associate Justice Bersamin penned a separate opinion. Associate Justice Nachura took no part. Associate Justices Corona, Velasco, Jr., and Peralta were on official leave.

67 Id. at 132.

68 276 Phil. 301 (1991) [Per J. Paras, En Banc].

69 Id. at 140.

70 *Apex Mining Co., Inc. v. Hon. Garcia*, 276 Phil. 301, 303 (1991) [Per J. Paras, En Banc].

71 Id. at 307–308.

72 Id.

73 Id. at 308.

74 *Apex Mining Co, Inc. v. Southeast Mindanao Gold Mining Corp*, 620 Phil. 100, 155 (2009) [Per J. Chico-Nazario, En Banc].

75 Id. at 141.

Litis pendencia exists when the following elements are present: "(a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other."[76]

The existence of *litis pendencia* also means that the rule against forum shopping was violated.[77]

The Court of Appeals' July 31, 2000 decision denied SMGMC's petition on the ground of *litis pendencia* and forum shopping considering the then pending case docketed as G.R. No. 132475 assailing the January 6, 1998 MAB decision recognizing DAO No. 66 by excluding the 729-hectare area.[78]

The Court of Appeals' August 27, 2001 amended decision "maintain that matters pertaining to the petitioner's rights over the subject 729-hectare gold rush area have been decided by the Mines Adjudication Board (MAB), which decision is now with the Supreme Court for review[,]"[79] but it nevertheless annulled the DENR Secretary's decision "for having been issued with grave abuse of discretion in excess of his jurisdiction."[80]

Respondent SMGMC argued in its memorandum that no forum shopping or *litis pendencia* exists,[81] but later conceded in its explanation, manifestation, and compliance dated September 1, 2014 that supervening developments, such as this court's 2006 decision and 2009 resolution in *Apex Mining v. SMGMC*, mooted these cases.[82]

We do not need to decide on whether there was forum shopping or *litis pendencia*. *Apex Mining v. SMGMC* mooted these petitions.

Moot and academic

Apex Mining v. SMGMC consists of two consolidated cases.[83] SMGMC filed the petition docketed as G.R. No. 132475 assailing the

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76 *See Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 429 [Per J. Reyes, Second Division], *citing Villarica Pawnshop, Inc. v. Gernale*, 601 Phil. 66, 78 [Per J. Austria-Martinez, Third Division].

77 *See Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 427–428 [Per J. Reyes, Second Division].

78 *Rollo* (G.R. No. 149638), pp. 205–207.

79 Id. at 80.

80 Id. at 85.

81 Id. at 655.

82 Id. at 897.

83 Id. at 889.

January 6, 1998 MAB decision excluding the 729-hectares area and questioning the validity of DAO No. 66. MISSMA and other mining claimants filed the other petition docketed as G.R. No. 132528.[84]

These petitions were remanded to the Court of Appeals, consolidated as G.R. SP Nos. 61215 and 61216.[85] The Court of Appeals declared the MAB decision as null and void.[86]

Consequently, Apex filed a petition docketed as G.R. Nos. 152613 and 152628; Balite Communal Portal Mining Cooperative, Inc. filed a petition docketed as G.R. Nos. 152619-20; and the MAB and its members filed a petition docketed as G.R. Nos. 152870-71.[87]

All these petitions were consolidated, and this court rendered its decision entitled *Apex Mining v. SMGMC* on June 23, 2006, and resolution on November 20, 2009. The 2006 decision held:

> **WHEREFORE**, premises considered, the Petitions of Apex, Balite and the MAB are PARTIALLY GRANTED, thus:
>
> 1. We hereby REVERSE and SET ASIDE the Decision of the Court of Appeals, dated 13 March 2002, and hereby declare that EP 133 of MMC has EXPIRED on 7 July 1994 and that its subsequent transfer to SEM on 16 February 1994 is VOID.
>
> 2. We AFFIRM the finding of the Court of Appeals in the same Decision declaring DAO No. 66 illegal for having been issued in excess of the DENR Secretary's authority.
>
> Consequently, the State, should it so desire, may now award mining operations in the disputed area to any qualified entity it may determine. No costs.
>
> **SO ORDERED.**[88]

This court denied the motions for reconsiderations, among others, in its 2009 resolution.[89]

Since this court declared that EP 133 expired and its transfer to SMGMC is void, respondent SMGMC has no more basis to claim any right over the disputed 729 hectares in the Diwalwal gold rush area excluded from its MPSA.

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84 Id.
85 Id.
86 Id.
87 Id. at 889–890.
88 *Apex Mining v. SMGMC*, 525 Phil. 436, 472 (2006) [Per J. Chico-Nazario, First Division].
89 *Apex Mining v. SMGMC*, 620 Phil. 100, 156 (2009) [Per J. Chico-Nazario, En Banc].

Furthermore, since this court has declared that the DENR Secretary had no authority to issue DAO No. 66 declaring 729 hectares of the Agusan-Davao-Surigao Forest Reserve as forest land open for small-scale mining purposes subject to existing and valid private rights, both the PMRB decision, and the DENR Secretary's decision affirming it with modification, are consequently overturned for lack of basis in delineating the 729 hectares from the MPSA.

The 2009 resolution in *Apex Mining v. SMGMC* also ruled that "the State, through the Executive Department, should it so desire, may now award mining operations in the disputed area to any qualified entities it may determine [and] [t]he Mines and Geosciences Bureau may process exploration permits pending before it, taking into consideration the applicable mining laws, rules and regulations relative thereto."[90]

Indeed, then President Macapagal-Arroyo issued Proclamation No. 297 excluding an area in Moncayo, Compostela Valley, declaring this as a mineral reservation and as an environmentally critical area. DENR Administrative Order No. 2002-18 followed, declaring an emergency situation in this gold rush area and ordering the stoppage of all mining operations. Executive Order No. 217 thereafter created the National Task Force Diwalwal.

Authority and functions in mining activities

In any case, we discuss the powers of the different agencies in relation to mining activities as laid down by the relevant laws.

Mines Adjudication Board

Chapter XIII (Settlement of Conflicts) of Republic Act No. 7942 known as the Mining Act of 1995 provides for the powers of the panel of arbitrators and the Mines Adjudication Board (MAB). Section 77 states that "the panel shall have exclusive and original jurisdiction to hear and decide on the following:

a. Disputes involving rights to mining areas;
b. Disputes involving mineral agreements or permits;
c. Disputes involving surface owners, occupants and claimholders/ concessionaires; and

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90 Id.

d. Disputes pending before the Bureau and the Department at the date of the effectivity of this Act."[91]

Section 78 provides for the MAB's appellate jurisdiction over the decision or order of the panel of arbitrators.[92] Section 79 enumerates the MAB's powers and functions, including the power "to conduct hearings on all matters within its jurisdiction."[93]

Provincial Mining Regulatory Board

While the MAB's jurisdiction covers the settlement of conflicts over mining claims, the Provincial Mining Regulatory Board (PMRB) — created under Republic Act No. 7076 known as the People's Small-Scale Mining Act of 1991 — granted powers that include functions more executive in nature such as declaring and segregating areas for small-scale mining.[94]

Section 24 of Republic Act No. 7076 provides for the PMRB's power to "declare and segregate existing gold-rich areas for small-scale mining" but "under the direct supervision and *control* of the Secretary":

> Section 24. Provincial/ City Mining Regulatory Board. There is hereby created under the direct supervision and control of the Secretary a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department, and shall exercise the following powers and functions, subject to review by the Secretary:
>
> (a) Declare and segregate existing gold-rich areas for small-scale mining;
>
> (b) Reserve future gold and other mining areas for small-scale mining;
>
> (c) Award contracts to small-scale miners;
>
> (d) Formulate and implement rules and regulations related to small-scale mining;
>
> (e) Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small mining area; and
>
> (f) Perform such other functions as may be necessary to achieve the goals and objectives of this Act.[95]

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91 Rep. Act No. 7942 (1995), sec. 77.
92 Rep. Act No. 7942 (1995), sec. 78.
93 Rep. Act No. 7942 (1995), sec. 79.
94 Rep. Act No. 7076 (1991), sec. 24.
95 Rep. Act No. 7076 (1991), sec. 24.

Section 22 of DAO No. 34–92, the implementing rules and regulations of Republic Act No. 7076, similarly states that the "Provincial/City Mining Regulatory Board created under RA 7076 shall exercise the following powers and functions, subject to review by the Secretary[.]"[96]

Section 6 of DAO No. 34–92 also provides that "[t]he Board created under RA 7076 shall have the authority to declare and set aside People's Small-Scale Mining Areas in sites onshore suitable for small-scale mining operations *subject to review by the DENR Secretary* thru the Director[.]"[97]

DENR Secretary

Section 26 of Republic Act No. 7076 reiterates the DENR Secretary's power of control over "the program and the activities of the small-scale miners within the people's small-scale mining area":

> Section 26. Administrative Supervision over the People's Small-scale Mining Program. The Secretary through his representative shall exercise direct supervision and control over the program and activities of the small-scale miners within the people's small-scale mining area.
>
> The Secretary shall within ninety (90) days from the effectivity of this Act promulgate rules and regulations to effectively implement the provisions of the same. Priority shall be given to such rules and regulations that will ensure the least disruption in the operations of the small-scale miners.[98]

Section 21.1 of DAO No. 34–92, the implementing rules and regulations of Republic Act No. 7076, states that the DENR Secretary has "direct supervision and control over the program and the activities of the small-scale miners within the people's small-scale mining area."[99]

This court has distinguished the power of control and the power of supervision as follows:

> . . . In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. ***Control, on the other hand, means the***

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96 DAO No. 34-92 (1992), sec. 22.
97 DAO No. 34-92 (1992), sec. 6. Emphasis supplied.
98 Rep. Act No. 7076 (1991), sec. 26.
99 DAO No. 34-92 (1992), sec. 21.1.

> ***power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done*** in the performance of his duties and to substitute the judgment of the former for that of the latter.[100] (Emphasis supplied)

League of Provinces v. DENR[101] discussed that "the Local Government Code did not fully devolve the enforcement of the small-scale mining law to the provincial government, as its enforcement is subject to the supervision, control and review of the DENR, which is in charge, subject to law and higher authority, of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization of the country's natural resources."[102]

Since the DENR Secretary has power of control as opposed to power of supervision, he had the power to affirm with modification the PMRB's decision.

Executive Department

The Constitution provides that "[t]he 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[.]"[103]

Moreover, "[t]he President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country[.]"[104]

Chapter II, Section 4 of Republic Act No. 7942 known as the Philippine Mining Act of 1995 also provides as follows:

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100 *Pimentel v. Aguirre*, 391 Phil. 84, 99 (2000) [Per J. Panganiban, En Banc], *quoting Mondano v. Silvosa*, 97 Phil. 143, 147–148 (1955) [Per J. Padilla, En Banc]. *See also League of Provinces v. Department of Environment and Natural Resources*, G.R. No. 175368, April 11, 2013, 696 SCRA 190, 208 [Per J. Peralta, En Banc], *citing The National Liga Ng Mga Barangay v. Paredes*, 482 Phil. 331 (2004) [Per J. Tinga, En Banc].

101 G.R. No. 175368, April 11, 2013, 696 SCRA 190 [Per J. Peralta, En Banc].

102 Id. at 213, *citing* 1987 ADM. CODE, title XIV (Environment and Natural Resources), chap. 1, sec. 2 (2). *See* J. Leonen, concurring opinion, G.R. No. 175638, April 11, 2013, 696 SCRA 190, 238. The concurring opinion of J. Leonen discusses how autonomous regions are "in a more asymmetrical relationship with the national government as compared to other local governments or any regional formation," since the Constitution grants them legislative powers over some matters usually under the national government's control, including natural resources.

103 CONST., art. XII, sec. 2.

104 CONST., art. XII, sec. 2.

> SEC. 4. *Ownership of Mineral Resources.* – Mineral resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The state may directly undertake such activities or it may enter into mineral agreements with contractors.
>
> The State shall recognize and protect the rights of the indigenous cultural communities to their ancestral lands as provided for by the Constitution.[105]

Section 5 of Republic Act No. 7942 on mineral reservations provides that "[m]ining operations in existing mineral reservations and such other reservations as may thereafter be established, shall be undertaken by the Department or through a contractor[.]"[106]

Apex Mining v. SMGMC discussed that "Section 5 of Republic Act No. 7942 is a special provision, as it specifically treats of the establishment of mineral reservations only. Said provision grants the President the power to proclaim a mineral land as a mineral reservation, regardless of whether such land is also an existing forest reservation."[107]

In the 2002 case of *Southeast Mindanao Gold Mining Corporation v. Balite Portal Mining Cooperative*[108] involving the same Diwalwal gold rush area, this court discussed that "the State may not be precluded from considering a direct takeover of the mines, if it is the only plausible remedy in sight to the gnawing complexities generated by the gold rush."[109]

Incidentally, we acknowledge that PICOP raised the validity of Proclamation No. 297 in its memorandum.[110] It argues that Proclamation No. 297 by then President Macapagal-Arroyo was without congressional

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105 Rep. Act No. 7942 (1995), sec. 4.

106 SEC. 5. *Mineral Reservations.* - When the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value, the President may establish mineral reservations upon the recommendation of the Director through the Secretary. Mining operations in existing mineral reservations and such other reservations as may thereafter be established, shall be undertaken by the Department or through a contractor: *Provided*, That a small scale-mining cooperative covered by Republic Act No. 7076 shall be given preferential right to apply for a small-scale mining agreement for a maximum aggregate area of twenty-five percent (25%) of such mineral reservation, subject to valid existing mining/quarrying rights as provided under Section 112 Chapter XX hereof. All submerged lands within the contiguous zone and in the exclusive economic zone of the Philippines are hereby declared to be mineral reservations.
A ten *per centum* (10%) share of all royalties and revenues to be derived by the government from the development and utilization of the mineral resources within mineral reservations as provided under this Act shall accrue to the Mines and Geosciences Bureau to be allotted for special projects and other administrative expenses related to the exploration and development of other mineral reservations mentioned in Section 6 hereof.

107 *Apex Mining Co, Inc. v. Southeast Mindanao Gold Mining Corp*, 620 Phil. 100, 149–150 (2009) [Per J. Chico-Nazario, En Banc].

108 429 Phil. 668 (2002) [Per J. Ynares-Santiago, First Division].

109 Id. at 683.

110 *Rollo* (G.R. No. 149638), pp. 841–849.

concurrence as required by Republic Act No. 3092, thus, revocable.[111] The validity of Proclamation No. 297, however, is not an issue in these cases. This subsequent development was not litigated, and this is not the proper case to assail its validity.

WHEREFORE, in view of the foregoing, the petitions are **DENIED** for being moot and academic.

MARVIC M.V. F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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[111] Id. at 842–843.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice