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FIRST DIVISION

[G.R. No. 162243. November 29, 2006]

HON. HEHERSON ALVAREZ substituted by HON. ELISEA G. GOZUN, in her capacity as Secretary of the Department of Environment and Natural Resources, *petitioner, vs.* **PICOP RESOURCES, INC.,** *respondent.*

[G.R. No. 164516. November 29, 2006]

PICOP RESOURCES, INC., *petitioner, vs.* **HON. HEHERSON ALVAREZ substituted by HON. ELISEA G. GOZUN, in her capacity as Secretary of the Department of Environment and Natural Resources,** *respondent.*

[G.R. No. 171875. November 29, 2006]

THE HON. ANGELO T. REYES (formerly Hon. Elisea G. Gozun), in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), *petitioner, vs.* **PAPER INDUSTRIES CORP. OF THE PHILIPPINES (PICOP),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; MOTION TO DISMISS; LACK OF CAUSE OF ACTION; HYPOTHETICALLY ADMITS THE TRUTH OF THE ALLEGATIONS IN THE COMPLAINT. — The Court of Appeals is correct. Since PICOP alleges grave abuse of discretion on the part of the DENR Secretary, it behooves the court to determine the same. An outright dismissal of the case would have prevented such determination. For the same reason, the *MANDAMUS* CASE could not have been dismissed outright for lack of cause of action. A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint. In ruling upon the DENR Secretary's Motion to Dismiss, PICOP's allegation that it has a contract with the government should, thus, be hypothetically admitted. Necessarily, the DENR Secretary's argument that

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there was no such contract should be considered in the trial of the case and should be disregarded at this stage of the proceedings.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 8975; PROHIBITION AGAINST TEMPORARY RESTRAINING ORDERS APPLIES WHEN LICENSES AND CONCESSIONS ENTAIL GOVERNMENT INFRASTRUCTURE PROJECTS.** — We agree with the DENR Secretary. Republic Act. No. 8975 was not intended to set out in full all laws concerning the prohibition against temporary restraining orders, preliminary injunctions and preliminary mandatory injunctions. Republic Act No. 8975 prohibits lower courts from issuing such order in connection with the implementation of government infrastructure projects, while Presidential Decree No. 605 prohibits the issuance of the same, in any case involving licenses, concessions and the like, in connection with the natural resources of the Philippines. This can be further seen from the respective titles of these two laws, which, of course, should express the subjects thereof: xxx. However, when the licenses, concessions and the like *also* entail government infrastructure projects, the provisions of Republic Act No. 8975 should be deemed to apply, and, thus, Presidential Decree No. 605 had been modified in this sense.

3. **ID.; ID.; PRESIDENTIAL DECREE NO. 605; PROHIBITION ON THE ISSUANCE OF INJUNCTIONS OR RESTRAINING ORDERS BY THE COURTS PERTAINS TO ADMINISTRATIVE ACTS IN CONTROVERSIES INVOLVING FACTS OR THE EXERCISE OF DISCRETION IN TECHNICAL CASES BUT NOT ISSUES INVOLVING QUESTIONS OF LAW.**— Nevertheless, despite the fact that Presidential Decree No. 605 subsists, the DENR Secretary must have missed out ruling in *Datiles and Co. v. Sucaldito,* wherein we held that the prohibition in Presidential Decree No. 605 "pertains to the issuance of injunctions or restraining orders by courts against **administrative acts in controversies involving facts or the exercise of discretion in technical cases,** because to allow courts to judge these matters could disturb the smooth functioning of the administrative machinery. But on **issues definitely outside of this dimension and involving questions of law,** courts are not prevented by Presidential Decree No. 605 from exercising their power to

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restrain or prohibit administrative acts. "While there are indeed questions of facts in the present Petitions, the overriding controversy involved herein is one of law: whether the Presidential Warranty issued by former President Marcos are contracts within the purview of the Constitution's Non-Impairment Clause. Accordingly, the prohibition in Presidential Decree No. 605 against the issuance of preliminary injunction in cases involving permits for the exploitation of natural resources does not apply in this case.

4. **ID.; ID.; ID.; CANNOT DEPRIVE THE COURTS OF AUTHORITY TO TAKE COGNIZANCE OF THE ISSUES RAISED IN THE PRINCIPAL ACTION AS LONG AS MUCH ACTION AND THE RELIEF SOUGHT ARE WITHIN THEIR JURISDICTION.** – Moreover, as we held in *Republic v. Nolasco,* statutes such as Presidential Decree No. 605, Presidential Decree No. 1818 and Republic Act No. 8975 merely proscribe the issuance of temporary restraining orders and writs of preliminary injunction and preliminary mandatory injunction. They cannot, under pain of violating the Constitution, deprive the courts of authority to take cognizance of the issues raised in the principal action, as long as such action and the relief sought are within their jurisdiction. We further held in *Nolasco:* However, it must be clarified that Republic Act No. 8975 does not ordinarily warrant the outright dismissal of any complaint or petition before the lower courts seeking permanent injunctive relief from the implementation of national government infrastructure projects. What is expressly prohibited by the statute is the issuance of the provisional reliefs of temporary restraining orders, preliminary injunctions, and preliminary mandatory injunctions. It does not preclude the lower courts from assuming jurisdiction over complaints or petitions that seek as ultimate relief the nullification or implementation of a national government infrastructure project. **A statute such as Republic Act No. 8975** *cannot diminish the constitutionally mandated judicial power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. . . . .*

5. **ID.; ID.; ID.; LICENSES CONCERNING THE HARVESTING OF TIMBER IN THE COUNTRY'S FORESTS CANNOT BE CONSIDERED CONTRACTS THAT WOULD BIND THE**

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GOVERNMENT REGARDLESS OF CHANGES IN POLICY AND THE DEMANDS OF PUBLIC INTEREST AND WELFARE.— In unequivocal terms, we have consistently held that such licenses concerning the harvesting or timber in the country's forest cannot be considered contracts that would bind the Government regardless of changes in policy and the demands of public interest and welfare. Such unswerving verdict is synthesized in *Oposa v. Factoran, Jr.,* where we held: In the first place, the respondent Secretary did not, for obvious reasons, even invoke in his motion to dismiss the non-impairment clause. If he had done so, he would have acted with utmost infidelity to the Government by providing undue and unwarranted benefits and advantages to the timber license holders because he would have forever bound the Government to strictly respect the said license according to their terms and conditions regardless of changes in policy and the demands of public interest and welfare. He was aware that as correctly pointed out by petitioners, into every timber license must be read Section 20 of the Forestry Reform Code (P.D. No. 705) which provides: "xxx Provided, that when the national interest so requires, the President may amend, modify, replace or rescind any contract, concession, permit, license or any other form of privilege granted herein xxx." Needless to say, all license may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the constitution. x x x..

6. **ID.; ID.; ID.; A LICENSE OR A PERMITEE, IS NOT A CONTRACT BETWEEN THE SOVEREIGNTY AND THE LICENSEE OR PERMITTE, AND IS NOT A PROPERTY IN THE CONSTITUTIONAL SENSE, AS TO WHICH THE PROSCRIPTION AGAINST THE IMPAIRMENT OF CONTRACTS MAY EXTEND.**— The argument that the Presidential Warranty is a contract on the ground that there were mutual considerations taken into account consisting in investments on PICOP's part is preposterous. All licensees put up investments in pursuing their businesses. To construe these investments as consideration in a contract would be to stealthily render render ineffective the settled jurisprudence that "a license or a permit is not a contract between the sovereignty and the licensee or permittee, and is not a property in the constitutional sense, as to which the constitutional proscription against the impairment of contracts may extend."

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Neither shall be allow a circumvention of such doctrine by terming such a permit as a "warranty."

7. ID.; ID.; ID.; AUTOMATIC CONVERSION OF THE TIMBER LICENSE AGREEMENT (TLA) INTO AN INTEGRATED FOREST MANAGEMENT AGREEMENT (IFMA), REQUISITES.— DAO No. 99-53 enumerates the requirements for the grant of the IFMA conversion: Sec. 9. Qualifications of Applicants. The applicants for IFMA shall be: (a) A Filipino citizen of legal age; or (b) Partnership, cooperative or corporation whether public or private, duly registered under Philippine laws. However, in the case of application for the conversion of TLA into IFMA, an automatic conversion after proper evaluation shall be allowed, provided the TLA holder shall have signified such intention prior to the expiry of the TLA, *PROVIDED further, the TLA holder has shown satisfactory performance and have complied with the terms and conditions of the TLA and pertinent rules and regulations.* Therefore, the following are the requisites for the automatic conversion of the TLA into an IFMA, to wit: 1. The holder had signified its intent to convert its TLA into an IFMA prior to the expiration of its TLA; 2. Proper evaluation was conducted on the application; and 3. The TLA holder has satisfactorily performed and complied with the terms and conditions of the TLA and the pertinent rules and regulations.

8. CIVIL LAW; ESTOPPEL; THE GOVERNMENT IS NOT ESTOPPED BY MISTAKE OR ERROR ON THE PART OF ITS OFFICIAL OR AGENTS; CASE AT BAR.— Finally, even if we consider for the sake of argument that the IAOP should not have been issued if PICOP had existing forestry accounts, the issuance of the IAOP cannot be considered proof that PICOP has paid the same. Firstly, the best evidence of payment is the receipt thereof. PICOP has not presented any evidence that such receipt had been lost or destroyed or cannot be produced in court. Secondly, it is a well known and settled rule in our jurisdiction that the Republic, or its government, is usually not estopped by mistake or error on the part of its officials or agents. If PICOP had been issued an IAOP in violation of the law allegedly because it may not be issued if PICOP had existing forestry accounts, the government cannot be estopped from collecting such amounts and providing the necessary sanctions therefor, including the withholding of the IFMA until such amounts are paid.

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9. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 8371; A LICENSE IS NEITHER A PROPERTY OR A PROPERTY RIGHT NOR DOES IT CREATE A VESTED RIGHT.— On the statutory requirement of procuring a clearance from the NCIP, the Court of Appeals held that PICOP need not comply with the same at all. xxx. According to the Court of Appeals, PICOP has acquired property right over the TLA No. 43 areas, being in exclusive, continues and uninterrupted possession and occupation of TLA No. 43 areas since 1952 up to the present. This ruling defies the settled jurisprudence we have mentioned earlier, including that of *Oposa* and *Tan* which held that "[a] license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state or municipal, granting it and the person to whom it is granted; *neither is it property or a property right, nor does it create a vested right;*. . . ."

10. STATUTORY CONSTRUCTION; STATUTES; WHERE THE LAW SPEAKS IN CLEAR AND CATEGORICAL LANGUAGE, THERE IS NO ROOM FOR INTERPRETATION.— The Court of Appeals' resort to statutory construction is, in itself, misplaced. Section 59 of Republic Act No. 8371 is clear and unambiguous: xxx The court may not construe a statute that is clear and free from doubt. Time and again, it has been repeatedly declared by this Court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. PICOP's intent to put a cloud of ambiguity in Section 59 of Republic Act No. 8371 by invoking Section 3(a) thereof fails miserably.

11. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 8371; ANCESTRAL DOMAIN, DEFINED.— Section 3(a) of Republic Act No. 8371 defines ancestral domain as follows: a) Ancestral domains – Subject to Section 56 hereof, refers to all areas generally belonging to ICCsPs comprising lands, inland waters, coastal areas, and natural resources therein, ***held under a claim of ownership, occupied or possessed by ICCPs/IPs by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted*** by war, *force majeure* or displacement by force, deceit, stealth or ***as a consequence of government projects or any other voluntary***

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dealings entered into by government and private individuals/ corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forest, pasture, residential, agricultural, and other lands individual owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other resources, and lands which may no longer be exclusively occupied by ICCPs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators; Ancestral domains remain as such even when possession or occupation of the area has been interrupted by causes provided under the law such as voluntary dealings entered into by the government and private individuals/corporation. Therefore, the issuance of TLA No. 43 in 1952 did not cause the Indigenous Cultural Communities or Indigenous Peoples to lose their possession or occupation over the area covered by TLA No. 43.

12. **ID,; ID.; ID.; ISSUANCE OF A CERTIFICATE OF ANCESTRAL DOMAIN TITLE IS NOT A CONDITION PRECEDENT FOR THE ISSUANCE OF CERTIFICATION FROM THE NATIONAL COMMISSION ON INDIGENOUS PEOPLE.** — The issuance of a Certificate of Ancestral Domain Title is merely a formal recognition of the ICCs/IPs' rights of possession and ownership over their ancestral domain identified and delineated in accordance with the Indigenous Peoples Rights Act, and therefore, cannot be considered a condition precedent for the need for an NCIP certification. In the first place, it is manifestly absurd to claim that the subject lands must first be proven to be part of ancestral domains before the certification that they are not part of ancestral domains can be required. In *Cruz v. Secretary of DENR,* where no single member of the Court penned a majority opinion (since the petition to declare Republic Act No. 8371 unconstitutional was dismissed for the reason that the votes were equally divided), Mr. Justice Reynato Puno, who voted to dismiss the petition, wrote in his separate opinion: As its subtitle suggests, [Section 59 of R.A. No. 8371] requires as a precondition for the issuance of any concession, license or agreement over natural resources, that a certification be issued by the NCIP that the area subject of the agreement does not lie with any ancestral domain. The provision does

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not vest the NICP with power over the other agencies of the State as to determine whether to grant or deny any concession or license or agreement. It merely gives the NICP the authority to ensure that the ICCs /IPs have been informed of the agreement and that their consent thereto has been obtained. Note that ***the certification applies to agreement over natural resources that do not necessarily lie within the ancestral domains. For those that are found within the said domains, Sections 7(b) and 57 of the IPRA apply.***

13. **ID.; ID.; LOCAL GOVERNMENT CODE; PRIOR APPROVAL OF LOCAL GOVERNMENT UNIT AFFECTED BY THE CONVERSION OF TLA TO IFMA IS NECESSARY BEFORE ANY PROJECT CAN BE IMPLEMENTED.**— Another requirement determined by the Court of Appeals to have been complied with by PICOP, *albeit* impliedly this time by not mentioning it at all, is the requirement posed by Section 26 and 27 of the Local Government Code: xxx These provisions are clear: the prior approval of local government units affected by the proposed conversion of a TLA into an IFMA is necessary before any project or program can be implemented by the government authorities that may cause "depletion of non-renewable resources, loss of crop land, rangeland or forest cover, and extinction of animal or plant species."

14. **ID.; ID.; ADMINISTRATIVE AGENCY; DEPARTMENT OF ENVIROMENT AND NATURAL RESOURCES (DENR); APPROVAL OF CONVERSION OR TLA NO. 43 INTO AN IFMA SUBJECT TO COMLIANCE WITH THE NECESSARY REQUISITES.**— Then DENR Secretary Alvarez's 25 October 2001 letter is reproduced herein for reference: xxx By giving this clearance for the conversion of PICOP's TLA into an IFMA, the DENR Secretary cannot, by any stretch of imagination, be claimed to have granted the conversion itself. The letter is clear that the "conversion" could not be final since its conditions and details still have to be discussed as stated in the second paragraph of said letter; hence, the same letter could not have reduced to a mere formality the approval of the conversion of PICOP's TLA No. 43 into IFMA. Likewise, then DENR Secretary Alvarez's 26 April 2002 letter approving PICOP's Transition Development and Management Plan (TDMP) cannot be considered as an approval of PICOP's application

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for IFMA conversion. xxx. The aforesaid letter speaks for itself. PICOP's application for IFMA conversion **is still pending approval**. Indeed, there could have been no approval of PICOP's application for IFMA conversion because DAO No. 99-53 (which governs application for IFMA conversion) require full and complete compliance with the requirements for conversion before it may be approved. As stated in the letter itself of then DENR Secretary Alvarez, PICOP has yet to "**submit/comply with all the necessary requisites for final conversion of TLA No. 43 into IFMA.**"

15. **ID.; ID.; ID.;; ID.; LOGGING PERMITS ARE NOT CONTRACTS WITHIN THE NON-IMPAIRMENT CLAUSE AND THUS, CAN BE AMENDED, MODIFIED, REPLACED OR RESCINDED WHEN THE NATIONAL INTEREST SO REQUIRES.**— Even assuming, however, that the IFMA has already been converted, this is all purely academic because of the above-discussed settled jurisprudence that logging permits are not contracts within the non-Impairment Clause and thus, can be amended, modified, replaced or rescinded when the national interest so requires. If the DENR Secretary, therefore, finds that the IFMA would be in violation of statutes, rules and regulations, particularly those protecting the rights of the local governments and the indigenous peoples within the IFMA area, then it behooves the DENR Secretary to revoke such IFMA. These same statutes, rules and regulations are the very same requirements mentioned above for the conversion of the TLA No. 43 into an IFMA.

16. **ID.; CONSTITUTIONAL LAW; THE COURT WILL NOT TOUCH THE ISSUE OF UNCONSTITUTIONALITY UNLESS IT IS THE VERY *LIS MOTA*.**—We agree with PICOP that this constitutional issue cannot be decided upon in this case. This Court will not touch the issue of unconstitutionality unless it is the very *lis mota*. It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court may raise its judgment, that course will be adopted and the constitutional question will be left for consideration until such question will be unavoidable. The constitutional question presented by PICOP is not the very *lis mota* in these consolidated

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cases, as the preceding discussions very well give us adequate grounds to grant the Petition in G.R. No. 162243, deny the Petition in G.R. No. 164516, and dismiss the Petition in G.R. No. 171875. Moreover, PICOP has filed a separate petition for the declaration of nullify of Proclamation No. 297, wherein the issue of the constitutionality of Proclamation No. 297 is property ventilated. Consequently, all actions and reliefs sought by either PICOP or the DENR Secretary which has Proclamation No. 297 as its ground or subject should be ventilated either in the pending petition for the declaration of its nullity, or in another proper suit instituted for that matter.

17. REMEDIAL LAW; EVIDENCE; FINDINGS; OF FACTS OF ADMINISTRATIVE AGENCIES ARE GENERALLY ACCORDED GREAT RESPECT, IF NOT FINALITY BY THE COURTS.— Finally, the DENR, by withholding the conversion of PICOP's TLA No. 43 into an IFMA, has made a factual finding that PICOP has not yet complied with the requirements for such a conversion. Findings of facts of administrative agencies are generally accorded great respect, if not finality, by the courts because of the special knowledge and expertise over matters failing under their jurisdiction. Such finality of the DENR's factual finding, supported as it is by substantial evidence, can only be overcome by grave abuse of discretion amounting to lack or excess in jurisdiction, which is even more pronounced in a Petition for *Mandamus*.

APPEARANCES OF COUNSEL

Quasa Anchita Pena & Nolasco for PICOP.

D E C I S I O N

CHICO-NAZARIO, *J.*:

On the line are three consolidated Petitions, all arising from the 11 October 2002 Quezon City Regional Trial Court (RTC) Decision[1] granting the Petition for *Mandamus* filed by Paper Industries Corporation of the Philippines (PICOP). The Court of Appeals affirmed the 11 October 2002 RTC Decision, with

[1] Penned by Judge Jose G. Pineda, Quezon City RTC, Branch 220.

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modification, in a 19 February 2004 Decision.[2]

In G.R. No. 162243, then Department of Environment and Natural Resources (DENR) Secretary Heherson T. Alvarez, who was later successively substituted by subsequent DENR Secretaries Elisea G. Gozun and Angelo T. Reyes, assails the 19 February 2004 Decision insofar as it granted the Petition for *Mandamus*. In G.R. No. 164516, PICOP assails the same Decision insofar as it deleted the imposition of damages against then Secretary Alvarez. Secretary Reyes filed a third Petition docketed as G.R. No. 171875, assailing the 16 December 2004 Amended Decision[3] of the Court of Appeals lifting the Writ of Preliminary Injunction that enjoined the enforcement of the 11 October 2002 Decision and 10 February 2003 Orders of the RTC.

FACTS

The facts, culled from the records of the three consolidated petitions, are as follows:

On 24 May 1952, PICOP's predecessor, Bislig Bay Lumber Co., Inc. (BBLCI) was granted Timber License Agreement (TLA) No. 43.[4] The TLA was amended on 26 April 1953 and 4 March 1959. As amended, TLA No. 43 covers an area of 75,545 hectares in Surigao del Sur, Agusan del Sur, Compostela Valley, and Davao Oriental.

Allegedly sometime in 1969, the late President Ferdinand E. Marcos issued a presidential warranty to BBLCI, confirming that TLA No. 43 "definitely establishes the boundary lines of [BBLCI's] concession area."[5]

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[2] Penned by Associate Justice Ruben T. Reyes with Associate Justices Edgardo P. Cruz and Noel G. Tijam concurring; *rollo* of G.R. No. 162243, pp. 229-258.

[3] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Hakim S. Abdulwahid and Vicente Q. Roxas concurring; *rollo* of G.R. No. 171875, pp. 67-78.

[4] CA *rollo*, pp. 176-183.

[5] CA *rollo*, p. 321.

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TLA No. 43, as amended, expired on 26 April 1977. It was renewed on 7 October 1977 for another 25 years to "terminate on April 25, 2002."[6]

On 23 December 1999, then DENR Secretary Antonio H. Cerilles promulgated DENR Administrative Order (DAO) No. 99-53 which had for its subject, the "Regulations Governing the Integrated Forest Management Program (IFMP)."[7]

In a 28 August 2000 letter to the Community Environment and Natural Resources Office (CENRO), DENR-Region XIII-D4, Bislig, Surigao del Sur, PICOP signified its intention to convert its TLA No. 43 into an Integrated Forest Management Agreement (IFMA) invoking the provisions of Section 9, Chapter III of DAO No. 99-53.[8]

Acting on the said letter, Forester III Trifino M. Peregrino, In-Charge, Office of the CENRO, wrote a letter dated 1 September 2000 to PICOP's resident manager in Tabon, Bislig, Surigao del Sur, informing PICOP "that we will consider said letter as an advance notice considering that it is yet premature to act on your request since we are yet in CY 2000."[9]

In a 24 January 2001 letter, Neolito Frondozo, Group Manager, Forest Operations Manager of PICOP, requested for a favorable indorsement of their letter of intent from the CENRO of the DENR, Region XIII-D4 in Bislig City. This was followed up by another letter dated 25 January 2001 of Wilfredo D. Fuentes, Vice President and Resident Manager of PICOP, to the Regional Executive Director (RED), DENR, Caraga Region XIII in Ambago, Butuan City, likewise, requesting for a favorable indorsement of their letter of intent to the DENR Secretary.[10]

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[6] Folder of Exhibits, Exhibit G-25, p. 114; Records, Vol. 1.

[7] Records, Vol. 1, pp. 41-55.

[8] Folder of Exhibits, Exhibit 7-B, Records, Vol. 1, p. 82; Records, Vol. 3, p. 469.

[9] Records, Vol. 1, p. 83; Folder of Exhibits, Exhibit 7-C, Vol. 3, p. 470.

[10] Records, Vol. 1, pp. 84-85; Folder of Exhibits, Exhibits 7-D and 7-E, pp. 471 and 472; Records, Vol. 3.

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The Officer-In-Charge (OIC), Regional Executive Director Constantino A. Paye, Jr., in a 6 March 2001 Memorandum, forwarded PICOP's letter of intent dated 28 August 2000 to the DENR Secretary informing the latter that the DENR Caraga Region XIII in Ambago, Butuan City, had created a team tasked to conduct a performance evaluation on PICOP on the said TLA pursuant to DAO No. 99-53.[11]

Subsequently, Elias R. Seraspi, Jr., RED, DENR, Caraga Region XIII in Ambago, Butuan City, submitted a 31 July 2001 Memorandum to the DENR Secretary on the performance evaluation of PICOP on its TLA No. 43. Paragraph 11 of the same Memorandum reads:

> Hence, it is imperative to chart a good forest policy direction for the management, development and protection of TLA No. 43 after it expires on April 26, 2002 for the purpose of sustainable forest management of the area in support of national development. With this vision, the proper evaluation to consider the request for automatic conversion of TLA No. 43 to IFMA pursuant to Section 9, DENR A.O. No. 99-53, upon its expiration on April 26, 2002 is hereby recommended.[12]

Attached to said Memorandum, *inter alia*, were the 11 July 2001 Report and 27 July 2001 Supplemental Report of the Performance Evaluation Team created to conduct such performance evaluation indicating violations by PICOP of existing DENR Rules and Regulations governing TLA No. 43, such as the non-submission of its five-year forest protection plan and seven-year reforestation plan as required by the DENR rules and regulations. The said 31 July 2001 Memorandum was forwarded to the Forest Management Bureau (FMB) for appropriate action and recommendation.[13]

Sometime in September 2001, the DENR Secretary was furnished a copy of Forest Management Specialist II (FMS II) Teofila L. Orlanes' 24 September 2001 Memorandum concerning

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[11] Folder of Exhibits, Exhibit 7-F, Records, Vol. 3, p. 473.

[12] *Rollo* of G.R. No. 162243, pp. 361-363.

[13] *Rollo* of G.R. No. 162243, pp. 364-392.

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alleged unpaid and overdue forest charges of respondent on TLA No. 43. Attached thereto was a 19 September 2001 Memorandum of Amelia D. Arayan, Bill Collector of the DENR R13-14, Bislig City, likewise indicating purported unpaid and overdue forest charges by PICOP on its TLA No. 43.[14]

Said Memorandum was referred to FMB Director Romeo T. Acosta, who directed FMB Senior Forest Management Specialist (SFMS) Ignacio Evangelista to proceed to Region 13 to gather forestry-related data and validate the report contained in the respective Memoranda of Orlanes and Arayan.[15] SFMS Evangelista found that the 8 May 2001 to 7 July 2001 forest charges adverted to in the Orlanes and Arayan Memoranda was belatedly filed. He also found that PICOP had not paid its regular forest charges covering the period of 22 September 2001 to 26 April 2002 in the total amount of ₱15,056,054.05.[16] Moreso, he discovered that from 1996 to 30 August 2002, PICOP was late in paying some of its forest charges in 1996, and was consistently late in paying all its forestry charges from 1997 onwards.[17]

The overdue and unpaid forest charges (including penalties, interests and surcharges) of PICOP total ₱150,169,485.02. Its silvicultural fees amount to ₱2,366,901.00 from 1996 up to 30 August 2002. In all, PICOP has an outstanding and overdue total obligation on its forest charges in the amount of ₱167,592,440.90 as of 30 August 2002.[18]

Thus, FMB Director Acosta submitted a 5 October 2001 Memorandum to the DENR Secretary concerning PICOP's application for conversion of its TLA No. 43 into an IFMA, *viz*:

RECOMMENDATION

The conversion of the TLA into IFMA is primarily aimed at sustaining the raw materials for the continuous operation of the

[14] *Rollo* of G.R. No. 162243, pp. 393-395.

[15] *Rollo* of G.R. No. 162243, p. 396.

[16] Records, pp. 433-434.

[17] *Id.* at 433-439.

[18] *Id.* at 440.

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> integrated wood processing plant of the company. However, the very complex issues presented cannot just be ignored and have to be fully addressed to before further appropriate action is taken on the application for conversion. In the absence of categorical comments and recommendation of the regional office to resolve the issue, it is recommended that a transition team composed of the following be created: x x x.[19]

In lieu of a transition team, the DENR Secretary constituted a negotiating team by virtue of Special Order No. 2001-698 dated 23 October 2001 composed of Undersecretary Ramon J.P. Paje as chairman, with the following as members: Undersecretary Gregorio V. Cabantac and FMB Assistant Director Neria A. Andin. The team was authorized to negotiate for such terms and conditions as are advantageous to the Government.[20]

The DENR Secretary sent a 25 October 2001 letter to PICOP, through its president, requesting him to designate its representative/s to discuss with the DENR negotiating team "the conditions and details of the said IFMA including the production sharing arrangement between PICOP and the government."[21]

Since PICOP failed to send a representative, and considering that TLA No. 43 was about to expire, DENR Undersecretary Paje called for a meeting on 21 March 2002. It was only then, or almost five months from the receipt of the 25 October 2001 letter from the DENR Secretary, that PICOP sent its representatives to the DENR.[22]

On 9 April 2002, the DENR Negotiating Team issued Resolution No. 1, series of 2002, creating a Technical Working Committee (TWC) to provide technical assistance to the negotiating team composed of representatives from both DENR and PICOP.[23] On 10 April 2002, the members of the TWC

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[19] *Rollo* of G.R. No. 162243, p. 421.

[20] *Id.* at 425.

[21] *Id.* at 426.

[22] *Id.* at 427-428.

[23] *Id.* at 429-430.

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met and discussed the findings of the Performance Evaluation Team that PICOP has neither submitted its Five-Year Forest Protection Plan nor presented its Seven-Year Reforestation Plan, both being required by DENR rules and regulations. In the same meeting, PICOP agreed to secure and submit a clearance from the National Commission on Indigenous Peoples (NCIP) as required by Section 59 of the Indigenous Peoples' Rights Act (IPRA).[24]

On 15 April 2002, another TWC meeting was conducted, wherein the proposed validation of PICOP's overall performance "as part of the evaluation process for the conversion of the TLA into an IFMA" was discussed with PICOP representatives being given copies of the performance evaluation of PICOP on its TLA No. 43.[25] PICOP's representatives were subsequently requested to prepare a map showing by categories the area planted with trees in compliance with PICOP's reforestation requirements.[26]

In the next TWC meeting on 19 April 2002, PICOP's representatives were asked of their compliance with their agreement during the 10 April 2002 meeting that they should have submitted a list of stockholders on 15 April 2002. The PICOP representatives did not submit such list and instead inquired on the TWC's interpretation of the 25 October 2001 letter of the DENR Secretary to PICOP, which provides in full, thus:

25 October 2001

MR. TEODORO G. BERNARDINO
President
PICOP Resources Incorporated
2nd Flr, Moredel Building
2280 Pasong Tamo Extension
Makati City

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[24] *Id.* at 431-435.

[25] *Id.* at 436.

[26] *Id.* at 437-439.

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Dear Mr. Bernardino:

Consistent with our attached Memorandum to Her Excellency, the President, dated 17 October 2001 and in response to your Letter of Intent dated 25 February 2001, we wish to inform you that, pursuant to DENR Administrative Order No. 99-53, we have cleared the conversion of PICOP's Timber License Agreement (TLA) No. 43 to Integrated Forest Management Agreement (IFMA) effective from the expiration of said TLA on April 26, 2002.

In this regard, you are hereby requested to designate PICOP's representative(s) to discuss with the DENR Team, created under Special Order No. 2001-638, the conditions and details of the said IFMA, including the production sharing agreement between PICOP and the government.

For your information and guidance.

Very truly yours,

(sgd)
HEHERSON T. ALVAREZ
Secretary[27]

It was the position of the DENR members of the TWC that PICOP's application for the IFMA conversion should undergo the process as provided in DAO No. 99-53. PICOP representative Atty. Caingat, however, claimed that "the TLA has been converted" and suggested the suspension of the meeting as they would submit a written position on the matter the following day.[28]

On 22 April 2002, the TWC members of the DENR received a letter from PICOP dated 18 April 2002 insisting that "the conversion of TLA No. 43 into IFMA has already been completed" and indicated that they had "no choice except to decline participation in the ongoing meeting and bring our issues to the proper public and legal forum."[29]

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[27] Folder of Exhibits, Exhibit 9, p. 512; RTC records, Vol. 3.

[28] *Rollo* of G.R. No. 162243, pp. 440-441.

[29] *Id.* at 442-443.

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On 24 April 2002, the TWC submitted a Memorandum dated 22 April 2002 to the Undersecretary for Operations and Undersecretary for Legal, Lands and International Affairs of the DENR, enumerating the salient points taken up during the TWC meetings. This includes the performance evaluation report of the DENR Regional Office covering the period from 24 June 1999 to 23 June 2000. The report states that PICOP has not submitted its 5-Year Forest Protection Plan and 7-Year Reforestation Plan; that it has unpaid and overdue forest charges; and its failure to secure a clearance from the Regional Office of the NCIP considering the presence of Indigenous Peoples (IPs) in the area and Certificate of Ancestral Domain Claims issued within the area.

The DENR Secretary instructed the RED, Caraga Region, to coordinate with PICOP and reiterate the requirements for conversion of TLA No. 43 into IFMA.

Thereafter, the FMB Director received a letter dated 6 August 2002 from NCIP Chairperson Atty. Evelyn S. Dunuan informing him that, based on their records, no certification has been issued to PICOP concerning its application for conversion of its TLA No. 43 into IFMA, "as there has never been an application or endorsement of such application to our office."[30]

On 12 August 2002, a meeting was held at the Office of the President of the Philippines presided by Undersecretary Jose Tale and Undersecretary Jake Lagonera of the Office of the Executive Secretary. PICOP's representatives committed to submit the following, to wit:

1. Certificate of Filing of Amended Articles of Incorporation issued on 12 August 2002 that extended PICOP's corporate term for another fifty (50) years;
2. Proof of Payment of forest charges;
3. Proof of Payment of Reforestation Deposit;
4. Response to social issues, particularly clearance from the NCIP; and

[30] *Id.* at 452.

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5. Map showing reforestation activities on an annual basis.[31]

PICOP submitted its purported compliance with aforesaid undertaking through a letter dated 21 August 2002 to the DENR Secretary. Upon evaluation of the documents submitted by PICOP, the TWC noted that:

a) PICOP did not submit the required NCIP clearance;

b) The proof of payments for forest charges covers only the production period from 1 July 2001 to 21 September 2001;

c) The proof of payment of reforestation deposits covers only the period from the first quarter of CY 1999 to the second quarter of CY 2001;

d) The map of the areas planted through supplemental planting and social forestry is not sufficient compliance per Performance Evaluation Team's 11 July 2001 report on PICOP's performance on its TLA No. 43, pursuant to Section 6.6 of DAO 79-87; and

e) PICOP failed to respond completely to all the social issues raised.[32]

Accordingly, the Secretary of DENR claims that further processing of PICOP's application for the conversion of TLA No. 43 cannot proceed until PICOP complies with the requirements.

Insisting that the conversion of its TLA No. 43 had been completed, PICOP filed a Petition for *Mandamus* against then DENR Secretary Heherson T. Alvarez before the RTC of Quezon City, which was raffled to Branch 220, presided by Hon. Jose G. Paneda. The petition was docketed as Civil Case No. Q-02-47764 (hereinafter referred to as the *MANDAMUS* CASE).

On 11 October 2002, the RTC rendered a Decision granting PICOP's Petition for *Mandamus*, thus:

WHEREFORE, premises considered, the Petition for *Mandamus* is hereby GRANTED.

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[31] Folder of Exhibits, Exhibit 7, Vol. 3, pp. 466-467.

[32] *Id.* at 467-468.

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The Respondent DENR Secretary Hon. Heherson Alvarez is hereby ordered:

1. to sign, execute and deliver the IFMA contract and/or documents to PICOP and issue the corresponding IFMA assignment number on the area covered by the IFMA, formerly TLA No. 43, as amended;

2. to issue the necessary permit allowing petitioner to act and harvest timber from the said area of TLA No. 43, sufficient to meet the raw material requirements of petitioner's pulp and paper mills in accordance with the warranty and agreement of July 29, 1969 between the government and PICOP's predecessor-in-interest; and

3. to honor and respect the Government Warranties and contractual obligations to PICOP strictly in accordance with the warranty and agreement dated July 29, 1999 (sic) between the government and PICOP's predecessor-in-interest (Exhibits "H", "H-1" to "H-5", particularly the following:

   a) the area coverage of TLA No. 43, which forms part and parcel of the government warranties;

   b) PICOP tenure over the said area of TLA No. 43 and exclusive right to cut, collect and remove sawtimber and pulpwood for the period ending on April 26, 1977; and said period to be renewable for [an]other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions; and

   c) The peaceful and adequate enjoyment by PICOP of the area as described and specified in the aforesaid amended Timber License Agreement No. 43.

The Respondent Secretary Alvarez is likewise ordered to pay petitioner the sum of ₱10 million a month beginning May 2002 until the conversion of TLA No. 43, as amended, to IFMA is formally effected and the harvesting from the said area is granted.[33]

On 25 October 2002, the DENR Secretary filed a Motion for Reconsideration.[34]

[33] *Rollo* of G.R. No. 162243, pp. 221-222.

[34] Records, Vol. 2, pp. 393-456.

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PICOP filed an Urgent Motion for Issuance of Writ of *Mandamus* and/or Writ of Mandatory Injunction.[35]

On 12 November 2002, then DENR Secretary Alvarez filed a Motion to Inhibit Hon. Jose G. Paneda from further trying the case, attaching to said motion an administrative complaint against the latter which was filed by the former before the Office of the Court Administrator.[36] The Motion was denied in an Order dated 10 December 2002.

On 19 December 2002, PICOP filed a Manifestation and Motion to Implead Hon. Elisea Gozun as respondent,[37] which was granted. Elisea Gozun was, thus, substituted as respondent in her official capacity as the new DENR Secretary.[38]

On 6 November 2002, then NCIP Chairperson Atty. Evelyn S. Dunuan sent a letter to the DENR (1) informing the DENR Secretary that after validation by the NCIP, it was found out that the area of 47,420 hectares covered by PICOP's TLA No. 43 conflicts with the ancestral domains of the Manobos; and (2) reiterating the information that no NCIP certification was sought by PICOP to certify that the area covered by TLA No. 43, subject of its IFMA conversion, does not overlap with any ancestral domain. Accordingly, she "strongly urge[d] the revocation of the one-year permit granted to PICOP until the full provisions of [the] IPRA are followed and the rights of our Indigenous Peoples over their ancestral land claims are respected."[39]

On 25 November 2002, President Gloria Macapagal-Arroyo issued 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." The excluded area consists of 8,100

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[35] *Id.* at 459.

[36] *Id.* at 481-503.

[37] *Id.* at 566.

[38] *Id.* at 573.

[39] *Rollo* of G.R. No. 162243, pp. 470-472.

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hectares, more or less, which formed part of PICOP's expired TLA No. 43, subject of its application for IFMA conversion.[40]

On 21 January 2003, PICOP filed a Petition for the Declaration of Nullity of the aforesaid presidential proclamation as well as its implementing DENR Administrative Order No. 2002-35 (DAO No. 2002-35) which was raffled to Branch 78 of the RTC in Quezon City. The Petition was docketed as Special Civil Action No. Q-03-48648 (hereinafter referred to as the NULLITY CASE).

In said NULLITY CASE, the RTC issued a Temporary Restraining Order (TRO) enjoining respondents therein[41] from implementing the questioned issuances. The DENR Secretary and her co-respondents in said case filed on 6 February 2003 an Omnibus Motion (1) To Dissolve the Temporary Restraining Order dated 3 February 2003; and (2) To Dismiss (With Opposition to the Issuance of a Writ of Preliminary Injunction).[42]

The trial court issued a Resolution dated 19 February 2003 granting the Motion to Dismiss on the ground that the Petition does not state a cause of action.[43] PICOP filed a Motion for Reconsideration as well as a Motion to Inhibit. On 24 March 2003, the presiding judge of Branch 78 inhibited himself from hearing the case.[44] Accordingly, the NULLITY CASE was re-

[40] *Id.* at 473-475.

[41] The respondents in this case are the following: Alberto G. Romulo, as Executive Secretary, and Elisea Gozun, as Secretary of the Department of Environment and Natural Resources.

[42] Records, Vol. 5, p. 1892.

[43] *Id.* at 1970.

[44] The 24 March 2003 Resolution reads in full:

For the Court's resolution are petitioner's twin motions, "Motion for Reconsideration" and "Motion for Inhibition" dated February 27, 2003.

Anent the Motion for Inhibition, while the Court refutes the grounds relied upon by the petitioner in support of said move, for the peace of mind of the petitioner, the Court deems it proper to inhibit itself from taking cognizance of this case.

For reason of propriety, the merits or demerits of petitioner's "Motion for Reconsideration" will not be ruled upon and shall be left to be dealt with by the next Court.

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raffled to Branch 221 of the RTC of Quezon City, which granted PICOP's Motion for Reconsideration by setting for hearing PICOP's application for preliminary injunction.

Meanwhile, in the *MANDAMUS* CASE, the RTC denied the DENR Secretary's Motion for Reconsideration and granted the Motion for the Issuance of Writ of *Mandamus* and/or Writ of Mandatory Injunction *via* a 10 February 2003 Order.[45] The *fallo* of the 11 October 2002 Decision was practically copied in the 10 February 2003 Order, although there was no mention of the damages imposed against then Secretary Alvarez.[46] The

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Accordingly, this Court INHIBITS, and let the expediente of this case be transmitted to the Executive Judge, through the Office of the Clerk of Court, RTC, QC, for re-raffle.

[45] Records, Vol. 4, pp. 1349-1575.

[46] The dispositive portion of the 10 February 2003 Order, reads:

WHEREFORE, premises considered, the Motion for Reconsideration dated October 25, 2002 is hereby DENIED for utter lack of merit while the Motion for the Issuance of Writ of Mandamus and/or Writ of Mandatory Injunction is GRANTED. Accordingly, respondent DENR Secretary Heherson Alvarez, now substituted by Secretary Elisea Gozun, is hereby ordered:

1. to sign, execute and deliver the IFMA contract and/or documents to PICOP and issue the corresponding IFMA assignment number on the area covered by the IFMA, formerly TLA No. 43, as amended;

2. to issue the necessary permit allowing petitioner to act and harvest timber from the said area of TLA No. 43, sufficient to meet the raw material requirements of petitioner's pulp and paper mills in accordance with the warranty and agreement of July 29, 1969 between the government and PICOP's predecessor-in-interest; and

3. to honor and respect the Government Warranties and contractual obligations to PICOP strictly in accordance with the warranty and agreement dated July 29, 1999 (sic) between the government and PICOP's predecessor-in-interest (Exhibits "H", "H-1" to "H-5", particularly the following:

a) The area coverage of TLA No. 43, which forms part and parcel of the government warranties;

b) PICOP tenure over the said area of TLA No. 43 and exclusive right to cut, collect and remove sawtimber and pulpwood for the period ending on April 26, 1977; and said period renewable for [an]other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions; and

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DENR Secretary filed a Notice of Appeal[47] from the 11 October 2002 Decision and the 10 February 2003 Order.

On 28 February 2003, the DENR Secretary filed before the Court of Appeals, a Petition for *Certiorari* With a Most Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction insofar as the trial court ordered the execution of its 11 October 2002 Decision pending appeal. The petition (hereinafter referred to as the INJUNCTION CASE) was docketed as CA-G.R. SP No. 75698, which was assigned to the Special 13th Division thereof.

On 11 March 2003, the Court of Appeals issued a 60-day TRO[48] enjoining the enforcement of the 11 October 2002 Decision and the 10 February 2003 Order of the RTC. On 30 April 2003, the Court of Appeals issued a Writ of Preliminary Injunction.[49]

On 30 October 2003, the Court of Appeals rendered its Decision[50] in the INJUNCTION CASE granting the Petition and annulling the Writ of *Mandamus* and/or Writ of Mandatory Injunction issued by the trial court. PICOP filed a Motion for Reconsideration.[51]

On 19 February 2004, the Seventh Division of the Court of Appeals rendered a Decision[52] on the *MANDAMUS* CASE, affirming the Decision of the RTC, to wit:

WHEREFORE, the appealed Decision is AFFIRMED with modification that the order directing then DENR Secretary Alvarez "to pay petitioner-appellee the sum of ₱10 million a month beginning

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c) The peaceful and adequate enjoyment by PICOP of the area as described and specified in the aforesaid amended Timber License Agreement No. 43. (Records, Vol. 4, pp. 1374-1375.)

[47] Records, Vol. 2, p. 611.

[48] *Rollo* of G.R. No. 171875, pp. 272-275.

[49] *Id.* at 276-282.

[50] *Id.* at 294-298.

[51] *Id.* at 299-339.

[52] *Rollo* of G.R. No. 162243, pp. 229-258.

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May, 2002 until the conversion to IFMA of TLA No. 43, as amended, is formally effected and the harvesting from the said area is granted" is hereby deleted.[53]

PICOP filed a Motion for Partial Reconsideration[54] of this Decision, which was denied by the Court of Appeals in a 20 July 2004 Resolution.[55]

Meanwhile, in a 22 March 2004 Resolution,[56] the Special Thirteenth Division of the Court of Appeals held in abeyance the ruling on the Motion for Reconsideration of the INJUNCTION CASE pending the Seventh Division's resolution of the Motion for Reconsideration of the 19 February 2004 Decision in the *MANDAMUS* CASE.

The DENR Secretary and PICOP filed with this Court separate Petitions for Review on the 19 February 2004 Court of Appeals Decision in the *MANDAMUS* CASE. These Petitions were docketed as G.R. No. 162243 and 164516, respectively.

On 16 December 2004, the Special Thirteenth Division of the Court of Appeals rendered an Amended Decision[57] on the INJUNCTION CASE lifting the Writ of Preliminary Injunction it had previously issued, to wit:

> WHEREFORE, the Resolution dated March 22, 2004 holding in abeyance the resolution of the motion for reconsideration of Our October 30, 2003 decision is set aside and the Decision dated October 30, 2003 reconsidered.
>
> The Writ of Preliminary Injunction dated 30 April 2003 is hereby lifted and dissolved and the Order dated 10 February 2003 allowing execution pending appeal and authorizing the issuance of the writ of *mandamus* and/or writ of mandatory injunction is hereby affirmed. The Petition dated February 27, 2003 is herewith dismissed.[58]

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[53] *Id.* at 257.

[54] *Rollo* of G.R. No. 164516, pp. 107-119.

[55] *Id.* at 121-122.

[56] *Rollo* of G.R. No. 171875, pp. 340-341.

[57] *Id.* at 67-72.

[58] *Id.* at 72.

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Upon denial of its Motion for Reconsideration in a 9 March 2006 Resolution,[59] the DENR Secretary filed with this Court, a Petition for Review[60] of the INJUNCTION CASE. The Petition was docketed as G.R. No. 171875.

On 5 July 2006, this Court resolved[61] to consolidate G.R. No. 162243, 164516, and 171875.

ISSUES

In G.R. No. 162243, the DENR Secretary brought forth the following issues for our consideration:

I

WHETHER THE PRESIDENTIAL WARRANTY IS A CONTRACT WHICH CONSTITUTES A LEGAL BAR TO THE EXERCISE BY THE STATE OF ITS FULL CONTROL AND SUPERVISION REGARDING THE EXPLORATION DEVELOPMENT AND UTILIZATION OF ITS NATURAL RESOURCES.

II

WHETHER [PICOP] HAD ACQUIRED A VESTED RIGHT OVER ITS FOREST CONCESSION AREA BY VIRTUE OF THE AFORESAID PRESIDENTIAL WARRANTY.

III

WHETHER THE TRIAL COURT HAD JURISDICTION TO TAKE COGNIZANCE OF THIS CASE BECAUSE THE SUBJECT MATTER THEREOF PERTAINS TO THE EXCLUSIVE ADMINISTRATIVE DOMAIN OF [THE DENR SECRETARY].

IV

WHETHER [PICOP'S] PETITION FOR *MANDAMUS* SHOULD HAVE BEEN DISMISSED (1) FOR LACK OF CAUSE OF ACTION; AND (2) BECAUSE THE SUBJECT MATTER THEREOF IS NOT CONTROLLABLE BY *CERTIORARI*.

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[59] *Id.* at 73-78.

[60] *Id.* at 8-66.

[61] *Id.* at 344.

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V

WHETHER [PICOP] HAS FAITHFULLY COMPLIED WITH ALL THE ADMINISTRATIVE AND OTHER STATUTORY REQUIREMENTS ENTITLING IT TO AN IFMA CONVERSION.

VI

WHETHER [PRESIDENTIAL DECREE NO. 605][62] HAS BEEN PARTLY REPEALED BY [REPUBLIC ACT NO. 8975].[63]

In G.R. No. 164516, PICOP submits the sole issue:

WHETHER THE COURT OF APPEALS PROPERLY DELETED THE AWARD OF DAMAGES TO PETITIONER BY THE TRIAL COURT.[64]

Finally, in G.R. No. 171875, the DENR Secretary submits the following arguments:

A. [PICOP] DID NOT ACTUALLY FILE A MOTION FOR EXECUTION PENDING APPEAL.

B. THERE ARE NO GOOD REASONS FOR THE GRANT OF EXECUTION PENDING APPEAL.[65]

THIS COURT'S RULING

Whether or not outright dismissal was proper

Since the third, fourth and sixth issues raised by the DENR Secretary, if determined in favor of the DENR Secretary, would have warranted an outright dismissal of the *MANDAMUS* CASE as early as the trial court level, it is proper to resolve these issues first.

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[62] The DENR Secretary's statement of the issues in its G.R. No. 162243 Memorandum mistakenly interchanged the two laws:

"WHETHER ***REPUBLIC ACT NO. 8975*** HAS BEEN PARTLY REPEALED BY ***PRESIDENTIAL DECREE NO. 605***"

[63] *Rollo* of G.R. No. 162243, pp. 1013-1015.

[64] *Rollo* of G.R. No. 164516, p. 646.

[65] *Rollo* of G.R. No. 171875, pp. 42 and 46.

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The DENR Secretary alleges that the jurisdiction over the subject matter of the *MANDAMUS* CASE pertains to the exclusive administrative domain of the DENR, and therefore, the RTC had been in error in taking cognizance thereof. The DENR Secretary adds that, assuming *arguendo* that the RTC properly took cognizance of the *MANDAMUS* CASE, it committed a reversible error in not dismissing the same (1) for lack of cause of action; and (2) because the subject matter thereof is not controllable by *mandamus*.

The Petition filed before the trial court was one for *mandamus* with prayer for the issuance of a writ of preliminary prohibitory and mandatory injunction with damages. Specifically, it sought to compel the DENR Secretary to: (1) sign, execute and deliver the IFMA documents to PICOP; (2) issue the corresponding IFMA number assignment; and (3) approve the harvesting of timber by PICOP from the area of TLA No. 43. The DENR Secretary contends that these acts relate to the licensing regulation and management of forest resources, which task belongs exclusively to the DENR[66] as conveyed in its mandate:

> SECTION 4. Mandate. – The Department shall be the primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, specifically ***forest and grazing lands***, mineral resources, including those in reservation and watershed areas, and lands of the public domain, as well as the licensing and regulation of all natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos.[67]

The Court of Appeals ruled:

> The contention does not hold water. In its petition for *mandamus*, [PICOP] asserted that "DENR Secretary Alvarez acted with grave abuse of discretion or in excess of his jurisdiction in refusing to perform his ministerial duty to sign, execute and deliver the IFMA

[66] DENR Secretary's Memorandum, *rollo* of G.R. No. 162243, p. 54.

[67] Executive Order No. 192, otherwise known as the "Reorganization Act of the Department of Environment and Natural Resources," Section 4.

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contract and to issue the corresponding IFMA number to it." The cited jurisdiction of the DENR on licencing regulation and management of our environment and natural resources is not disputed. In fact, the petition seeks to compel it to properly perform its said functions in relation to [PICOP]. What is at stake is not the scope of the DENR jurisdiction but the manner by which it exercises or refuses to exercise that jurisdiction.

The courts have the duty and power to strike down any official act or omission tainted with grave abuse of discretion. The 1987 Constitution is explicit in providing that judicial power includes not only the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of any branch or instrumentality of the government.[68]

The Court of Appeals is correct. Since PICOP alleges grave abuse of discretion on the part of the DENR Secretary, it behooves the court to determine the same. An outright dismissal of the case would have prevented such determination.

For the same reason, the *MANDAMUS* CASE could not have been dismissed outright for lack of cause of action. A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint.[69] In ruling upon the DENR Secretary's Motion to Dismiss, PICOP's allegation that it has a contract with the government should, thus, be hypothetically admitted. Necessarily, the DENR Secretary's argument that there was no such contract should be considered in the trial of the case and should be disregarded at this stage of the proceedings.

The DENR Secretary, however, counters that he/she has not yet exercised his/her exclusive jurisdiction over the subject matter of the case, *i.e.*, either to approve or disapprove PICOP's application for IFMA conversion. Hence, it is argued that PICOP's

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[68] *Rollo* of G.R. No. 162243, pp. 243-244.

[69] *Sta. Clara Homeowners' Association v. Spouses Gaston*, 425 Phil. 221, 227 (2002).

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immediate resort to the trial court was precipitate based on the doctrine of exhaustion of administrative remedies.[70]

The Court of Appeals ruled that the doctrine of exhaustion of administrative remedies is disregarded when there are circumstances indicating the urgency of judicial intervention,[71] which are averred to be extant in this case, citing PICOP's employment of a sizable number of workers and its payment of millions in taxes to the government.[72] The Court of Appeals appends:

> Moreover, contrary to [the DENR Secretary's] claim, the approval of an application for IFMA conversion is not purely discretionary on the part of the DENR Secretary since the approval of an IFMA conversion depends upon compliance with the requirements provided under DAO No. 99-53.
>
> Of course, as earlier intimated, even assuming, arguendo, that the approval of an IFMA conversion involves the exercise of discretion by the DENR Secretary, the writ of mandamus may be issued to compel the proper exercise of that discretion where it is shown that there was grave abuse of discretion, manifest injustice, or palpable excess of authority.[73]

While the Court of Appeals is correct in making such rulings, such accuracy applies **only insofar as the RTC assessment that the *MANDAMUS* CASE should not have been subjected to outright dismissal**. The issue of whether there was indeed an urgency of judicial intervention (as to warrant the issuance of a writ of *mandamus* despite the exclusive jurisdiction of the DENR) is ultimately connected to the truth of PICOP's assertions, which were hypothetically admitted in the motion to dismiss stage. In other words, it all boils down to whether the DENR Secretary committed grave abuse of discretion in not executing

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[70] DENR Secretary's Memorandum, *rollo* of G.R. No. 162243, p. 61.

[71] The Court of Appeals cites *Aquino-Sarmiento v. Morato*, G.R. No. 92541, 13 November 1991, 203 SCRA 515, 520-521; *Pagara v. Court of Appeals*, 325 Phil. 66, 81 (1996).

[72] *Rollo* of G.R. No. 162243, pp. 245-246.

[73] *Id.* at 246-247.

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the IFMA documents and in not approving PICOP's harvesting of timber from the area of TLA No. 43.

The sixth issue raised by the DENR Secretary concerns Section 1 of Presidential Decree No. 605 which, according to the Court of Appeals had been partly repealed by Republic Act No. 8975. Section 1 of Presidential Decree No. 605 provides:

> SECTION 1. No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licenses, permits, patents, or public grants of any kind in connection with the disposition, exploitation, utilization, exploration and/or development of the natural resources of the Philippines.

According to the Court of Appeals,

> Section 1 of PD 605 has been partly repealed by RA No. 8975, enacted on November 7, 2002. Section 3 of the said law limits the prohibition on the issuance of restraining orders and injunctions to the following:
>
> "(a) Acquisition, clearance and development of the right-of-way and/or site of location of any national government project;
>
> "(b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
>
> "(c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
>
> "(d) Termination or rescission of any such contract/project; and
>
> "(e) The undertaking or authorization of any other lawful activity necessary for such contract/project."
>
> Noticeably, the subject coverage on concessions, licenses and the like contemplated in Section 1 of PD 605 is not reproduced in the foregoing enumeration under Section 3 of R.A. 8975. The effect of the non-reenactment is a partial repeal of Section 1 of PD 605. It is a rule of legal hermenuetics (sic) that an act which purports to set out in full all that it intends to contain operates as a repeal of

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anything omitted which was contained in the old act and not included in the act as revised. As the repealing clause of R.A. 8975 states:

"Sec. 9. Repealing Clause – All laws, decrees including Presidential Decree Nos. 605, 1818 and Republic Act No. 7160, as amended, orders, rules and regulations or parts thereof inconsistent with this act are hereby repealed or amended accordingly."[74]

The DENR Secretary claims that since Republic Act No. 8975 simply declares that Presidential Decree No. 605 or parts thereof "inconsistent with this Act are hereby repealed or amended accordingly," then, there should be an inconsistency between Presidential Decree No. 605 and Republic Act No. 8975 before there can be a partial repeal of Presidential Decree No. 605.

We agree with the DENR Secretary. Republic Act No. 8975 was not intended to set out in full all laws concerning the prohibition against temporary restraining orders, preliminary injunctions and preliminary mandatory injunctions. Republic Act No. 8975 prohibits lower courts from issuing such orders in connection with the implementation of government infrastructure projects, while Presidential Decree No. 605 prohibits the issuance of the same, in any case involving licenses, concessions and the like, in connection with the natural resources of the Philippines. This can be further seen from the respective titles of these two laws, which, of course, should express the subjects thereof:[75]

REPUBLIC ACT NO. 8975

AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES.

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[74] *Id.* at 255-256.

[75] PHIL. CONST. SECTION 26(1), Art. VI: "Every bill passed by Congress shall embrace only one subject which shall be expressed in the title thereof."

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PRESIDENTIAL DECREE NO. 605

BANNING THE ISSUANCE BY COURTS OF PRELIMINARY INJUNCTIONS IN CASES INVOLVING CONCESSIONS, LICENSES, AND OTHER PERMITS ISSUED BY PUBLIC ADMINISTRATIVE OFFICIALS OR BODIES FOR THE EXPLOITATION OF NATURAL RESOURCES.

However, when the licenses, concessions and the like *also* entail government infrastructure projects, the provisions of Republic Act No. 8975 should be deemed to apply,[76] and, thus, Presidential Decree No. 605 had been modified in this sense.

Nevertheless, despite the fact that Presidential Decree No. 605 subsists, the DENR Secretary must have missed our ruling in *Datiles and Co. v. Sucaldito*,[77] wherein we held that the prohibition in Presidential Decree No. 605 "pertains to the issuance of injunctions or restraining orders by courts against **administrative acts in controversies involving facts or the exercise of discretion in technical cases**, because to allow courts to judge these matters could disturb the smooth functioning of the administrative machinery. But on **issues definitely outside of this dimension and involving questions of law**, courts are not prevented by Presidential Decree No. 605 from exercising their power to restrain or prohibit administrative acts."

While there are indeed questions of facts in the present Petitions, the overriding controversy involved herein is one of law: whether the Presidential Warranty issued by former President Marcos are contracts within the purview of the Constitution's Non-Impairment Clause. Accordingly, the prohibition in Presidential

[76] Consequently, in these cases, the prohibition against temporary restraining orders, preliminary injunctions and preliminary mandatory injunctions apply in cases instituted by a private party. The prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant should then file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought (Republic Act No. 8975, Section 3, par. 2).

[77] G.R. No. 42380, 22 June 1990, 186 SCRA 704, 712.

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Decree No. 605 against the issuance of preliminary injunction in cases involving permits for the exploitation of natural resources does not apply in this case.

Moreover, as we held in *Republic v. Nolasco*,[78] statutes such as Presidential Decree No. 605, Presidential Decree No. 1818 and Republic Act No. 8975 merely proscribe the issuance of temporary restraining orders and writs of preliminary injunction and preliminary mandatory injunction. They cannot, under pain of violating the Constitution, deprive the courts of authority to take cognizance of the issues raised in the principal action, as long as such action and the relief sought are within their jurisdiction. We further held in *Nolasco*:

> However, it must be clarified that Republic Act No. 8975 does not ordinarily warrant the outright dismissal of any complaint or petition before the lower courts seeking permanent injunctive relief from the implementation of national government infrastructure projects. What is expressly prohibited by the statute is the issuance of the provisional reliefs of temporary restraining orders, preliminary injunctions, and preliminary mandatory injunctions. It does not preclude the lower courts from assuming jurisdiction over complaints or petitions that seek as ultimate relief the nullification or implementation of a national government infrastructure project. **A statute such as Republic Act No. 8975 cannot diminish the constitutionally mandated judicial power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.** x x x.[79]

As the disposition of these consolidated Petitions will be dispositions of the principal actions, any applicability of the prohibitions in Presidential Decree No. 605 will be mooted.

Whether or not the presidential warranty was a contract

PICOP's ground for the issuance of a writ of *mandamus* is the supposed contract entered into by the government in the

[78] G.R. No. 155108, 27 April 2005, 457 SCRA 400, 420-421.

[79] *Republic v. Nolasco*, *id.* at 420-421.

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form of a Presidential Warranty, dated 29 July 1969 issued by then President Ferdinand E. Marcos to PICOP. The DENR Secretary refutes this claim, and alleges that the RTC and the Court of Appeals erred in declaring the Presidential Warranty a valid and subsisting contract under the Constitution's Non-Impairment Clause.

The Court of Appeals has this brief statement concerning the main issue of the *MANDAMUS* CASE:

> The questioned warranty is a valid contract. It was freely entered into by the government and [PICOP]. Mutual considerations were taken into account in the execution of that contract. [PICOP] invested billions of pesos in its concession areas. In return, the government assured [PICOP] of its tenurial rights over TLA No. 43, as amended, as well as its exclusive right to cut, collect and saw timber and pulpwood therein. The DENR must perforce honor and respect the warranty by maintaining the area alloted (sic) to [PICOP] under TLA No. 43, as amended.[80]

We are constrained to disagree. In unequivocal terms, we have consistently held that such licenses concerning the harvesting of timber in the country's forests cannot be considered contracts that would bind the Government regardless of changes in policy and the demands of public interest and welfare.[81] Such unswerving verdict is synthesized in *Oposa v. Factoran, Jr.*,[82] where we held:

> In the first place, the respondent Secretary did not, for obvious reasons, even invoke in his motion to dismiss the non-impairment clause. If he had done so, he would have acted with utmost infidelity to the Government by providing undue and unwarranted benefits and advantages to the timber license holders because he would have forever bound the Government to strictly respect the said licenses according to their terms and conditions regardless of changes in policy and the demands of public interest and welfare. He was aware that as correctly pointed out by petitioners, into every timber license must

[80] *Rollo* of G.R. No. 162243, pp. 253-254.

[81] *Oposa v. Factoran, Jr.*, G.R. No. 101083, 30 July 1993, 224 SCRA 792, 811.

[82] *Id.* at 811-812.

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be read Section 20 of the Forestry Reform Code (P.D. No. 705) which provides:

> "x x x Provided, that when the national interest so requires, the President may amend, modify, replace or rescind any contract, concession, permit, licenses or any other form of privilege granted herein x x x."

Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the constitution. In *Tan vs. Director of Forestry*, [125 SCRA 302, 325 (1983)] this Court held:

> "x x x A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.
>
> "A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right; nor is it taxation (37 C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights. (*People vs. Ong Tin*, 54 O.G. 7576). x x x"

We reiterated this pronouncement in *Felipe Ysmael, Jr. & Co., Inc. vs. Deputy Executive Secretary* [190 SCRA 673, 684 (1990)]:

> "x x x Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause [See Sections 3(ee) and 20

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of Pres. Decree No. 705, as amended. *Also, Tan v. Director of Forestry*, G.R. No. L-24548, October 27, 1983, 125 SCRA 302]."

Since timber licenses are not contracts, the non-impairment clause, which reads:

"SEC. 10. No law impairing, the obligation of contracts shall be passed."

cannot be invoked.

PICOP, however, argues that these rulings laid down in *Tan v. Director of Forestry*,[83] *Felipe Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary*[84] and *Oposa* do not find application in the present case allegedly because the issue here is the unlawful refusal of then DENR Secretary Alvarez to issue an IFMA to PICOP and not the matter of a timber license being merely a license or privilege.[85]

We are not persuaded. PICOP filed the *MANDAMUS* CASE against then DENR Secretary Alvarez on the ground that Secretary Alvarez's refusal to issue an IFMA in its favor allegedly violated its vested right over the area covered by its TLA No. 43 and presidential warranty, and impaired the obligation of contract under said agreement and warranty.[86]

The argument that the Presidential Warranty is a contract on the ground that there were mutual considerations taken into account consisting in investments on PICOP's part is preposterous. All licensees put up investments in pursuing their businesses. To construe these investments as consideration in a contract would be to stealthily render ineffective the settled jurisprudence that "a license or a permit is not a contract between the sovereignty and the licensee or permittee, and is not a property in the constitutional sense, as to which the constitutional proscription

[83] 210 Phil. 244 (1983).

[84] G.R. No. 79538, 18 October 1990, 190 SCRA 673, 684.

[85] PICOP's Comment, pp. 3-4, *rollo* of G.R. No. 162243.

[86] PICOP's Petition for *Mandamus*, pp. 1-38.

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against the impairment of contracts may extend."[87] Neither shall we allow a circumvention of such doctrine by terming such permit as a "warranty."

Whether or not there was compliance with the requirements for the conversion of TLA No. 43 as amended into an IFMA

DAO No. 99-53 enumerates the requirements for the grant of the IFMA conversion:

Sec. 9. Qualifications of Applicants. The applicants for IFMA shall be:

(a) A Filipino citizen of legal age; or

(b) Partnership, cooperative or corporation whether public or private, duly registered under Philippine laws.

However, in the case of application for conversion of TLA into IFMA, an automatic conversion after proper evaluation shall be allowed, provided the TLA holder shall have signified such intention prior to the expiry of the TLA, ***PROVIDED further, the TLA holder has shown satisfactory performance and have complied with the terms and conditions of the TLA and pertinent rules and regulations.***

Therefore, the following are the requisites for the automatic conversion of the TLA into an IFMA, to wit:

1. The TLA holder had signified its intent to convert its TLAinto an IFMA prior to the expiration of its TLA;
2. Proper evaluation was conducted on the application; and
3. The TLA holder has satisfactorily performed and complied with the terms and conditions of the TLA and the pertinent rules and regulations.

The Court of Appeals held:

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[87] *Gonzalo Sy Trading v. Central Bank*, G.R. No. L-41480, 30 April 1976, 70 SCRA 570, 580.

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From the foregoing provision, it can be gleaned that as long as an applicant-corporation has signified its intention to convert its TLA into an IFMA prior to the expiration of its TLA, has shown satisfactory performance as a TLA holder and has complied with the terms and conditions of the TLA and pertinent rules and regulations, conversion follows as a matter of course. It becomes automatic.

[PICOP] has complied with the administrative requirements. In its letter dated August 28, 2000 to the Community Environment and Natural Resources Office (CENRO) for DENR-RXIII-D4, Bislig, Surigao del Sur, it signified its intention to convert its TLA into an IFMA. It has also shown satisfactory performance as a TLA holder as evidenced by the July 31, 2001 Report of Director Elias Seraspi, Jr. The said report states that [PICOP] was able to hold on its management and protection of its concession areas.

xxx xxx xxx

Apparently, [the DENR Secretary] refuses to sign the documents on the grounds that [PICOP] has not secured and submitted a clearance from the National Commission on Indigenous Peoples (NCIP) showing that its TLA areas do not overlap with existing ancestral domains: and that [PICOP] has outstanding and overdue obligation in forest charges.

The two reasons last cited by the Secretary for refusing to sign and deliver the IFMA documents are not real nor valid.

Section 59 of RA 8371, which requires prior certification from the NCIP that the areas affected do not overlap with any ancestral domain before any IFMA can be entered into by the government, should be read in conjunction with Sections 3 (a) and 56 of the same law.

Section 3 (a) of RA 8371 describes ancestral domains as "areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present xxx." On the other hand, Section 56 of the same law provides:

> "Sec. 56. Existing Property Rights Regimes.— Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected."

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It can thus be deduced that Section 59 can only be interpreted to refer to ancestral domains which have been duly established as such (*i.e.*, the concerned indigenous people must have been in continuous possession or occupation of the area concerned since time immemorial up to the present). Too, existing property rights over the areas sought to be declared as part of an ancestral domain must be recognized and respected.

[PICOP] has already acquired property rights over its concession areas. It has been in exclusive, continuous and uninterrupted possession and occupation of TLA No. 43 areas since 1952 to present. From the time it managed and operated TLA No. 43, it has made huge investments on its concession areas. These include the planting of millions of trees and the scientific silvicultural treatment of the forest to make it more productive. Having acquired property rights over TLA No. 43 areas, [PICOP] need not be required to secure clearance from the NCIP pursuant to Section 59 of RA 8371.

[The DENR Secretary's] claim that [PICOP] failed to settle its outstanding obligations to the government in the form of unpaid forest charges do not inspire belief. Under Sec. 3 (3.5) of DENR Memorandum Circular No. 96-04 dated March 14, before an Integrated Annual Operations Plan (IAOP) can be issued, it is a condition precedent that the licensee has no pending forestry accounts. If it were true that [PICOP] had unpaid forest charges, why was it issued IAOP for calendar year 2001-2002 by Secretary Alvarez himself?[88]

Upon close scrutiny of the records, this Court observes that these findings of compliance by PICOP are negated by the very evidence on which they are supposedly moored.

As clearly shown by the 31 July 2001 Memorandum of Regional Executive Director Elias D. Seraspi, Jr., DENR Caraga Region, RED Seraspi neither made a categorical finding of PICOP's satisfactory performance on its TLA No. 43 nor favorably recommended approval of PICOP's application for IFMA conversion. Rather, RED Seraspi recommended the proper evaluation of PICOP's request for the automatic conversion of TLA No. 43 into an IFMA:

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[88] *Rollo* of G.R. No. 162243, pp. 248-252.

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Hence, it is imperative to chart a good forest policy direction for the management, development and protection of TLA No. 43 after it expires on April 26, 2002 for the purpose of sustainable forest management of the area in support of national development. With this vision, the proper evaluation to consider the request for automatic conversion of TLA No. 43 to IFMA pursuant to Section 9, DENR A.O. No. 99-53, upon its expiration on April 26, 2002 is hereby recommended.[89]

Administrative Requirements

There was actually no way by which RED Seraspi could have come up with a satisfactory performance finding since the very Performance Evaluation Team tasked to make the evaluation found PICOP to have violated existing DENR rules and regulations. According to the 11 July 2002 Memorandum Report of the Performance Evaluation Team, PICOP has not submitted its Five-Year Forest Protection Plan and its Seven-Year Reforestation Plan.[90]

Forest charges are, on the other hand, due and payable within 30 days from removal of the forest products from the cutting area when timber and other forest products are removed for domestic sales pursuant to Sections 6 and 6.2 of DAO No. 80, series of 1987. Thus:

Section 6. *Payment of Forest Charges.*— x x x In such a case, the forest charges shall be due and payable as follows:

6.1 When timber and other forest products are intended for export.— x x x x

6.2 When timber and other forest products are to be removed for domestic sales.— The forest charges shall be due and payable within thirty (30) days from removal thereof at the cutting area, or where the forest products are gathered; Provided, that such date of removal shall in no case be beyond thirty (30) days when the products are cut, gathered and removed.

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[89] Exhibit O-2-D, Folder of Exhibits, Volume 2, p. 177; Exhibit 7-g-1-a, Folder of Exhibits, Vol. 3, p. 476.

[90] Exhibit 7-g-2, Folder of Exhibits, Vol. 3, pp. 480-482.

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As testified to by FMB SFMS Ignacio M. Evangelista, PICOP failed to pay its regular forest charges covering the period from 22 September 2001 to 26 April 2002 in the total amount of ₱15,056,054.05.[91] PICOP was also late in paying most of its forest charges from 1996 onwards for which it is liable for a surcharge of 25% per annum on the tax due and interest of 20% per annum which now amounts to ₱150,169,485.02.[92] Likewise, it has overdue and unpaid silvicultural fees in the amount of ₱2,366,901.00 as of 30 August 2002.[93] In all, PICOP has unpaid and overdue forest charges in the sum of ₱167,592,440.90 as of 10 August 2002.[94]

PICOP's failure to pay its regular forest charges, interests, penalties and surcharges and silvicultural fees amounting to ₱167,592,440.90 as of 30 August 2002 is further evidenced by the collection letters sent to PICOP and the absence of official receipts in the DENR records in Bislig City evidencing payment of the overdue amounts stated in the said collection letters.[95] As can be gleaned from SFMS Evangelista's tabulation, all the official receipts evidencing payments of PICOP with their corresponding periods are indicated. However, there are no similar official receipts for the period covering 22 September 2001 to 26 April 2002, which indicate that no payment has been made for the same period.

With the DENR Secretary's presentation of its positive and categorical evidence showing PICOP's failure to pay its forest charges amounting to ₱167,592,440.90 as of 10 August 2002, the burden of evidence has been shifted to PICOP to prove otherwise. PICOP should have, thus, presented official receipts as proof of their payment of such forest charges, but failed to do so.

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[91] Folder of Exhibits, Vol. 3, pp. 433-434.

[92] Exhibit 6, Folder of Exhibits, Vol. 3, p. 440.

[93] *Id.*

[94] *Id.*

[95] TSN, 1 October 2002, pp. 13-14.

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Despite the foregoing evidence, the Court of Appeals declared that if it were true that PICOP has unpaid forest charges, it should not have been issued an IAOP for the year 2001-2002 by Secretary Alvarez himself.[96] In doing so, the Court of Appeals disregarded the part of the very evidence presented by PICOP itself, which shows that the IAOP was approved subject to several conditions, not the least of which was the submission of proof of updated payment of forest charges from April 2001 to June 2001.[97]

Neither was this the only evidence presented by PICOP which showed that it has unpaid forest charges. PICOP presented the certification of CENRO Calunsag which refers only to its alleged payment of regular forest charges covering the period from 14 September 2001 to 15 May 2002.[98] The certification does not mention similar payment of the penalties, surcharges and interests which it incurred in paying late several forest charges, which fact it did not rebut.

The 27 May 2002 Certification by CENRO Calunsag, on the other hand, specified only the period covering 14 September 2001 to 15 May 2002 and the amount of ₱53,603,719.85 paid by PICOP without indicating the corresponding volume and date of production of the logs. This is in contrast to the findings of SFMS Evangelista which cover the period from CY 1996 to 30 August 2002 which includes penalties, interests, and surcharges for late payment pursuant to DAO 80, series of 1987.

Per request of PICOP, a certification dated 21 August 2002 was issued by Bill Collector Amelia D. Arayan, and attested to by CENRO Calunsag, showing that PICOP paid only regular forest charges of its log production covering 1 July 2001 to 21 September 2001. However, there being log productions after 21 September 2001, PICOP failed to pay the corresponding regular forest charges amounting to ₱15,056,054.05.[99] The same

[96] *Rollo* of G.R. No. 162243, p. 252.

[97] Folder of Exhibits, Vol. 2, pp. 398-399.

[98] Exhibit NN, Folder of Exhibits, Vol. 2, p. 349.

[99] Records, Vol. 2, pp. 457-458.

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certification also shows delayed payment of forest charges, thereby corroborating the testimony of SFMS Evangelista and substantiating the imposition of penalties and surcharges.

Finally, even if we consider for the sake of argument that the IAOP should not have been issued if PICOP had existing forestry accounts, the issuance of the IAOP cannot be considered proof that PICOP has paid the same. Firstly, the best evidence of payment is the receipt thereof. PICOP has not presented any evidence that such receipts had been lost or destroyed or cannot be produced in court.[100] Secondly, it is a well known and settled rule in our jurisdiction that the Republic, or its government, is usually not estopped by mistake or error on the part of its officials or agents.[101] If PICOP had been issued an IAOP in violation of the law allegedly because it may not be issued if PICOP had existing forestry accounts, the government cannot be estopped from collecting such amounts and providing the necessary sanctions therefor, including the withholding of the IFMA until such amounts are paid.

Statutory Requirements

To recap, the Court of Appeals had relied on RED Seraspi's certification in concluding that there was satisfactory performance on the part of PICOP as a TLA holder, despite said certification showing non-compliance with the required Five-Year Forest Protection Plan and Seven-Year Reforestation Plan. The Court of Appeals also declared that PICOP has paid its outstanding obligations based on an inference that the IAOP would not have been issued if PICOP had unpaid forest charges, contrary to the conditions laid down in the IAOP itself, and in violation of the Best Evidence Rule and the doctrine disallowing the estoppel of the government from the acts of its officers.

On the statutory requirement of procuring a clearance from the NCIP, the Court of Appeals held that PICOP need not comply with the same at all. As quoted above, the Court of Appeals held that Section 59 of Republic Act No. 8371, which

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[100] *See* Rules of Court. Rule 130, Section 3(a).

[101] *Luciano v. Estrella*, 145 Phil. 454, 461 (1970).

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requires prior certification from the NCIP that the areas affected do not overlap with any ancestral domain before any IFMA can be entered into by government, should be interpreted to refer to ancestral domains which have been duly established as such by the continuous possession and occupation of the area concerned by indigenous peoples since time immemorial up to the present. According to the Court of Appeals, PICOP has acquired property rights over the TLA No. 43 areas, being in exclusive, continuous and uninterrupted possession and occupation of TLA No. 43 areas since 1952 up to the present.

This ruling defies the settled jurisprudence we have mentioned earlier, including that of *Oposa* and *Tan* which held that "[a] license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state or municipal, granting it and the person to whom it is granted; ***neither is it property or a property right, nor does it create a vested right***; x x x."[102]

The Court of Appeals' resort to statutory construction is, in itself, misplaced. Section 59 of Republic Act No. 8371 is clear and unambiguous:

SEC. 59. *Certification Precondition.* – ***All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain.*** Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of the ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

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[102] *Oposa v. Factoran, Jr.*, *supra* note 81 at 812; *Tan v. Director of Forestry*, *supra* note 83 at 325.

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The court may not construe a statute that is clear and free from doubt. Time and again, it has been repeatedly declared by this Court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application.[103] PICOP's intent to put a cloud of ambiguity in Section 59 of Republic Act No. 8371 by invoking Section 3(a) thereof fails miserably. Section 3(a) of Republic Act No. 8371 defines ancestral domain as follows:

> a) Ancestral domains – Subject to Section 56 hereof, refers to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, ***held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted*** by war, *force majeure* or displacement by force, deceit, stealth or ***as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations***, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

Ancestral domains remain as such even when possession or occupation of the area has been interrupted by causes provided under the law such as voluntary dealings entered into by the government and private individuals/corporation. Therefore, the issuance of TLA No. 43 in 1952 did not cause the Indigenous Cultural Communities or Indigenous Peoples to lose their possession or occupation over the area covered by TLA No. 43.

The issuance of a Certificate of Ancestral Domain Title is merely a formal recognition of the ICCs/IPs' rights of possession

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[103] *Cebu Portland Cement Co. v. Municipality of Naga*, 133 Phil. 695, 699 (1968).

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and ownership over their ancestral domain identified and delineated in accordance with the Indigenous Peoples Rights Act,[104] and therefore, cannot be considered a condition precedent for the need for an NCIP certification. In the first place, it is manifestly absurd to claim that the subject lands must first be proven to be part of ancestral domains before a certification that they are not part of ancestral domains can be required. In *Cruz v. Secretary of DENR*,[105] where no single member of the Court penned a majority opinion (since the petition to declare Republic Act No. 8371 unconstitutional was dismissed for the reason that the votes were equally divided), Mr. Justice Reynato Puno, who voted to dismiss the petition, wrote in his separate opinion:

> As its subtitle suggests, [Section 59 of R.A. No. 8371] requires as a precondition for the issuance of any concession, license or agreement over natural resources, that a certification be issued by the NCIP that the area subject of the agreement does not lie with any ancestral domain. The provision does not vest the NCIP with power over the other agencies of the State as to determine whether to grant or deny any concession or license or agreement. It merely gives the NCIP the authority to ensure that the ICCs/IPs have been informed of the agreement and that their consent thereto has been obtained. Note that ***the certification applies to agreements over natural resources that do not necessarily lie within the ancestral domains. For those that are found within the said domains, Sections 7(b) and 57 of the IPRA apply.***

Another requirement determined by the Court of Appeals to have been complied with by PICOP, *albeit* impliedly this time by not mentioning it at all, is the requirement posed by Sections 26 and 27 of the Local Government Code:

> SEC. 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* – It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change,

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[104] Republic Act No. 8371, Section 3(c):

[105] G.R. No. 135385, 6 December 2000, 347 SCRA 129, 238, Separate Opinion of Justice Reynato Puno.

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depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

SEC. 27. *Prior Consultation Required.* – No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, ***and prior approval of the sanggunian concerned is obtained***: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

These provisions are clear: the prior approval of local government units affected by the proposed conversion of a TLA into an IFMA is necessary before any project or program can be implemented by the government authorities that may cause "depletion of non-renewable resources, loss of crop land, rangeland or forest cover, and extinction of animal or plant species."

The common evidence of the DENR Secretary and PICOP, namely the 31 July 2001 Memorandum of RED Seraspi, enumerates the local government units and other groups which had expressed their opposition to PICOP's application for IFMA conversion:

7. During the conduct of the performance evaluation of TLA No. 43 issues/complaints against PRI were submitted thru Resolutions and letters. It is important that these are included in this report for assessment of what are their worth, viz:

xxx xxx xxx

7.2 Joint Resolution (unnumbered), dated March 19, 2001 of the Barangay Council and Barangay Tribal Council of Simulao, Boston, Davao Oriental (ANNEX F) opposing the conversion of TLA No. 43 into IFMA over the 17,112 hectares allegedly covered with CADC No. 095.

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7.3 Resolution Nos. 10, s-2001 and 05, s-2001 (ANNEXES G & H) of the Bunawan Tribal Council of Elders (BBMTCE) strongly demanding none renewal of PICOP TLA. They claim to be the rightful owner of the area it being their alleged ancestral land.

7.4 Resolution No. 4, S-2001 of Sitio Linao, San Jose, Bislig City (ANNEX I) requesting not to renew TLA 43 over the 900 hectares occupied by them.

7.5 Resolution No. 22, S-2001 (ANNEX J) of the Sanguniang Bayan, Lingig, Surigao del Sur not to grant the conversion of TLA 43 citing the plight of former employees of PRI who were forced to enter and farm portion of TLA No. 43, after they were laid off.

7.6 SP Resolution No. 2001-113 and CDC Resolutio Nos. 09-2001 of the Sanguniang Panglungsod of Bislig City (ANNEXES K & L) requesting to exclude the area of TLA No. 43 for watershed purposes.

7.7 Resolution No. 2001-164, dated June 01, 2001 (ANNEX M) Sanguniang Panglungsod of Bislig City opposing the conversion of TLA 43 to IFMA for the reason that IFMA do not give revenue benefits to the City.[106]

As stated in RED Seraspi's 31 July 2001 Memorandum,[107] several indigenous groups and some affected local government units have expressly opposed PICOP's application for IFMA conversion of its TLA No. 43.

PICOP merely submitted a purported resolution[108] of the Province of Surigao del Sur indorsing the approval of PICOP's application for IFMA conversion. But Surigao del Sur is not the only province affected by the area covered by the proposed IFMA. As even the Court of Appeals found, PICOP's TLA No. 43 traverses the length and breadth not only of Surigao del Sur but also Agusan del Sur, Compostela Valley and Davao

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[106] Folder of Exhibits, Exhibit O-1, Vol. 2, p. 176; Exhibit 7-g, Vol. 3, p. 475.

[107] *Id.*, Exhibit 7-g, Vol. 3, p. 474.

[108] *Id.*, Exhibit OO, Vol. 2, p. 351.

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Oriental.[109] How then can PICOP claim that it complied with the Local Government Code requirement of obtaining prior approval of the Sangunian concerned when only one out of the four affected local government units has purportedly signified its concurrence to the proposed IFMA conversion?

Finally, the DENR, by withholding the conversion of PICOP's TLA No. 43 into an IFMA, has made a factual finding that PICOP has not yet complied with the requirements for such a conversion. Findings of facts of administrative agencies are generally accorded great respect, if not finality, by the courts because of the special knowledge and expertise over matters falling under their jurisdiction.[110] Such finality of the DENR's factual finding, supported as it is by substantial evidence, can only be overcome by grave abuse of discretion amounting to lack or excess in jurisdiction, which is even more pronounced in a Petition for *Mandamus*.

Whether or not there has already been a conversion of TLA No. 43 into an IFMA

The Court of Appeals declared that there exists no legal impediment to the conversion of respondent's TLA No. 43 into an IFMA as evidenced by petitioner's letters dated 26 October 2002 and 26 April 2002:

> Moreover, [the DENR Secretary's] own letters to [PICOP] confirm that it has established a clear right to the automatic conversion of TLA No. 43 to IFMA. Thus, on October 26, 2002, [the DENR Secretary] stated in his letter to [PICOP] "that pursuant to DAO-99-53, we have cleared the conversion on PICOP's TLA No. 43 to IFMA effective from the expiration of said TLA on April 26, 2002." Too, in its April 24, 2002 letter to [PICOP], [the DENR Secretary] granted PICOP's TDMP "[p]ending the formal approval of [its] IFMA xxx." It could thus be deduced that there exists no legal impediment to the conversion of PICOP's TLA 43 to IFMA. Its approval remains a formality.

[109] *Rollo* of G.R. No. 162243, p. 230.

[110] *JMM Promotions and Management v. Court of Appeals*, 439 Phil. 1, 10-11 (2002); *Calvo v. Bernardito*, 423 Phil. 939, 947 (2001).

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We disagree. Then DENR Secretary Alvarez's 25 October 2001 letter is reproduced herein for reference:

Dear Mr. Bernardino:

Consistent with your attached Memorandum to her Excellency, the President, dated 17 October 2001 and in response to your Letter of Intent dated 25 January 2001, we wish to inform you that, pursuant to DENR Administrative Order No. 99-53, ***we have cleared the conversion of PICOP's Timber License Agreement (TLA) No. 43 to Integrated Forest Management Agreement (IFMA)*** effective from the expiration of said TLA on April 26, 2002.

In this regard, you are hereby requested to designate PICOP's representative(s) to discuss with the DENR Team, created under Special Order No. 2001-638, the conditions and details of the said IFMA, including the production sharing arrangement between PICOP and the government.[111]

By giving this clearance for the conversion of PICOP's TLA into an IFMA, the DENR Secretary cannot, by any stretch of imagination, be claimed to have granted the conversion itself. The letter is clear that the "conversion" could not be final since its conditions and details still have to be discussed as stated in the second paragraph of said letter; hence, the same letter could not have reduced to a mere formality the approval of the conversion of PICOP's TLA No. 43 into an IFMA.

Likewise, then DENR Secretary Alvarez's 26 April 2002 letter approving PICOP's Transition Development and Management Plan (TDMP) cannot be considered as an approval of PICOP's application for IFMA conversion. Again, the aforesaid letter is quoted in full:

April 24, 2002

MR. WILFREDO D. FUENTES
Vice President – Resident Manager
PICOP Resources, Incorporated
2nd Floor, Moredel Building
2280 Pasong Tamo Extension
Makati City

[111] *Rollo* of G.R. No. 162243, p. 426.

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Dear Mr. Fuentes:

This refers to your request for approval of the submitted Two-year Transition Development and Management Plan of PICOP Resources, Inc. (PRI) for the areas under TLA No. 43 which expires on April 26, 2002.

Pending the formal approval of your IFMA and consistent with our letter to the PRI President dated 25 October 2002, we hereby grant your Transition Development and Management Plan (TDMP) for a period of one (1) year, effective 26 April 2002.

Within such period we expect PRI to submit/comply with all the necessary requisites for the final conversion of TLA 43 into IFMA, as provided for under DENR Administrative Order No. 99-53, including the settlement of certain obligations such as taxes, if any, and submission of plans and programs for evaluation and approval of item number 1 of your proposal contained in your letter dated February 4, 2002.

All other proposed activities in your TDMP, particularly items 2-7 of your letter dated February 4, 2002, are hereby approved.

For your information and guidance.

Very truly yours,

(sgd)
HEHERSON T. ALVAREZ
Secretary

Cc: Mr. Teodoro G. Bernardino
President

The Director, FMB

The aforesaid letter speaks for itself. PICOP's application for IFMA conversion **is still pending approval.** Indeed, there could have been no approval of PICOP's application for IFMA conversion because DAO No. 99-53 (which governs application for IFMA conversion) requires full and complete compliance with the requirements for conversion before it may be approved. As stated in the letter itself of then DENR Secretary Alvarez, PICOP has yet to **"submit/comply with all the necessary requisites for final conversion of TLA No. 43 into IFMA."**

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Even assuming, however, that the IFMA has already been converted, this is all purely academic because of the above-discussed settled jurisprudence that logging permits are not contracts within the Non-Impairment Clause and thus, can be amended, modified, replaced or rescinded when the national interest so requires. If the DENR Secretary, therefore, finds that the IFMA would be in violation of statutes, rules and regulations, particularly those protecting the rights of the local governments and the indigenous peoples within the IFMA area, then it behooves the DENR Secretary to revoke such IFMA. These same statutes, rules and regulations are the very same requirements mentioned above for the conversion of the TLA No. 43 into an IFMA.

Whether or not it is proper to determine the constitutionality of Proclamation No. 297 in these consolidated petitions

Another reason why the DENR Secretary wishes to further withhold the conversion of PICOP's TLA No. 43 into an IFMA is the 25 November 2002 Proclamation No. 297 excluding an area of 8,100 hectares, more or less, from the coverage of TLA No. 43, as amended, and which declared the same as a mineral reservation and as an environmentally critical area. The DENR Secretary claims that said Presidential Proclamation is rendered nugatory by the Court of Appeals' disposition that the DENR should honor and respect the area allotted to PICOP under TLA No. 43.[112]

PICOP claims that Proclamation No. 297 is a new matter which the DENR Secretary cannot raise before this Court without offending the basic rules of fair play, justice and due process.[113]

The DENR Secretary counters that it did not take up the issue of Proclamation No. 297 before the trial court precisely because said proclamation was issued more than one month after the trial court rendered its 11 October 2002 Decision.

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[112] *Id.* at 1018.

[113] *Id.* at 599.

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The DENR Secretary claims that PICOP cannot claim a violation of its right to due process because it raised the issue before the Court of Appeals in its Memorandum.

While not giving in to the DENR Secretary's argument, PICOP claims that Proclamation No. 297 is violative of the Constitution and an encroachment on the legislative powers of Congress.[114]

We agree with PICOP that this constitutional issue cannot be decided upon in this case. This Court will not touch the issue of unconstitutionality unless it is the very *lis mota*. It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court may raise its judgment, that course will be adopted and the constitutional question will be left for consideration until such question will be unavoidable.[115]

The constitutional question presented by PICOP is not the very *lis mota* in these consolidated cases, as the preceding discussions very well give us adequate grounds to grant the Petition in G.R. No. 162243, deny the Petition in G.R. No. 164516, and dismiss the Petition in G.R. No. 171875. Moreover, PICOP has filed a separate petition for the declaration of nullity of Proclamation No. 297, wherein the issue of the constitutionality of Proclamation No. 297 is properly ventilated.

Consequently, all actions and reliefs sought by either PICOP or the DENR Secretary which has Proclamation No. 297 as its ground or subject should be ventilated either in the pending petition for the declaration of its nullity, or in another proper suit instituted for that matter.

EPILOGUE AND DISPOSITION

In sum, the DENR Secretary has adequately proven that PICOP has, at this time, failed to comply with the administrative

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[114] *Id.* at 1246.

[115] *Sotto v. Commission on Elections*, 76 Phil. 516, 522 (1946).

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and statutory requirements for the conversion of TLA No. 43 into an IFMA. The Petition in G.R. No. 162243 should therefore be granted.

On the other hand, as PICOP is not yet entitled to such conversion, then Secretary Alvarez had been correct in withholding the same and thus cannot be held liable for damages therefor. Thus, the Petition in G.R. No. 164516 should be dismissed.

Finally, the DENR Secretary's Petition in G.R. No. 171875, assailing the lifting by the Court of Appeals of the Preliminary Injunction in its favor, is now mooted.

PICOP's noncompliance with the requirements for the conversion of their TLA is so glaring, that we almost see a reluctance to uphold the law in light of PICOP's sizeable investments in its business, a fact repeatedly stressed by PICOP in its pleadings. In applying the judicial policy of nurturing prosperity, consideration should also be given to the long-term effects of the judicial evaluations involved, particularly to our nation's greatest wealth, our vast natural resources.

Our country has been blessed with rich, lush and verdant rain forests in which varied, rare and unique species of flora and fauna may be found.[116] The legislative policy has been to preserve and nourish these natural resources as they are not only for our benefit but more so for the countless future generations to which we are likewise responsible. It has also been legislative policy to let the citizens of this country reap their benefits, foremost the citizens in close proximity to such resources, through the local governments and the NCIP.

In working for the legislative policy of environmental preservation, the requirements of a five-year forest protection plan and seven-year reforestation plan had been laid down, together with the levy of forest charges for the regulation of forestry activities. In pursuing, on the other hand, the benefit distribution policy, the Local Government Code requires prior Sanggunian approval to ensure that local communities partake

[116] Petition in *Oposa v. Factoran, Jr.*, *supra* note 81.

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in the fruits of their own backyard, while R.A. No. 8371 provides for the rights of the indigenous peoples, who have been living in, managing, and nourishing these forests since time immemorial.

PICOP has been fortunate to have been awarded an enormous concession area and thus, a huge chunk of the benefits of this country's natural resources. Attached to this fortune is the responsibility to comply with the laws and regulations implementing the stated legislative policies of environmental preservation and benefit distribution. These laws and regulations should not be ignored, and the courts should not condone such blatant disregard by those who believe they are above the law because of their sizable investments and significant number of workers employed. PICOP has only itself to blame for the withholding of the conversion of its TLA. But while this disposition confers another chance to comply with the foregoing requirements, the DENR Secretary can rightfully grow weary if the persistence on noncompliance will continue. The judicial policy of nurturing prosperity would be better served by granting such concessions to someone who will abide by the law.

WHEREFORE, the Petition in G.R. No. 162243 is *GRANTED*. The Decision of the Court of Appeals insofar as it affirmed the RTC Decision granting the Petition for *Mandamus* filed by Paper Industries Corporation of the Philippines (PICOP) is hereby *REVERSED* and *SET ASIDE*. The Petition in G.R. No. 164516 seeking the reversal of the same Decision insofar as it nullified the award of damages in favor of PICOP is *DENIED* for lack of merit. The Petition in G.R. No. 171875, assailing the lifting of the Preliminary Injunction in favor of the Secretary of Environment and Natural Resources is *DISMISSED* on the ground of mootness.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and *Callejo, Sr., JJ.,* concur.