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SECOND DIVISION

[G.R. No. 115104. October 12, 1998]

MACAWIWILI GOLD MINING AND DEVELOPMENT CO., INC. and OMICO MINING AND INDUSTRIAL CORPORATION, *petitioners, vs.* **COURT OF APPEALS and PHILEX MINING CORPORATION,** *respondents.*

SYNOPSIS

Philex Mining Corporation filed a complaint for expropriation against Macawiwili Gold Mining and Development Co., Inc. (Macawiwili) and Omico Mining and Industrial Corporation (Omico) pursuant to Section 59 of PD No. 463. The trial court dismissed the complaint, citing the Supreme Court decision in *Poe Mining Ass. v. Garcia* (202 SCRA 222) which recognized the possessory rights of Macawiwili and Omico over the mining claims located at Tuba and Itogon, Benguet, lots subject of the expropriation proceedings, and that the right to expropriate under Section 59 of the law is not absolute but a mere auxiliary right and is given only in aid of mining operations. The trial court held that the award of possessory rights to Macawiwili and Omico gave the land a public character which can no longer be expropriated except when otherwise mandated by the legislature or under a specific grant of authority to the delegate. Philex appealed to the Court of Appeals when its motion for reconsideration was denied. Macawiwili and Omico moved to dismiss the appeal on the ground that only questions of law were involved, hence, the appeal should be made to the Supreme Court. The Court of Appeals denied the motion to dismiss. Macawiwili and Omico, without filing a motion for reconsideration, filed the instant petition for *certiorari*. Philex moved to dismiss on the ground that petitioners should have filed a motion for reconsideration.

As a rule, a motion for reconsideration is required before a petition for *certiorari* can be filed except when the questions raised before this Court are the same as those which have been squarely raised in and passed upon by the court below. To require the filing of a motion for reconsideration would simply be a repetition of their arguments.

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The question of whether Philex has a right to expropriate Macawiwili's and Omico's mining areas under Section 59 of PD No. 463 is a question of law which should be filed directly with this Court by a petition for review on *certiorari* under Rule 45 of the Rules of Court. Thus, the Court of Appeals committed a grave abuse of discretion when it denied Macawiwili's and Omico's motion to dismiss.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MOTION FOR RECONSIDERATION, REQUIRED; EXCEPTIONS.**— It is settled that the writ of certiorari lies only when petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law. Thus, a motion for reconsideration, as a general rule, must be filed before the tribunal, board, or officer against whom the writ of certiorari is sought. This rule, however, is not without exceptions when the questions raised before this Court are the same as those which have been squarely raised in and passed upon by, the court below, the filing of a motion for reconsideration in said court before *certiorari* can be instituted in this Court, is no longer prerequisite. This rule is subject, however, to exceptions, among which are the following, namely: 1) where the issue raised is one purely of law; 2) where public interest is involved; 3) in case of urgency; and (4) when the questions raised before this Court are the same as those which have been squarely raised in and passed upon by, the court below.

2. **ID.; ID.; ID.; ID.; CASE AT BAR, AN EXCEPTION.**— The issues raised by petitioners in this petition are substantially the same as those asserted by them in their Motion to Dismiss Appeal, dated February 14, 1994, before the Court of Appeals. The argument that respondent has no right to expropriate petitioners' mineral areas under Presidential Decree No. 463 has already been raised, argued, and submitted by petitioners for resolution by the appellate court in their Motion to Dismiss Appeal. To further file a motion for reconsideration before the Court of Appeals would simply be to repeat their arguments. For this reason, we hold that petitioners' failure to file a motion for reconsideration is not fatal to the allowance of their action.

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3. **ID.; ID.; ID.; WHEN DOES IT LIE.**— The writ of *certiorari* lies when a court, in denying a motion to dismiss, acts without or in excess of jurisdiction or with grave abuse of discretion. By "grave abuse of discretion" is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to virtual refusal to perform the duty enjoined by or to act all in contemplation of law.

4. **ID.; ID.; ID.; QUESTION OF LAW RAISED IN CASE AT BAR.**— The first four arguments advanced by respondent Philex Mining raise the sole issue of whether it has, under Presidential Decree No. 463, the right to expropriate the 21.9 hectare mining areas where petitioners' mining claims are located. On the other hand, its final argument raises the issue of whether the rules on the allegation of alternative causes of action in one pleading under Rule 8, §1 of the Rules of Court are applicable to special civil actions. These are legal questions whose resolution does not require an examination of the probative weight of the evidence presented by the parties but a determination of what the law is on the given state of facts. These issues raise questions of law which should be the subject of a petition for review on *certiorari* under Rule 45 filed directly with this Court. The Court of Appeals committed a grave error in ruling otherwise.

APPEARANCES OF COUNSEL

Feria Feria Lugtu & La'o for Macawiwili Gold Mining Co., Inc.

Roco Bunag Kapunan & Migallos for Philex.

David A. Daoas for heirs of Acquiapao & Pigoro.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for *certiorari* to set aside the resolution, dated April 12, 1994, of the Tenth Division of the Court of Appeals in CA-G.R. CV No. 42120, denying petitioners' motion

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to dismiss the appeal of private respondent from a ruling of the trial court.[1]

The antecedent facts are as follows:

On October 16, 1992, respondent Philex Mining Corporation filed a complaint for expropriation against petitioners Macawiwili Gold Mining and Development Co., Inc. and Omico Mining & Industrial Corporation. The complaint, entitled "Philex Mining Corporation *v.* Macawiwili Gold Mining and Development Co., Inc., et al.," was filed before the Regional Trial Court of La Trinidad, Benguet, where it was docketed as Civil Case No. 92-CV-0727.

Based on §53 of P.D. No. 463, Philex Mining sought to expropriate 21.9 hectares of petitioners' mining areas where the latter's "Macawiwili claims" are located. Philex Mining likewise moved for the issuance of a writ of preliminary injunction to enjoin petitioners from ejecting it (Philex Mining) from the mining areas sought to be expropriated.

Although a temporary restraining order was initially issued by the Regional Trial Court of La Trinidad, Branch X, on November 11, 1992, it denied respondent's application for a preliminary injunction.

On February 18, 1993, the trial court, acting on the motion of petitioners, dismissed the complaint of Philex Mining. In its resolution, the trial court stated:[2]

> To better appreciate the incident submitted for resolution, a review of the antecedent facts which gave rise to this case is in order.
>
> The decision of the Supreme Court dated October 2, 1991 in Poe Mining Association *vs.* Garcia, 202 SCRA 222 upheld the decision of the then Minister of Natural Resources which was affirmed by the Office of the President. This decision recognized the possessory rights of defendants Macawiwili and Omico over their mining claims

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[1] Per Justice Emeterio C. Cui, and concurred in by Justices Fermin A. Martin, Jr. and Eugenio S. Labitoria.

[2] *Rollo*, pp. 90-94.

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located at Tuba and Itogon, Benguet as against Poe Mining Association and plaintiff herein Philex Mining Corporation as operator. However, on the surface of 21.9 hectares of these mining claims awarded to defendants Macawiwili and Omico, we find improvements of the plaintiff consisting of a network of roads, a motorpool facility, a tailings dam and three bunkhouses. The Department of Environment and Natural Resources - Cordillera Administrative Region (DENR-CAR), in pursuance of the Supreme Court decision is poised to order the removal or demolition of plaintiff's improvements and to hand possession of the area to defendants Macawiwili and Omico. Plaintiff, while admitting the possessory rights of defendant mining companies, stresses that the improvements already existing thereon are vital to the conduct of its mining operations particularly, its Nevada claims. Thus, it came to court seeking the expropriation of this area pursuant to Section 59 of Presidential Decree No. 463.

The conflict between the plaintiff and defendant mining companies spans a period of almost 23 years until finally, it reached the Supreme Court, the final arbiter of all disputes. The Supreme Court has spoken and it has awarded to defendants Macawiwili and Omico the portion sought to be expropriated by the plaintiff.

Can this Court now grant to plaintiff the right to expropriate the very land which has been denied it by the decision of the highest court of the land?

This Court believes not. To do so would not only be presumptious of this Court but a patent defiance of the decision of the highest tribunal.

The plaintiff states that the expropriation is necessary in order for it to continue with the operation of its Nevada claims. The improvements now existing on the land sought to be expropriated consists of a network of roads constructed sometime in 1958, a motorpool facility built in 1963, a tailings dam and three (3) two-storey concrete bunkhouses. It is thus clear that these improvements have been existing for quite sometime now. Aware that these improvements are essential to their mining operations, plaintiff should have initiated expropriation proceedings long before it even started putting up said improvements. Why exercise the right of eminent domain only now that the land has been adjudged in favor of defendant mining companies by no less than the Supreme Court? It seems the plaintiff, mindful of the Supreme Court decision, would now look

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for avenues of escape to evade the repercussions of such a decision. What it has not achieved through the decision, it tries to gain through the power of eminent domain. Clearly, this is forum-shopping, plain and simple. Stripped of all its legal niceties, this expropriation proceeding is patently a last ditch effort on the part of the plaintiff to overcome the adverse effects of the Supreme Court decision.

Can this Court countenance such a procedure under the guise of the legal process of expropriation?

No. To agree to it would be to encourage forum-shopping which is abhorred as there will no longer be any end to any litigation.

Nevertheless, plaintiff asserts that its right to expropriate is distinct and separate from the rights of Macawiwili and Omico under the Supreme Court decision, anchoring said right on Section 59 of Presidential Decree No. 463 which states:

> SEC. 59. Eminent Domain. — When the claim owner or an occupant or owner of private lands refuses to grant to another claim owner or lessee the right to build, construct or install any of the facilities mentioned in the next preceding section, the claim owner or lessee may prosecute an action for eminent domain under the Rules of Court in the Court of First Instance of the province where the mining claims involved are situated. In the determination of the just compensation due the claim owner or owner or occupant of the land, the court shall appoint at least one duly qualified mining engineer or geologist to be recommended by the Director as one of the commissioners.

There are two (2) stages in every action of expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends either with an order of dismissal or an order of condemnation. The second phase of the eminent domain action is concerned with the determination by the court of the "just compensation for the property sought to be taken" (Municipality of Biñan *vs.* Hon. Jose Mar Garcia, *et al.*, 180 SCRA 576 as quoted in National Power Corporation *vs.* Jocson, G.R. Nos. 94193-99, February 25, 1992, 206 SCRA 520).

Going to the first stage of the expropriation proceeding in the case at bar, the question is: Is the right to expropriate granted to mining companies under Section 59 of P.D. No. 463 an absolute right?

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An examination of Presidential Decree No. 463 would readily show that Section 59 upon which plaintiff asserts its right to expropriate is found under Chapter XI with the heading "Auxiliary Mining Rights." From the title alone, it would seem that the right to expropriate is not an absolute one but a mere auxiliary right. The right of eminent domain granted to mining companies is given in aid of its mining operations and not as a matter of right. Thus, it should be construed strictly against the mining company seeking the right. Thus, taking into context the antecedent facts arising from this case, is it proper for plaintiff to exercise the power of eminent domain?

Absolutely not. But, granting *arguendo* that the right of expropriation can be awarded to plaintiff, a bigger question arises on whether a mining company can expropriate land belonging to another mining company. It would be absurd if not ridiculous. In the first place, the land would no longer be subject to expropriation. Expropriation demands that the land be private land. When the Supreme Court awarded the possessory rights over the land subject of this case to defendants Macawiwili and Omico, it has stripped said land of its private character and gave it its public character, that is, to be utilized for mining operations. Although property already devoted to public use is still subject to expropriation, this must be done directly by the national legislature or under a specific grant of authority to the delegate (Constitutional Law by Isagani Cruz, 1989 edition, page 64). Section 59 of Presidential Decree No. 463 is not a specific grant of authority given to plaintiff but a mere general authority which will not suffice to allow plaintiff to exercise the power of eminent domain.

The plaintiff also states that it does not question the mining rights of defendant mining companies over the area as it is only interested in the surface rights as this is where its improvements are located. But this is an illusory dream which cannot be given reality by this Court. It is a well-known principle that the owner of a piece of land has rights not only to its surface but also to everything underneath and the airspace above it to a reasonable height (Art. 437, Civil Code of the Philippines). The surface area cannot be segregated from the subjacent minerals. There is no dividing line between the surface and what is underneath that one can categorically state that one belongs to the plaintiff while the other forms part of the property of the defendant mining companies. For that is in effect what the plaintiff wants, just the surface area where its improvements are. It would be like dismembering a human body of a lady and awarding the upper

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part including her bosom to someone while giving the lower part to another, making it a useless proposition to either one. For how can defendant mining companies operate their mining claims when the surface belongs to somebody else and for that matter, how will the plaintiff improve the surface area without affecting what is underneath?

As the Supreme Court stated in the case of *Republic vs. Court of Appeals*, No. L-43938, April 15, 1988, 160 SCRA 228: "Under the (no- conflict) theory of the respondent court, the surface owner will be planting on the land while the mining locator will be boring tunnels underneath. The farmer cannot dig a well because he may interfere with the mining operations below and the miner cannot blast a tunnel lest he destroys the crops above. How deep can the farmer, and how high can the miner, go without encroaching on each other's right? Where is the dividing line between the surface and sub-surface rights? The Court feels that the rights over the land are indivisible and that the land itself cannot be half agricultural and half mineral. The classification must be categorical; the land must be either completely mineral or completely agricultural."

All told, it is clear that plaintiff has not shown that it has the right to expropriate the land subject of this case. Moreover, that land has been placed out of its reach by the Supreme Court decision when it awarded it to defendants Macawiwili and Omico. Both plaintiff and defendants are engaged in mining, and the Supreme Court has adjudged defendant mining companies to be the owner of the land. This Court now, on the ground of the exercise of the power of eminent domain, cannot and will not overwhelm said decision by awarding it to plaintiff.

As the other motions have become moot and academic, this Court will no longer delve into them. However, as to the motion for reduction of deposit, the Court will make its last point. In the case of *National Power Corporation vs. Jocson*, *supra*, the Supreme Court made this pronouncement: "Presidential Decree No. 42 requires the petitioner, to deposit with the Philippine National Bank in its main office or any of its branches or agencies, 'an amount equivalent to the assessed valued of the property for purposes of taxation.' This assessed value is that indicated in the tax declaration. P.D. No. 42 repealed the provisions of Rule 67 of the Rules of Court and any other existing law contrary to or inconsistent with it. Accordingly, it repealed Section 2 of Rule 67 insofar as the determination of the provisional value, the form of payment and the agency with which the deposit shall be made, are concerned. P.D. No. 42, however effectively removes the discretion of the court in determining the provisional value. What is

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to be deposited is an amount equivalent to the assessed value for taxation purposes. No hearing is required for that purpose. All that is needed is notice to the owner of the property sought to be condemned."

Thus, the plaintiff is right in depositing the assessed value of the property as appearing on the tax declaration of defendant Macawiwili as the provisional value of the land sought to be expropriated. While this case remains pending, the plaintiff may then withdraw the balance of the Two Million Pesos (₱2,000,000.00) from the Philippine National Bank after deducting the provisional value of the land amounting to Forty Eight Thousand Six Hundred Pesos (₱48,600.00).

WHEREFORE, premises considered, the Motion to Dismiss filed by defendants Macawiwili Gold Mining and Development Mining Co., Inc. and Omico Mining and Industrial Corporation is granted. This case is hereby DISMISSED without pronouncement as to costs.

SO ORDERED.

Philex Mining moved for a reconsideration, but its motion was denied. It then appealed to the Court of Appeals.

On February 16, 1994, petitioners filed a Motion to Dismiss Appeal on the ground that only questions of law were involved and, therefore, the appeal should be to the Supreme Court. However, the appellate court denied petitioners' motion in a resolution, dated April 12, 1994. Without filing a motion for reconsideration, petitioners filed the instant petition for *certiorari.*

Respondent Philex Mining seeks the dismissal of the petition on the ground that petitioner should have filed a motion for reconsideration giving the appellate court an opportunity to correct itself.

Rule 65, §1 of the 1964 Rules of Court in part provides:

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that

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judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer.

With some modifications, Rule 65, §1 of the 1997 Rules of Civil Procedure similarly provides:

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial *or quasi-judicial functions* has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion *amounting to lack or excess of jurisdiction,* and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings *of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.*[3]

It is settled that the writ of *certiorari* lies only when petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law. Thus, a motion for reconsideration, as a general rule, must be filed before the tribunal, board, or officer against whom the writ of *certiorari* is sought.

Ordinarily, *certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors.[4]

This rule, however, is not without exceptions. In *Pajo v. Ago and Ortiz*[5] we held:

Respondent contends that petitioners should have filed a motion for reconsideration of the order in question, or asked for the dissolution of the preliminary injunction issued by the trial court, before coming to us.

This is not always so. It is only when the questions are raised for the first time before this Court in a *certiorari* proceeding that the

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[3] The underscored portions represent the modifications.

[4] *Lasco v. United Nations Revolving Fund for Natural Resources Corporation*, 241 SCRA 681, 684 (1995), *citing Liberty Insurance Corporation v. Court of Appeals,* 222 SCRA 37 (1993).

[5] 108 Phil. 905, 917 (1960).

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writ shall not issue unless the lower court had first been given the opportunity to pass upon the same. In fine, when the questions raised before this Court are the same as those which have been squarely raised in and passed upon by, the court below, the filing of a motion for reconsideration in said court before *certiorari* can be instituted in this Court, is no longer prerequisite.

In *Locsin v. Climaco*[6] it was stated:

When a definite question has been properly raised, argued, and submitted to a lower court, and the latter has decided the question, a motion for reconsideration is no longer necessary as a condition precedent to the filing of a petition for *certiorari* in this Court.

And in *Central Bank v. Cloribel,*[7] it was explained:

It is true that Petitioner herein did not seek a reconsideration of the order complained of, and that, as a general rule, a petition for *certiorari* will not be entertained unless the respondent has had, through a motion for reconsideration, a chance to correct the error imputed to him. This rule is subject, however, to exceptions, among which are the following, namely: 1) where the issue raised is one purely of law; 2) where public interest is involved; and 3) in case of urgency. These circumstances are present in the case at bar. Moreover, Petitioner herein had raised — in its answer in the main case and in the rejoinder to the memorandum of the Banco Filipino in support of the latter's application for a writ of preliminary injunction — the very same questions raised in the Petition herein. In other words, Judge Cloribel has already had an opportunity to consider and pass upon those questions, so that a motion for reconsideration of his contested order would have served no practical purpose. The rule requiring exhaustion of remedies does not call for an exercise in futility.

The issues raised by petitioners in this petition are substantially the same as those asserted by them in their Motion to Dismiss Appeal, dated February 14, 1994, before the Court of Appeals. The argument that respondent has no right to expropriate petitioners' mineral areas under Presidential Decree No. 463 has already been raised, argued, and submitted by petitioners

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[6] 26 SCRA 816, 832-33 (1969).

[7] 44 SCRA 307, 314-315 (1972).

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for resolution by the appellate court in their Motion to Dismiss Appeal. To further file a motion for reconsideration before the Court of Appeals would simply be to repeat their arguments. For this reason, we hold that petitioners' failure to file a motion for reconsideration is not fatal to the allowance of their action.

We therefore come to the main question: Did the Court of Appeals commit grave abuse of discretion in denying petitioners' Motion to Dismiss Appeal? We find that it did.

To begin with, the writ of *certiorari* lies when a court, in denying a motion to dismiss, acts without or in excess of jurisdiction or with grave abuse of discretion.[8] By "grave abuse of discretion" is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[9]

Petitioners contend that the Court of Appeals gravely abused its discretion in denying their motion to dismiss the appeal. According to petitioners, respondent's appeal raises only questions of law and, therefore, it should be brought to the Supreme Court by means of a petition for review on *certiorari* and not, as Philex Mining did, by bringing an ordinary appeal to the Court of Appeals. Petitioners argue that the question whether respondent has a right to expropriate petitioners' mining areas under §59 of Presidential Decree No. 463 is a question of law.

On the other hand, Philex Mining maintains that the issues raised in its appeal are factual and, therefore, the appellate court is the proper forum for the ventilation of such issues.

Supreme Court Circular No. 2-90, which is based on the Resolution of the Court *En Banc* in UDK-9748 (*Anacleto Murillo v. Rodolfo Consul*), March 1, 1990, provides in §4(c) thereof:

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[8] *Marcelo v. Court of Appeals*, 235 SCRA 39 (1994).

[9] *Planters Products, Inc. v. Court of Appeals*, 193 SCRA 563 (1991).

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c) *Raising issues purely of law in the Court of Appeals, or appeal by wrong mode.* — If an appeal under Rule 41 is taken from the regional trial court to the Court of Appeals and therein the appellant raises only questions of law, the appeal shall be dismissed, issues purely of law not being reviewable by said Court. So, too, if an appeal is attempted from the judgment rendered by a Regional Trial Court in the exercise of its appellate jurisdiction by notice of appeal, instead of by petition for review, the appeal is inefficacious and should be dismissed.

Thus, judgments of the regional trial courts in the exercise of their original jurisdiction are to be elevated to the Court of Appeals in cases where the appellant raises questions of fact or mixed questions of fact and law. On the other hand, appeals from judgments of the regional trial courts in the exercise of their original jurisdiction must be brought directly to the Supreme Court in cases where the appellant raises only questions of law.

This procedure is now embodied in Rule 41, §2 of the 1997 Rules of Civil Procedure which distinguishes the different modes of appeal from judgments of regional trial courts as follows:

Modes of appeal.—

(a) *Ordinary appeal.* — The appeal to the Court to Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

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On the other hand, Rule 42 provides that appeals from judgments of the regional trial courts in the exercise of their appellate jurisdiction must be brought to the Court of Appeals, whether the appellant raises questions of fact, of law, or mixed questions of fact and law.

The rules on appeals from the judgments of the regional trial courts in civil cases may thus be summarized as follows:

(1) *Original Jurisdiction* — In all cases decided by the regional trial courts in the exercise of their original jurisdiction, appeal may be made to:

(a) Court of Appeals — where the appellant raises questions of fact or mixed questions of fact and law, by filing a mere notice of appeal.

(b) Supreme Court — where the appellant solely raises questions of law, by filing a petition for review on *certiorari* under Rule 45.

(2) *Appellate Jurisdiction*

All appeals from judgments rendered by the regional trial courts in the exercise of their appellate jurisdiction, whether the appellant raises questions of fact, of law, or mixed questions of fact and law, shall be by filing a petition for review under Rule 42.

The question is whether the issues raised in the appeal of respondent Philex Mining are questions of law or of fact.

[F]or a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. And the distinction is well-known: There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.[10]

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[10] *Medina v. Asistio, Jr.*, 191 SCRA 218, 223 (1990), *quoting Ramos v. Pepsi-Cola Bottling Co. of the P.I.*, 19 SCRA 289 (1967).

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Respondent's assignment of errors[11] before the appellate court should therefore be considered in order to determine the nature of the questions therein raised. Respondent Philex Mining argued before the Court of Appeals:

A. The trial court erred in finding that Philex has no right to expropriate; P.D. 463 expressly grants to Philex, as operator of the Nevada claims, the right of eminent domain.

B. The trial court erred in finding that Philex cannot expropriate land belonging to a mining company; Section 59 in relation to Section 58 of P.D. 463 allows an operator of a mining claim to expropriate mining claims or lands owned, occupied, or leased by other persons or claim owners.

C. The trial court erred in finding that Philex is attempting to subvert the Supreme Court decision and is engaged in forum-shopping. Philex is merely exercising its rights under the law.

D. The trial court erred in finding that the expropriation of the land will divide the surface from the subsurface.

E. The trial court erred in dismissing the complaint. Philex's alternative cause of action was disregarded.

The respondent's arguments may thus be summarized as follows:

(1) Section 59, in relation to Section 53 of Presidential Decree No. 463, expressly grants respondent the right to expropriate mining claims or lands owned, occupied, or leased by other persons once the conditions justifying expropriation are present. The power of eminent domain expressly granted under Sections 58 and 59 of P.D. No. 463 is not inferior to the possessory right of other claimowners.[12]

(2) There is nothing absurd in allowing a mining company to expropriate land belonging to another mining company. Pursuant to the ruling laid down in *Benguet Consolidated, Inc.*

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[11] *Rollo*, pp. 144-171.

[12] *Rollo*, pp. 158-163.

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v. Republic,[13] land covered by mining claims may be the subject of expropriation. Moreover, a general grant of the power of eminent domain only means that the court may inquire into the necessity of the expropriation.[14]

(3) Respondent could not be held guilty of forum-shopping or subverting the Supreme Court's decision in *Poe Mining v. Garcia*.[15] Forum-shopping, which refers to filing the same or repetitious suits, is not resorted to in the present case since respondent seeks to expropriate petitioners' mining areas, not as operator of the Poe mining claims, but as operator of the Nevada mining claims.[16]

(4) Respondent's expropriation of the land will not divide the surface from the subsurface for the reason that respondent seeks to expropriate all rights that petitioners, as well as the Pigoro heirs, have over the 21.9 hectare area.[17]

(5) The trial court erred in disregarding respondent's alternative cause of action, even on the assumption that respondent does not have the right to expropriate, for the reason that an alternative statement in a pleading, if sufficient, is not vitiated by the insufficiency of the other alternative statements.[18]

The first four arguments advanced by respondent Philex Mining raise the sole issue of whether it has, under Presidential Decree No. 463, the right to expropriate the 21.9 hectare mining areas where petitioners' mining claims are located. On the other hand, its final argument raises the issue of whether the rules on the allegation of alternative causes of action in one pleading under Rule 8, §1 of the Rules of Court are applicable to special civil actions. These are legal questions whose resolution does

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[13] 143 SCRA 466 (1986).

[14] *Rollo*, pp. 163-166.

[15] 202 SCRA 222 (1991).

[16] *Rollo*, pp. 166-168.

[17] *Id.*, pp. 168-169.

[18] *Id.*, pp. 169-170.

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not require an examination of the probative weight of the evidence presented by the parties but a determination of what the law is on the given state of facts. These issues raise questions of law which should be the subject of a petition for review on *certiorari* under Rule 45 filed directly with this Court. The Court of Appeals committed a grave error in ruling otherwise.

WHEREFORE, the petition is *GRANTED*, the challenged resolution of the Court of Appeals is *SET ASIDE*, and the appeal of respondent Philex Mining is *DISMISSED*.

SO ORDERED.

Regalado, Acting C. J. (Chairman), Melo, Puno, and *Martinez, JJ.*, concur.

EN BANC

[G.R. No. 118570. October 12, 1998]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENEDICTO RAMOS y BINUYA *alias* "Bennie,"** *accused-appellant.*

SYNOPSIS

This is an automatic review of the decision of the Regional Trial Court finding appellant Ramos guilty of two separate heinous crimes; kidnapping for ransom and murder, instead of the complex crime charged in the Information. The trial court held that there was no proof that the victim was kidnapped for the purpose of killing her so as to make the offense a complex crime. The killing of the victim was a mere afterthought, making Ramos liable for two separate offenses. Hence, he was sentenced to death in each case and to indemnify the heirs of the victim the amount of ₱50,000 plus ₱105,150 for funeral expenses.