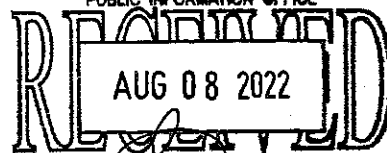




Republic of the Philippines
Supreme Court
Manila



BY: _____
TIME: _____

EN BANC

CONCERNED CITIZENS OF
STA. CRUZ, ZAMBALES
(CCOS), represented by their
Chairperson, DR. BENITO E.
MOLINO and PASTOR
EDGARDO C. OBRA, and the
following members: CASIMIRO
K. EBIDO, JR., DANILO C.
LEONEN, EDUARDO M.
MORANO, LUISITO F. CAPILI,
ALFREDO S. CALIXTO,
LOURDES E. MERCURIO,
CRISANTO A. CORPUZ, EDDIE
F. SANTIAGO, ELIZA
MONTEVIRGEN-GEGANTE,
ROMY M. EDNALAN,
MENALYN M. ALVIAR,
TEODENCIO M. MAQUIO,
MELBA S. DELA CRUZ, LORNA
A. MARILA, ALBERTO P.
MARCELLANA, SUSANA M.
MARILA, ROMANA S. DELA
CRUZ, DELILAH B. OBRA,
ENEDY S. MERCURIO, MINDA
S. DOCE, LAARNI B. MORANO,
MARIO M. BACHO, EMERITA
MAYOLA-MAS, ROBERT V.
MILLAMA, JOSE M. MODELO,
ESTELITA Z. MANA, ROBERT
E. MENOR, SANNY M. MENOR,
ERROL D. MERZA, MARLENE
N. TURA, IGNACIO DELA
CRUZ MERIN, EVELYN M.
LEONEN, ROSITA E.
MARCELLANA, and
RESIDENTS OF INFANTA,
PANGASINAN through the

GR. No. 236269

Present:

GESMUNDO, C.J.,
PERLAS-BERNABE,**
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,***
MARQUEZ, and
KHO, JR., JJ.

following: PERCIVAL A. MALLARE, LUZ M. DARAGAY, JESSE M. BELTRAN, ROGELIO O. SIOCO, REMEDIOS M. NAVAJAS, ALGIE G. MARTY, DIANA A. BERNAL, MARVIN Q. ALFEREZ, GIRLY D. BARNACHEA, DENNIS A. MANIAGO, CRESENCIO C. SILVESTRE, CARLOS M. MONTEHERMOSO, MELVIN Q. MONTERO, RHEALYN B. MONTEHERMOSO, ELISA R. MEJOS, REV. FR. ARRIOSTO R. MINA, and CICERO M. MANAGO,

Petitioners,

- versus -


HON. RAMON J.P. PAJE, in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), ENGR. LEO L. JASARENO, in his capacity as the Director of Mines and GeoSciences Bureau (MGB), ATTY. DANILO U. UYKIENG, in his capacity as the former Acting Regional Director of MGB-Region III, LOPE O. CARIÑO,* JR., in his capacity as OIC, Regional Director, MGB-Region III, ATTY. JUAN MIGUEL T. CUNA, in his capacity as the Director of the Environmental Management Bureau (EMB), LORMELYN E. CLAUDIO, in her capacity as the Regional Director of EMB-Region

* Sometimes spelled as "Carino" in some parts of the *rollo*.

** On official leave.

*** On official business.

III, Engr. LAURO S. GARCIA, JR., in his capacity as the former MMT Head and MGB RO3 MRFC Support Staff and Coordinator, ENGR. DENNIS CELESTIAL, in his capacity as the Chief of Environmental Impact Assessment and Management Division, Region 3 and Incumbent MMT Head, EMB3, LAUDEMIR S. SALAC, in his capacity as OIC of the Provincial Environment and Natural Resources (PENRO), RAYMOND A. RIVERA, in his capacity as OIC of the Community Environment and Natural Resources Office-Zambales (CENRO), HON. HERMOGENES E. EBDANE, in his capacity as Governor of the Province of Zambales, Members of the Sangguniang Panlalawigan of Zambales, in their official capacities; HON. CONSOLACION M. MARTY, in her capacity as Municipal Mayor of the Municipality of Sta. Cruz, Zambales, HON. LUISITO E. MARTY, in his official capacity as the Municipal Mayor during the time mining operations started in the Municipality of Sta. Cruz, Zambales, MEMBERS OF THE SANGGUNIANG BAYAN OF STA. CRUZ, ZAMBALES, in their official capacities, PCI ORLANDO C. REYES, in his official capacity as the Station Chief, PNP-Sta. Cruz, Zambales, BENGUET CORPORATION, NICKEL MINES, INC. (BNMI),



its Officers and Board of Directors, ERAMEN MINERALS, INC. (EMI), its Officers & Board of Directors, LNL ARCHIPELAGO MINERALS, INC. (LAMI), its Officers and Board of Directors, ZAMBALES DIVERSIFIED METALS CORPORATION, its Officers and Board of Directors, SHANGFIL MINING & TRADING CORPORATION, its Officers and Board of Directors,
Respondents.

Promulgated:

March 22, 2022



X-----X

RESOLUTION

INTING, J.:

Before the Court is a Petition¹ for Review on *Certiorari* which assails the Resolutions dated May 22, 2017² and December 14, 2017³ of the Court of Appeals (CA) in CA-G.R. SP No. 00032.

The Antecedents

Petitioners,⁴ for themselves and in representation of the residents of the Municipality of Sta. Cruz, Province of Zambales and the

¹ *Rollo*, pp. 10-32.

² *Id.* at 35-48; penned by Associate Justice Renato C. Francisco with Associate Justices Jose C. Reyes, Jr. (a retired Member of the Court) and Apolinario D. Bruselas, Jr., concurring.

³ *Id.* at 50-54.

⁴ The petitioners in this case are the concerned citizens of Sta. Cruz, Zambales, represented by their Chairperson, Dr. Benito E. Molino and Pastor Edgardo C. Obra, and the following members: Casimiro K. Ebido, Jr., Danilo C. Leonen, Eduardo M. Morano, Luisito F. Capili, Alfredo S. Calixto, Lourdes E. Mercurio, Crisanto A. Corpuz, Eddie F. Santiago, Eliza Montevirgen-Gegante, Romy M. Ednalan, Menalyn M. Alviar, Teodencio M. Maquio, Melba S. Dela Cruz, Lorna A. Marila, Alberto P. Marcellana, Susana M. Marila, Romana S. Dela Cruz, Delilah B. Obra, Eneidy S. Mercurio, Minda S. Doce, Laarni B. Morano, Mario M. Bacho, Emerita Mayola-Mas, Robert V. Millama, Jose M. Modelo, Estelita Z. Mana, Robert E. Menor, Sanny M. Menor, Errol D. Merza, Marlene N. Tura, Ignacio Dela Cruz Merin, Evelyn M. Leonen, Rosita E. Marcellana; and the residents of Infanta, Pangasinan through the following: Percival A. Mallare, Luz M. Daragay, Jesse M. Beltran, Rogelio O. Sioco, Remedios M. Navajas, Algie G. Marty, Diana A. Bernal, Marvin Q. Alvarez, Girly D. Barnachea, Dennis A. Maniago, Cresencio C. Silvestre, Carlos M. Montehermoso, Melvin Q. Montero, Rhealyn B. Montehermoso, Elisa R. Mejos, Rev. Fr. Arriosto R. Mina, and Cicero M. Manago.



Municipality of Infanta, Province of Pangasinan, filed before the Court a special civil action for the issuance of a Writ of *Kalikasan*, with a prayer for the grant of a Temporary Environmental Protection Order (TEPO) pursuant to A.M. No. 09-6-8-SC⁵ that sought to enjoin the conduct of nickel mining operations in the Municipality of Sta. Cruz, Province of Zambales.⁶ The case was docketed as G.R. No. 224375.⁷

For clarity, the Court's Resolution⁸ dated June 21, 2016 in G.R. No. 224375 is quoted as follows:

The petitioners, for themselves and in representation of the residents of Municipality of Sta. Cruz, Province of Zambales and the Municipality of Infanta, Province of Pangasinan, allege that their constitutional right to a balanced and healthful ecology is being threatened and is actually being violated by the following respondent mining companies, to wit:

Mining Company	Mining Activity/ies	Location	Area (Hectares)
Benguet Corp., Nickel Mines, Inc. (BNMI)	Surface mining of [nickel] laterite and associated metallic ores	Brgy. Guisguis, Sta. Cruz, Zambales	1,406.7361
Eramen Mineral, Inc. (EMI)	Modified contour [mining] of nickel silicate and associated metal ores	Sta. Cruz and Candelaria, Zambales	4,619.6869
LnL Archipelago Minerals, Inc. (LAMI)	Contour mining of nickel laterite and associated metallic ores Port/stockyard	Brgys. Guinabon and Guisguis, Sta. Cruz, Zambales Cato, Infanta, Quezon; Bolitoc, Sta. Cruz, Zambales	951.5734
Zambales Diversified Metals Corp. (ZDMC)	Surface mining of nickel laterite and associated metal ores	Sitio Acoje, Lucapon South, Sta. Cruz and Sitio Malimlim	3,765.3853

⁵ Rules of Procedure for Environmental Cases, approved on April 13, 2010.

⁶ *Rollo*, p. 56.

⁷ *Id.* at 55

⁸ *Id.* at 55-61.

		Uacon, Candelaria, Zambales	
ShangFil Mining Trading Corp. (SMTC)	With existing & exploration permit		

The petitioners aver that said mining companies have adopted unsystematic mining practices; that, for instance, during the onslaught of Typhoon *Labuyo* on August 12, 2013, a 6-foot muddy flood affected several residential areas, and submerged farmlands that became permanently contaminated with nickel laterite siltation; that the nickel laterite siltation had also turned the river into the "color of blood;" that the shorelines of the affected barangays as well as the fishponds were also silted with nickel laterite; that this situation has been repeated each time that the Province of Zambales experienced typhoons or heavy rains; that the unsustainable activities being implemented by said mining companies also resulted to the following: (a) the destruction of the ecosystem in the Municipality of Sta. Cruz, and its neighboring Municipality of Candelaria, both of the Province of Zambales, Zambales, and extended up to the Municipality of Infanta, Province of Pangasinan; (b) water, air and soil pollution; (c) heavy nickel laterite siltation of river systems, coasts, farmlands, fishponds and residential areas; (d) forest denudation resulting in soil erosions; (e) exacerbated flood problems during typhoons and heavy rains; (f) destruction of irrigation system in the Municipality of Sta. Cruz, Province of Zambales that severely reduced the palay production of the rice granary of the Province of Zambales; and (g) heavily affected the livelihood of the residents.

The petitioners fear that although the operations of the mining companies ZDMC, EMI, BNMI and LAMI/FMC have been suspended by respondent Mines and Geosciences Bureau (MGB)-Region III on July 14, 2014, they have continued to inconspicuously but actively engage in mining activities.

In their appeal for the issuance of the Writ of *Kalikasan*, the petitioners posit that the documented disastrous effects of the continued mining operations in the Municipality of Sta. Cruz, Province of Zambales have shown that respondent mining companies have not followed a waste-free and efficient mine development plan as required by Republic Act No. 7942 (*Mining Act of 1995*); that both public and private respondents failed to conduct an assessment of the destruction caused by the mining operations in the Municipality of Sta. Cruz, Province of Zambales and its neighboring municipalities in violation of Section 70 of R.A. No. 7942 and Section 3 and Section 39 of DENR Department Administrative Order No. 2010-21; and that

Section 71 of R.A. No. 7942 requires the restoration of the affected areas but the respondents have continuously ignored their obligation.

The petitioners further state that the continued inaction of the public respondents violates Section 4 and Section 5 of Executive Order No. 192; that the officials of the Department of Environment and Natural Resources (DENR), the Environmental Management Bureau (EMB) Regional Office, the Provincial Environment and Natural Resources Office (PENRO), and the Community Environment and Natural Resources (CENRO) have failed to discharge their duty under Section 21, Chapter 4 of the 1987 Administrative Code; and that the local government unit of the Municipality of Sta. Cruz, Province of Zambales has not complied with Section 16 of R.A. No. 7160 (*The Local Government Code*).

In support of their application for the grant of the TEPO, the petitioners submit that there is an urgent necessity to save and conserve the remaining villages of the Municipality of Sta. Cruz, Province of Zambales that have remained unaffected by the unsystematic mining activities; and that the TEPO shall prevent total destruction of the environment that could cause irreparable injury to the residents of the Municipality of Sta. Cruz, Province of Zambales as well as of the Municipality of Infanta, Province of Pangasinan.⁹

The Court found the petition to be sufficient in form and substance; thus, it issued the Writ of *Kalikasan* prayed for by the petitioners. The Court ordered respondents to file in the CA their verified returns in accordance with Section 8 of the Rules of Procedure for Environmental Cases within a non-extendible period of 10 days from service of the writ. The Court then referred the case, including the application for TEPO, to the CA for hearing.¹⁰

The case before the CA was docketed as CA-G.R. SP No. 00032.¹¹

In a Resolution dated July 19, 2016, the CA issued a Writ of Continuing *Mandamus* against public respondent local government units and required them to file their respective comments on the petition within a non-extendible period of 10 days from the service of the writ. The CA also set the application for TEPO for hearing.¹²

⁹ Id. at 56-58.

¹⁰ Id. at 58.

¹¹ Id. at 100, 149.

¹² Id. at 39.

From the assailed CA Decision, the Court gathered the following additional pieces of information:

The Environmental Mines Bureau (EMB) issued Cease and Desist Orders dated June 9, 2014 to Eramen Minerals, Inc. (EMI) and Benguet Corporation Nickel Mines, Inc.¹³ (BNMI) directing them to stop their hauling operations due to heavy laterite siltation of the Panalabawan and Sta. Cruz "Alinsaog" Rivers which are affecting adjoining farmlands, fishponds, and shorelines.¹⁴

On July 15, 2014, the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR) issued suspension orders ordering Zambales Diversified Metals Corporation (ZDMC), EMI, BNMI, and LnL Archipelago Minerals, Inc. (LAMI) to suspend the extraction of nickel ores and the future expansion of mining areas pending their compliance with a systematic mining method with defined mining benches pursuant to Rule 359¹⁵ of DENR Administrative Order (DAO) No. 2000-98.¹⁶

On January 13, 2015, the EMB ordered the temporary lifting of the suspension orders covering the hauling operations of BNMI and EMI, subject to the following conditions:

1. formation of an EMB-led multipartite monitoring team (MMT), which shall ensure the conduct of a 24-hour ambient air quality sampling on a weekly basis; water quality sampling of the Cabaluan River and Panalabawan River and affected coastal areas of Sta. Cruz on a monthly basis; and sediment sampling on a quarterly basis;
2. submission of a Contingency Plan to address the impacts of the cross-drains during heavy downpours;
3. submission of a Progress Report on the Sediment Fluz Study;
4. ensuring the effective operations of the installed CCTV cameras, records of which shall be submitted to the EMB on a weekly basis;

¹³ Now Benguet Mining Corporation.

¹⁴ *Rollo*, p. 40.

¹⁵ Rule 359 of DENR Administrative Order (DAO) No. 2000-98 provides:

Rule 359. The vertical height of working benches shall be kept at the maximum reach of the shovel/loader being used.

¹⁶ With the subject, "Mine Safety and Health Standards." See also, *rollo*, pp. 39-40.

5. assistance in the continuous impact assessment of mining operations in the area; and
6. continued rehabilitation of the affected waterbodies, fishponds, farmlands, and other ecosystems.¹⁷

The Order dated January 13, 2015 provides that there shall be an automatic reimposition of the Cease and Desist Orders dated June 9, 2014 should BNMI and EMI commit any violation of the conditions.¹⁸

After the issuance of the temporary lifting orders on the hauling operations, the EMB issued another set of orders: on February 10, 2015 with respect to the mining operations of LAMI, and on February 20, 2015 of EMI and BNMI for the temporary lifting of the suspension orders dated July 15, 2014.¹⁹ The suspension was for a duration of 90 days, subject to the following conditions:

1. construction of an alternative mine haulage road, to be submitted [within] 30 days;
2. resolution of the alleged coastal destruction brought about by the mining operations;
3. submission of a report on the present condition and rehabilitation of the coastal areas affected by the laterite siltation within 30 days;
4. full payment of claims for compensation for damages to fishponds within 60 days;
5. conduct of sediment flux monitoring to determine the effectiveness of erosion and siltation control measures within 90 days; and
6. full rehabilitation of the adversely affected river systems within 90 days.²⁰

However, petitioners alleged that the 90-day period temporarily lifting the suspension order lapsed on May 16, 2016. Despite the lapse of the period, public respondents had taken extraordinary lengths to

¹⁷ Id. at 40-41.

¹⁸ Id. at 41.

¹⁹ Id.

²⁰ Id.

accommodate and grant the requests by respondent mining companies²¹ for permits needed for their continued hauling and mining operations.²²

Petitioners reiterated their allegations in G.R. No. 224375, as contained in the Resolution dated June 21, 2016, expressing their fears that: (1) despite the suspension of the mining operations of ZDMC, EMI, BNMI, and LAMI/FMC, the mining companies have continued to inconspicuously, but actively engage in mining activities; (2) the documented disastrous effects of the mining operations in the Municipality of Sta. Cruz, Province of Zambales showed that respondent mining companies failed to follow a waste-free and efficient mine development plan as required by Republic Act No. (RA) 7942;²³ and (3) both public and private respondents failed to conduct an assessment of the destruction caused by the mining operations in the Municipality of Sta. Cruz, Province of Zambales and its neighboring municipalities in violation of the following: Section 70²⁴ of RA 7942; Sections 3 and 39 of DENR DAO 2010-21;²⁵ and Section 71²⁶ of RA 7942 that requires restoration of the affected areas.²⁷

²¹ The following are the respondent mining companies: Benguet Corp., Nickel Mines, Inc., Eramen Minerals, Inc., LnL Archipelago Minerals, Inc., Zambales Diversified Metals Corp. and ShangFil Mining & Trading Corp.

²² *Rollo*, p. 41.

²³ Philippine Mining Act of 1995, approved on March 3, 1995.

²⁴ Section 70 of RA 7942 provides:

Section 70. *Environmental Impact Assessment (EIA)*. – Except during the exploration period of a mineral agreement or financial or technical assistance agreement or an exploration permit, an environmental clearance certificate shall be required based on an environmental impact assessment and procedures under the Philippine Environmental Impact Assessment System including Sections 26 and 27 of the Local Government Code of 1991 which require national agencies to maintain ecological balance, and prior consultation with the local government units, non-governmental and people's organizations and other concerned sectors of the community: *Provided*, That a completed ecological profile of the proposed mining area shall also constitute part of the environmental impact assessment. people's organizations and non-governmental organizations shall be allowed and encouraged to participate in ensuring that contractors/permittees shall observe all the requirements of environmental protection.

²⁵ DAO 2010-21 is the Revised Implementing Rules and Regulations of RA 7942. Section 3 refers to its Governing Principles while Section 39 pertains to Terms and Conditions of a Mineral Agreement.

²⁶ Section 71 of RA 7942 provides:

Section 71. *Rehabilitation*. – Contractors and permittees shall technically and biologically rehabilitate the excavated, mined-out, tailings covered and disturbed areas to the condition of environmental safety, as may be provided in the implementing rules and regulations of this Act. A mine rehabilitation fund shall be created, based on the contractor's approved work program, and shall be deposited as a trust fund in a government depository bank and used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation. Failure to fulfill the above obligation shall mean immediate suspension or closure of the mining activities of the contractor/permittee concerned.

²⁷ *Rollo*, pp. 41-42.

To support their application for a writ of continuing *mandamus*, petitioners reiterated their allegations in G.R. No. 224375 that public respondents violated Sections 4 and 5 of Executive Order No. (EO) 192.²⁸ Petitioners further alleged that the officials of the DENR, the EMB Regional Office, the Provincial Environment and Natural Resources Office (PENRO), and the Community Environment and Natural Resources Office (CENRO) failed to discharge their duties under Section 21, Chapter 4 of the 1987 Administrative Code.²⁹

To support their application for TEPO, petitioners again asserted that there is an urgent necessity to save and conserve the remaining villages of the Municipality of Sta. Cruz, Province of Zambales that have remained unaffected by the unsystematic mining activities of respondent mining companies; and that the issuance of the TEPO shall prevent the total destruction of the environment that could cause irreparable injury to the residents of the Municipality of Sta. Cruz, Province of Zambales and the Municipality of Infanta, Province of Pangasinan.³⁰

On the other hand, the Office of the Solicitor General (OSG), representing public respondents, opposed the application for TEPO citing the Joint Suspension Order dated July 7, 2016 issued by the DENR, MGB-Region III, and EMB-Region III which immediately suspended the mining operations of all respondent mining companies. The OSG maintained that the application for TEPO had been rendered moot by the Joint Suspension Order. The OSG also sought the dismissal of the petition on the ground of forum shopping because petitioners also filed a petition for *mandamus* with prayer for the issuance of a writ of preliminary injunction before the CA, docketed as G.R. SP No. 140734. The OSG asserted that: (1) petitioners sought the suspension of the mining operations in the Municipality of Sta. Cruz, Province of Zambales pursuant to the Suspension Orders dated July 15, 2014 issued by the MGB-Region III; (2) the CA eventually dismissed G.R. No. 140734 in its Resolution dated October 8, 2015 for failure of petitioners to comply with the Resolution dated June 19, 2015 directing them to

²⁸ Entitled, "Providing for the Reorganization of the Department of Environment, Energy and Natural Resources, Renaming It as the Department of Environment and Natural Resources, and For Other Purposes," approved on June 10, 1987.

Executive Order No. 192 (1987) is the Reorganization Act of the Department of Environment and Natural Resources. Sections 4 and 5 are the Mandate and Powers and Functions, respectively.

²⁹ *Rollo*, p. 42.

³⁰ *Id.* at 42-43.

cure the procedural infirmities in their petition; and (3) the CA denied petitioners' motion for reconsideration in its Resolution dated June 1, 2016.³¹

The CA set the application for TEPO for hearing on October 5, 2016. The hearing was rescheduled to allow the parties to reach an amicable settlement.³²

On February 20, 2017, the OSG filed a Compliance and Manifestation alleging that: (1) the parties convened on February 2, 2017 for a possible amicable settlement of the case; (2) on even date, the DENR Secretary announced in a press conference the closure of the mining operations of BNMI, EMI, ZDMC, and LAMI; and (3) because of the supervening event and the irreconcilable positions adopted by the parties, they agreed to submit the merits of the case for resolution.³³

On February 27, 2017, petitioners filed an Extremely Urgent Motion for Ocular Inspection (for possible violation of the writ), alleging that despite the issuance of the writs of *kalikasan* and continuing *mandamus*, respondent mining companies have been continuing their extraction and hauling operations. In its Resolution dated February 28, 2017, the CA required the parties to submit their respective memoranda.³⁴

The Ruling of the CA

In the assailed Resolution³⁵ dated May 22, 2017, the CA denied petitioners' Petition for Writ of *Kalikasan*, application for TEPO, and Urgent Motion for Ocular Inspection.

The CA ruled that prior to the referral of the petition by the Court, the DENR Region III and the MGB Region III already issued a series of Joint Suspension Orders against ZDMC, BNMI, and LAMI; that during the pendency of the case, the DENR already conducted an audit of the mining operations of respondent mining companies for the month of

³¹ Id. at 43-44.

³² Id. at 44.

³³ Id. at 44-A.

³⁴ Id.

³⁵ Id. at 35-48.

August 2016, in accordance with DENR Memorandum Order No. 2016-01 dated July 8, 2016; and that on February 8, 2017, after finding that respondent mining companies violated pertinent environmental and mining laws, the DENR, through then Secretary Regina Lopez (Sec. Lopez), issued separate orders canceling the Mineral Production Sharing Agreements (MPSA) of respondent mining companies, resulting in the closure of their mining operations.³⁶

The CA further ruled that with the closure of the mining companies, “there can be no unlawful act or omission that may be committed by respondent mining companies that would result in actual or threatened violation of petitioner's constitutional right to a balanced and healthful ecology”³⁷ and as such, there is no more actual controversy between the parties.

The CA noted petitioners' allegation that despite the closure orders, the hauling operations of respondent mining companies continued. The CA, however, cited the in-depth audit of respondent mining companies conducted by the audit team composed of technical personnel from the FMB, DENR Region III, MGB Region VII, EMB Region VIII, Civil Society Organizations, and representatives from third party experts: Department of Agriculture (DA), Department of Health (DOH), National Economic and Development Authority (NEDA), and Bureau of Fisheries and Aquatic Resources (BFAR). The CA ruled that the audit team, after noting the various violations of mining and environmental laws committed by respondent mining companies, submitted its recommendations for compliance. The CA deferred to the technical and intricate factual findings of the DENR which has the special knowledge, experience, and expertise on the subject. The CA further ruled that the DENR has the primary jurisdiction to enforce environmental standards in mining and any violation committed by respondent mining companies should be brought before the DENR.³⁸

The dispositive portion of the CA Resolution reads:

WHEREFORE, premises considered, the petition for writ of *kalikasan*, petitioners' application for TEPO and Urgent Motion for Ocular Inspection are hereby DENIED. Accordingly, the prohibitory injunctive provisional writ of *kalikasan* issued by the Supreme Court

³⁶ Id. at 44-A-45.

³⁷ Id. at 45.

³⁸ Id. at 45-47.

in accordance with Section 5, Rule 7 of the Rules of Procedure on Environmental Cases is LIFTED.

SO ORDERED.³⁹

Petitioners filed a motion for reconsideration. In its Resolution⁴⁰ dated December 14, 2017, the CA denied the motion.

Hence, the petition before the Court.

The Issue

Whether the petition for writ of *kalikasan* and the application for a TEPO have been rendered moot with the closure of respondent mining companies.

BNMI, in its Comment,⁴¹ alleges that it totally ceased its mining operations, rendering the writ of *kalikasan* moot.⁴² The DENR Closure Order is a supervening event with practical and legal effects that petitioners cannot deny; that the relief prayed for in the TEPO had also been mooted; and that prior to the cessation of its operations, it was conducting responsible and systematic activities in Brgy. Guisguis, Municipality of Sta. Cruz, Province of Zambales. It further denies violating RA 7942.

LAMI, in its Comment,⁴³ maintains its position that the DENR Closure Order is not final, pending its timely appeal filed before the Office of the President (OP) which issued a Stay Order thereon. As such, the petition before the CA is not rendered moot. LAMI asserts that it did not commit any gross violation of environmental laws or regulations and all its activities were done responsibly.

In its Comment/Opposition,⁴⁴ EMI took the view that the DENR Closure Order had rendered the petition for writ of *kalikasan* and

³⁹ Id. at 47-48.

⁴⁰ Id. at 50-54.

⁴¹ Id. at 274-308.

⁴² Id. at 277.

⁴³ Id. at 334-342.

⁴⁴ Id. at 343-377.

issuance of TEPO moot. EMI alleged that while the CA directed the lifting of the writ of *kalikasan*, it has yet to order the lifting of the writ of continuing *mandamus* it issued on July 19, 2016 against the local government units of the Municipality of Sta. Cruz, Province of Zambales, the Regional Officers of the DENR, MGB, and EMB. Thus, the DENR is still compelled to exercise its duties of enforcing environmental laws and allied laws, rules, and regulations.

Shangfil Mining and Trading Corporation (SMTC) filed its Comment⁴⁵ adopting the CA ruling that the Closure Order rendered the case moot. SMTC alleges that while the petition for writ of *kalikasan* prayed for other remedies such as rehabilitation and payment of fines and penalties, these are ancillary matters that follow the fate of the main issue. SMTC further alleges that these incidents are highly factual that requires the presentation of evidence during a full-blown trial.

ZDMC filed its Opposition⁴⁶ and seeks the dismissal of the petition. ZDMC pointed out that instead of presenting its evidence before the CA, petitioners submitted the case for resolution based on the Closure Order issued by Sec. Lopez; that while petitioners mentioned Infanta, Pangasinan as an affected area of the mining activities in Zambales, the claims are confined to the supposed silted and damaged areas surrounding the Pamalabawan and Alinsaog Rivers; that it has no operations in Infanta, Pangasinan; that the Closure Order did not accord to it the opportunity to refute the accusations against it; that it did not violate any environmental laws; and that the report by the Regional Investigation and Assessment Team showed that it did not contribute in the siltation of the affected areas in Zambales.

In its Comment,⁴⁷ the OSG alleges that the DENR's cancellation of the MPSA of respondent mining companies rendered the case moot; that all the reliefs sought for in the petition for the issuance of a writ of *kalikasan* were resolved by the DENR Closure Orders. As regards petitioners' claim that the CA should not have dismissed the case because the issue of rehabilitation of the affected areas remains, the OSG asserts that the Closure Orders are still subject to compliance with the provisions of RA 7942 on the final mine rehabilitation of disturbed areas, as well as other applicable laws, rules, and regulations. The OSG

⁴⁵ Id. at 713-719.

⁴⁶ Id. at 726-742.

⁴⁷ Id. at 658-697.

further alleges that petitioners' insistence on an ocular inspection is procedurally infirm and non-compliant with Section 12(a) and (b), Part III of the Rules of Procedure for Environmental Cases.

In their Consolidated Reply,⁴⁸ petitioners aver that: (1) by giving way to the specialized knowledge and expertise of the DENR, the CA abandoned its primary jurisdiction over the case; (2) under Section 3, Rule 1 of A.M. No. 09-6-8-SC, the courts have to monitor and exact compliance with orders and judgments in environmental cases; (3) the CA abdicated this objective in rendering the case moot by the audit conducted in the administrative proceeding before the DENR; (4) the case involves the constitutional rights of the residents of Sta. Cruz and Candelaria, Zambales and Infanta, Pangasinan who deserve the judicious intervention of the courts; (5) the Closure Orders can only be paper victories unless they can be properly implemented; and (6) mining operations have been unhampered making the motion for ocular inspection necessary to discover possible violations by the mining companies. Petitioners likewise stated that the claims for rehabilitation are not claims for damages but are intended as rehabilitation funds to restore what Zambales and Pangasinan lost from the mining operations.

In a Resolution⁴⁹ dated January 26, 2021, the Court directed the parties to "MOVE IN THE PREMISES" and inform the Court of supervening events and/or subsequent developments pertinent to the disposition of the case which may have rendered the case moot. The directive is relative to LAMI's allegation that it had filed an appeal before the OP which questioned the DENR Order dated February 8, 2017 that cancelled its MPSA, and that it was able to secure a Stay Order thereon from the OP.

In their Manifestation,⁵⁰ petitioners submit that they "have been requesting copies of the DENR Resolution/Decision downgrading the Cancellation Order of then Secretary of Natural Resources [Sec. Lopez] to mere Suspension and eventually the lifting of the Suspension orders issued by public respondent DENR on the cancelled MPSAs of private respondents BNMI, ZMDC, EMI and Filipinas Mining/LAMI."⁵¹ Petitioners maintain that despite the cancellation order, respondent

⁴⁸ Id. at 767-777.

⁴⁹ Id. at 808-810.

⁵⁰ Id. at 811-816.

⁵¹ Id. at 811

mining companies have returned to their mining operations.

In its Compliance,⁵² the OSG manifests as follows:

(a) on March 1, 2017, March 2, 2017, and March 21, 2017, LAMI, EMI, and BNMI appealed to the OP the DENR Closure Order dated February 8, 2017 which cancelled their respective MPSAs;⁵³

(b) on January 7, 2021, the DENR issued a Memorandum⁵⁴ lifting and setting aside the closure order dated February 8, 2017 against LAMI;

(c) on September 30, 2019, the DENR issued a Resolution⁵⁵ lifting the Suspension of Mining Operation of ZMDC;

(d) on August 4, 2020, the DENR Sec. Roy A. Cimatu (Sec. Cimatu) approved the Memorandum⁵⁶ from the Undersecretary for Policy, Planning and International Affairs recommending the lifting of the closure order dated February 8, 2017 against BNMI; and

(e) on August 4, 2020,⁵⁷ the DENR Sec. Cimatu approved the Memorandum from the Undersecretary for Policy, Planning and International Affairs recommending the lifting of the closure order dated February 8, 2017 against EMI.

The OSG further states that at present, *all respondent mining companies are already operational* as a result of the lifting by the DENR of the Closure Order dated February 8, 2017; and that the appeal of respondent mining companies with the OP, which issued the Stay Order dated March 15, 2017 against the Closure Order, is still pending resolution.⁵⁸

⁵² Id. at 829-837.

⁵³ Id. at 830-833.

⁵⁴ Id. at 840-F.

⁵⁵ Id. at 840-B-840-D.

⁵⁶ Id. at 840-G-840-H.

⁵⁷ Id. at 840-I-840-J.

⁵⁸ Id. at 835.

For their part, BNMI, SMTC and EMI inform the Court that there are no supervening event and/or subsequent development relative to the assailed CA Resolutions dated May 22, 2017 and December 14, 2017.⁵⁹

On the other hand, LAMI confirms the manifestation of the OSG that in a Memorandum⁶⁰ dated January 7, 2021, Sec. Cimatu approved the lifting and setting aside of the Closure Order dated February 8, 2017 against it (LAMI).

The Ruling of the Court

A writ of *kalikasan* is a remedy under Section 1, Rule 7 of the Rules of Procedure for Environmental Cases. It provides:

Section 1. *Nature of the writ.* - The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

The requisites of a writ of *kalikasan* are as follows:

x x x (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.⁶¹

⁵⁹ Id. at 842-851; 852-854;

⁶⁰ Id. at 924.

⁶¹ *Paje v. Casiño*, 752 Phil. 498, 539 (2015).

The writ of *kalikasan* has been described as follows:

The writ is categorized as a special civil action and was, thus, conceptualized as an extraordinary remedy, which aims to provide judicial relief from threatened or actual violation/s of the constitutional right to a balanced and healthful ecology of a magnitude or degree of damage that transcends political and territorial boundaries. It is intended “to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short” and seeks “to address the potentially exponential nature of large-scale ecological threats.”⁶²

It bears stressing that the CA denied the petitioners' petition for writ of *kalikasan*, as well as their application for TEPO and Urgent Motion for Ocular Inspection, on the *sole* basis of the DENR Closure Orders dated February 8, 2017 which cancelled the respective MPSAs of respondent companies. The CA underscored that with the closure of the mining operations, “*there can be no unlawful act or omission that may be committed by respondent mining companies that would result in actual or threatened violation of petitioners' constitutional right to a balanced and healthful ecology.*”⁶³ For the CA, the DENR Closure Orders have rendered the case moot. Thus, it found that “*no useful purpose can be served in passing upon the merits of the petition.*”⁶⁴

The foregoing ruling of the CA *no longer holds*, owing to the subsequent and supervening events as manifested by the OSG and LAMI, more particularly on the *lifting* of the DENR Closure Order dated February 8, 2017 which previously cancelled the respective MPSA's of respondent mining companies.

Indeed, with the lifting of the Closure Orders dated February 8, 2017 and the resumption of the mining operations of respondent companies as manifested by the OSG, petitioners' allegations—*i.e.*, that respondent companies conduct unsystematic mining activities, and that their mining operations violate pertinent environmental and mining laws, which were considered by the DENR in the issuance of said Closure

⁶² *Id.* at 538.

⁶³ *Rollo*, p. 45.

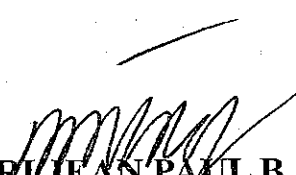
⁶⁴ *Id.* at 45.

Orders—become material and significantly relevant in the subject petition for writ of *kalikasan*. Thus, the propriety of the ultimate relief in a petition for writ of *kalikasan*, that is, to prevent further violations of the constitutionally protected rights to a balanced and healthful ecology remains a justiciable controversy. This has not been squarely passed upon or resolved by the CA.

Admittedly, the CA did not make any factual evaluation on petitioners' allegations as it merely cited the in-depth audit of respondent mining companies conducted by the audit team composed of technical personnel from the FMB, DENR Region III, MGB Region VII, EMB Region VIII, Civil Society Organizations, and representatives from third party experts: DA, DOH, NEDA, and BFAR. However, as pointed out by the CA, the audit team's findings on the various violations of pertinent mining and environmental laws committed by respondent mining companies merely culminated in the closure of the mining operations of respondent companies as directed in the Closure Orders dated February 8, 2017.⁶⁵

WHEREFORE, the Resolutions dated May 22, 2017 and December 14, 2017 of the Court of Appeals in CA-G.R. SP No. 00032 are **SET ASIDE**. Accordingly, the case is **REMANDED** to the Court of Appeals for the continuation of proceedings with dispatch.

SO ORDERED.

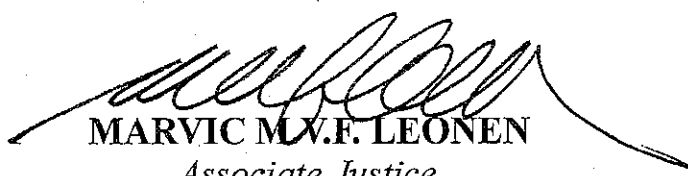

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

⁶⁵ *Id.*

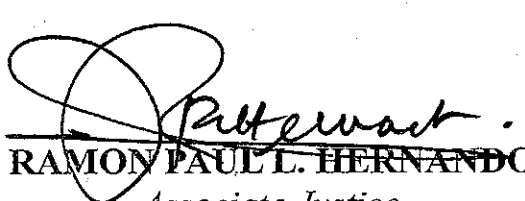
(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



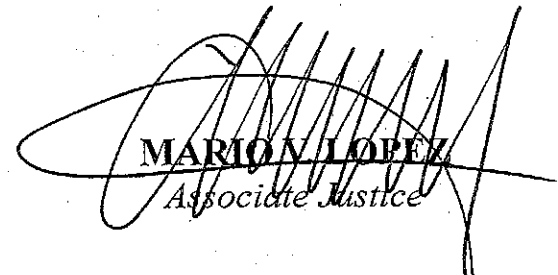
RAMON PAUL L. HERNANDO
Associate Justice




AMY C. LAZARO-JAVIER
Associate Justice



RODIL N. ZALAMEDA
Associate Justice



MARION LOPEZ
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

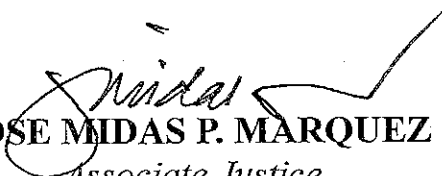


RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

(On official business)
JAPAR B. DIMAAMPAO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice

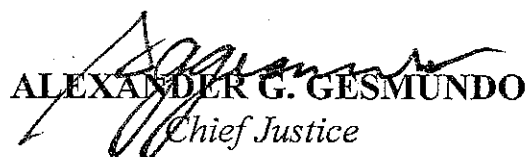


ANTONIO T. KHO, JR.
Associate Justice



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Resolution had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice

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