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FIRST DIVISION

[G.R. No. 202877. December 9, 2015]

NARRA NICKEL MINING AND DEVELOPMENT CORPORATION, TESORO MINING AND DEVELOPMENT, INC., and MCARTHUR MINING, INC., *petitioners, vs.* **REDMONT CONSOLIDATED MINES CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL UNDER RULE 43 OF THE RULES OF COURT; MUST BE TAKEN AGAINST A JUDGMENT, FINAL ORDER, RESOLUTION OR AWARD OF A QUASI-JUDICIAL AGENCY IN THE EXERCISE OF ITS QUASI-JUDICIAL FUNCTIONS.— It is a fundamental rule that the question of jurisdiction may be tackled *motu proprio* on appeal even if none of the parties raised the same. The reason for the rule is that a court without jurisdiction cannot render a valid judgment. Cast against this light, the Court finds that the CA improperly took cognizance of the case on appeal under Rule 43 of the Rules of Court for the reason that the OP's cancellation and/or revocation of the FTAA was not one which could be classified as an exercise of its quasi-judicial authority, thus negating the CA's jurisdiction over the case. The **jurisdictional parameter** that the appeal be taken against a judgment, final order, resolution or award of a "quasi-judicial agency **in the exercise of its quasi-judicial functions**" is explicitly stated in Section 1 of the said Rule x x x.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; QUASI-JUDICIAL OR ADMINISTRATIVE ADJUDICATORY POWER; REFERS TO THE POWER OF THE ADMINISTRATIVE AGENCY TO ADJUDICATE THE RIGHTS OF PERSONS BEFORE IT.— Quasi-judicial or **administrative adjudicatory power** is the power of the administrative agency to **adjudicate the rights of persons before it**. The administrative body exercises its quasi-judicial power when it performs **in a judicial manner** an act which is essentially executive or administrative in nature, where the power to act in such manner

is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. "'*Adjudicate*' as commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, or settle. The dictionary defines the term as 'to settle finally (the rights and duties of parties to a court case) on the merits of issues raised: x x x to pass judgment on: settle judicially: x x x act as judge.'" "In the legal sense, 'adjudicate' means: '[t]o settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;' and 'adjudge' means: '[t]o pass on judicially, to decide, settle, or decree, or to sentence or condemn. x x x. Implies a judicial determination of a fact, and the entry of a judgment.'" **The OP's cancellation and/or revocation of the FTAA is obviously not an "adjudication" in the sense above-described**. It cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The OP – at the instance of Redmont at that – was exercising an administrative function pursuant to the President's authority to invoke the Republic's right under paragraph a (iii), Section 17.2 of the FTAA x x x. With the legal treatment and parameters of an FTAA in mind, it becomes apparent that the OP's cancellation and/or revocation of the FTAA is **an exercise of a contractual right that is purely administrative in nature**, and thus, cannot be treated as an adjudication x x x. As one of the contracting parties to the FTAA, the OP could not have adjudicated on the matter in which it is an interested party, as in a court case where rights and duties of parties are settled before an impartial tribunal. In a very loose sense, the OP's cancellation/revocation may be taken as a "decision" but only to the extent of considering it as its final administrative action internal to its channels. It is not one for which we should employ the conventional import of the phrase "final and executory," as accorded to proper judicial/ quasi-judicial decisions, and its concomitant effect of barring further recourse of a party.

3. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; A FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT IS CLASSIFIED AS A GOVERNMENT OR PUBLIC CONTRACT WHICH IS GENERALLY SUBJECT TO THE SAME LAWS AND REGULATIONS GOVERNING THE VALIDITY AND SUFFICIENCY OF CONTRACTS BETWEEN

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PRIVATE INDIVIDUALS.— The basis for the State, through the President, to enter into an FTAA with another contracting party is found in the fourth paragraph of Section 2, Article XII of the 1987 Constitution x x x. An FTAA is explicitly characterized as **a contract** in Section 3 (r) of RA 7942 x x x. Since an FTAA is entered into by the President on the State's behalf, and it involves a matter of public concern in that it covers the large-scale exploration, development, and utilization of mineral resources, it is properly classified as a **government or public contract**, which is, according to jurisprudence, "generally subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals." x x x Similar to private contracts, an FTAA involves terms, conditions, and warranties to be followed by the contracting parties, which are expressly stated in Section 35 of RA 7942. Likewise, Section 36 of RA 7942 provides that an FTAA goes through negotiation x x x. [B]eing a government or public contract, the FTAA is subject to fundamental contract principles, one of which is the principle of mutuality of contracts which would definitely be violated if one were to accept the view that the OP, a contracting party, can adjudicate on the contract's own validity. The principle of mutuality of contracts is expressed in Article 1308 of the Civil Code x x x.

4. **POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7942 (THE PHILIPPINE MINING ACT OF 1995); CONVERSION OF MINERAL AGREEMENT; PUBLICATION IS NOT REQUIRED AS SUCH WOULD HAVE ALREADY BEEN UNDERTAKEN DURING THE APPLICATION OF THE ORIGINAL MINERAL AGREEMENT.—** [T]he only time that third parties, *i.e.*, an entity other than the contractor/applicant, may pose an objection to an FTAA application is during the ten (10)-day window period given by Section 55 of the RIRR. However, this window period is only available in instances of "fresh" FTAA applications (meaning, that the same covers an area previously uncovered by any existing mineral agreements and/or FTAAs). Differently, in instances of conversion, *i.e.*, of an existing MPSA to an FTAA, publication is not required as such would have already been undertaken during the application of the original mineral agreement, pursuant to the exemption expressly contained in Section 55 of the RIRR. Absent any form of protest procedure at least under the prevailing rules, it appears that the process

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merely involves the concerned executive agency directly evaluating, *i.e.*, screening and checking, whether the contractor had complied with the pertinent requisites necessary for it to enter into a valid FTAA with the Republic. If the requisites have been met, the agency would then endorse the conversion application to the topmost executive levels, *i.e.*, the DENR Secretary, all culminating in the President's, through his/her duly appointed agents/representatives, *i.e.*, the Executive Secretary, execution of the FTAA for and in behalf of the Republic, with the contractor as counter-party. Following these premises, Redmont's opposition to petitioner's application for FTAA conversion was actually made beyond the prescribed course of procedure.

5. **ID.; ID.; ID.; PANEL OF ARBITRATORS; HAS EXCLUSIVE AND ORIGINAL JURISDICTION TO HEAR AND DECIDE MINING DISPUTES; MINING DISPUTE, DEFINED.—** Section 68 of the RIRR provides that the cancellation/revocation/termination of an FTAA may only be done after due process. In relation, Section 77 of RA 7942 x x x provides that the POA has the exclusive and original jurisdiction to hear and decide mining disputes x x x. In *Gonzales v. Climax Mining Ltd.* (*Gonzales*), it was clarified that "a mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, **FTAAs**, or permits, and (c) surface owners, occupants and claimholders/ concessionaires." Note that "the [POA's] jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience." Thus, the Court, in *Gonzales*, ruled that **the POA is bereft of any jurisdiction over a complaint for declaration of nullity and/or termination of the subject contracts on the ground of fraud, oppression and violation of the Constitution** x x x. The Court added that although mining rights may be raised as corollary issues, **the POA still has no jurisdiction to resolve cases which mainly involve a determination of a contract's validity**. Neither too would the mere involvement of an FTAA turn a case into a mining dispute that would fall under the POA's jurisdiction x x x.

APPEARANCES OF COUNSEL

Gatmaitan Yap Patacsil Gutierrez & Protacio for petitioners.
Legaspi Barcelo and Salamera Law Offices for respondent.

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 23, 2012 and the Resolution[3] dated July 27, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 120409, which affirmed the Decision[4] dated April 6, 2011 and the Resolution[5] dated July 6, 2011 of the Office of the President (OP) in O.P. Case No. 10-E-229 and, among others, ordered the cancellation and/or revocation of the Financial or Technical Assistance Agreement[6] (FTAA) executed between the Republic of the Philippines (Republic) and herein petitioners Narra Nickel Mining and Development Corporation, Tesoro Mining and Development, Inc., and McArthur Mining, Inc.

The Facts

On November 8, 2006, respondent Redmont Consolidated Mines Corporation (Redmont) filed an Application for an Exploration Permit[7] (EP) over mining areas located in the Municipalities of Rizal, Bataraza, and Narra, Palawan. After an inquiry with the Department of Environment and Natural Resources (DENR), Redmont learned that said areas were already covered by existing Mineral Production Sharing Agreements (MPSA) and an EP, which were initially applied for by petitioners' respective predecessors-in-interest with the Mines and Geosciences Bureau (MGB), Region IV-B, Office of the DENR.[8]

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[1] *Rollo,* pp. 44-87.

[2] *Id*. at 19-30. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Amelita G. Tolentino and Ramon R. Garcia concurring.

[3] *Id*. at 32-34.

[4] *Id*. at 452-469. Penned by Executive Secretary Paquito N. Ochoa, Jr.

[5] CA *rollo*, Vol. I, pp. 90-93. See also *rollo*, p. 45.

[6] *Rollo*, pp. 271-324.

[7] CA *rollo*, Vol. I, pp. 252-253.

[8] *Rollo*, pp. 50, 156, 162, and 168.

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In particular, petitioner Narra Nickel Mining and Development Corporation (Narra Nickel) acquired the application of MPSA-IV-I-12, covering an area of 3,277 hectares (ha.) in Barangays Calategas and San Isidro, Narra, Palawan, from Alpha Resources and Development Corporation and Patricia Louise Mining and Development Corporation. On March 30, 2006, or prior to Redmont's EP application, Narra Nickel had converted its MPSA into an FTAA application, denominated as AFTA-IVB-07.[9]

For its part, petitioner Tesoro Mining and Development, Inc. (Tesoro) acquired the application of MPSA-AMA-IVB-154 (formerly EPA-IVB-47), covering an area of 3,402 has. in Barangays Malinao and Princesa Urduja, Narra, Palawan, from Sara Marie Mining, Inc. (SMMI). Similar to Narra Nickel, Tesoro sought the conversion of its MPSA into an FTAA, but its application therefor, denominated as AFTA-IVB-08, was filed subsequent to Redmont's EP application, or sometime in May 2007.[10]

In the same vein, petitioner McArthur Mining, Inc. (McArthur) acquired the application of MPSA-AMA-IVB-153, as well as EPA-IVB-44, covering the areas of 1,782 has. and 3,720 has. in Barangays Sumbiling and Malatagao, Bataraza, Palawan, respectively, from Madridejos Mining Corporation, an SMMI assignee. McArthur also filed an application for FTAA conversion in May 2007, denominated as AFTA-IVB-09.[11]

Upon the recommendation of then DENR Secretary Jose L. Atienza, Jr., through a memorandum[12] dated November 9, 2009, petitioners' FTAA applications were all approved on April 5, 2010. Consequently, on April 12, 2010, the Republic – represented by then Executive Secretary Leandro R. Mendoza, acting by authority of then President Gloria Macapagal-Arroyo –

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[9] *Id*. at 452.

[10] *Id*. at 162 and 453. See also *id*. at 332.

[11] *Id*. at 332 and 452.

[12] CA *rollo*, Vol. I, pp. 327-329.

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and petitioners executed an FTAA[13] covering the subject areas, denominated as FTAA No. 05-2010-IVB (MIMAROPA).[14]

Prior to the grant of petitioners' applications for FTAA conversion, and the execution of the above-stated FTAA, Redmont filed on January 2, 2007 three (3) separate petitions[15] for the denial of petitioners' respective MPSA and/or EP applications before the Panel of Arbitrators (POA) of the DENR-MGB, docketed as DENR Case Nos. 2007-01,[16] 2007-02,[17] and 2007-03.[18] Redmont's primary argument was that petitioners were all controlled by their common majority stockholder, MBMI Resources, Inc. (MBMI) – a 100% Canadian-owned corporation[19] – and, thus, disqualified from being grantees of MPSAs and/or EPs. The matter essentially concerning the propriety of denying petitioners' MPSAs and/or EPs in view of their nationality had made it all the way to this Court, and was docketed as G.R. No. 195580.[20] In the Court's April 21, 2014 Decision,[21] petitioners were declared to be foreign corporations under the application of the "Grandfather Rule." Petitioners moved for the reconsideration of the said Decision, which was, however, denied in the Court's Resolution dated January 28, 2015.

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[13] *Rollo*, pp. 271-324.

[14] CA *rollo*, Vol. I, pp. 105-159. See also *rollo*, p. 20.

[15] Filed on January 2, 2007. *Rollo*, pp. 155-172.

[16] In particular, Petition for Denial of MPSA and EP Applications of McArthur (see *id*. at 167-172).

[17] In particular, Petition for Denial of MPSA Application of Tesoro (see *id*. at 161-166).

[18] In particular, Petition for Denial of MPSA Application of Narra Nickel (see *id*. at 155-160).

[19] *Id*. at 453.

[20] Entitled "*Narra Nickel Mining and Development Corporation, Tesoro Mining and Development, Inc., and McArthur Mining, Inc. v. Redmont Consolidated Mines Corporation.*"

[21] See *Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation*, G.R. No. 195580, April 21, 2014, 722 SCRA 382.

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Meanwhile, Redmont separately sought the cancellation and/or revocation of the executed FTAA through a Petition[22] dated May 7, 2010 (May 7, 2010 Petition) filed before the Office of the President (OP), docketed as O.P. Case No. 10-E-229. Redmont asserted, among others, that the FTAA was highly anomalous and irregular, considering that petitioners and their mother company, MBMI, have a long history of violating and circumventing the Constitution and other laws, due to their questionable activities in the Philippines and abroad.[23]

Petitioners opposed Redmont's petition through a motion to dismiss, contending that: (*a*) there is no rule or law which grants an appeal from a memorandum of a department secretary; (*b*) the appeal was filed beyond the reglementary period; (*c*) the appeal was not perfected because copies of the appeal were not properly served on them; and (*d*) Redmont is not a real party-in-interest.[24]

The OP Ruling

In a Decision[25] dated April 6, 2011, the OP granted Redmont's petition. It declared that the OP has the authority to cancel the FTAA because the grant of exclusive power to the President of the Philippines to enter into agreements, including FTAAs under Republic Act No. (RA) 7942,[26] or the "Philippine Mining Act of 1995," carries with it the authority to cancel the same.[27] Thus, finding, *inter alia*, that petitioners misrepresented that they were Filipino corporations qualified to engage in mining

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[22] *Rollo*, pp. 423-450.

[23] See Supplemental Petition with Motion to Admit; CA *rollo*, Vol. I, pp. 338-373.

[24] *Rollo*, p. 459.

[25] *Id*. at 452-469.

[26] Entitled "AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION" (approved on March 3, 1995).

[27] *Rollo*, pp. 461-462.

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activities,[28] the OP cancelled and/or revoked the said FTAA, and, in turn, gave due course to Redmont's EP application.[29]

Dissatisfied, petitioners appealed to the CA.[30]

The CA Ruling

In a Decision[31] dated February 23, 2012, the CA affirmed the OP Ruling. It found no procedural error in the OP's action on the FTAA, holding that it was done in accordance with the President's power of control over the executive departments.[32] As to its merits, the CA ruled that the Republic, as represented by the OP, had the right to cancel the FTAA, even without judicial permission, because paragraph a (iii), Section 17.2[33] thereof provides that such agreement may be cancelled by either party on the ground of "any intentional and materially false statement or omission of facts by a [p]arty."[34] Accordingly, it sustained the OP's finding that petitioners committed misrepresentations which warranted the cancellation and/or revocation of the FTAA.[35]

Unperturbed, petitioners filed on March 14, 2012 a motion for reconsideration,[36] which was denied in a Resolution[37] dated July 27, 2012; hence, this petition.

The Issue Before the Court

The main issue for the Court's resolution is whether or not the CA correctly affirmed on appeal the OP's cancellation and/or revocation of the FTAA.

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[28] *Id*. at 466.

[29] *Id*. at 468-469.

[30] See Petition for Review [with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction] dated July 26, 2011; *id*. at 470-518.

[31] *Id*. at 19-30.

[32] *Id*. at 24-25.

[33] *Id*. at 311-312.

[34] *Id*. at 25.

[35] *Id*. at 27.

[36] *Id*. at 571-603.

[37] *Id*. at 32-34.

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The Court's Ruling

The petition is meritorious.

I. ON JURISDICTION.

It is a fundamental rule that the question of jurisdiction may be tackled *motu proprio* on appeal even if none of the parties raised the same.[38] The reason for the rule is that a court without jurisdiction cannot render a valid judgment.[39]

Cast against this light, the Court finds that the CA improperly took cognizance of the case on appeal under Rule 43 of the Rules of Court for the reason that the OP's cancellation and/or revocation of the FTAA was not one which could be classified as an exercise of its quasi-judicial authority, thus negating the CA's jurisdiction over the case. The **jurisdictional parameter** that the appeal be taken against a judgment, final order, resolution or award of a "quasi-judicial agency **in the exercise of its quasi-judicial functions**" is explicitly stated in Section 1 of the said Rule:

> Rule 43
>
> Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals
>
> Section 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by **any quasi-judicial agency in the exercise of its quasi-judicial functions**. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, **Office of the President**, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission,

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[38] *Alcala v. Villar*, 461 Phil. 617, 624 (2003).

[39] *Zamora v. CA*, 262 Phil. 298, 309 (1990).

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Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphases and underscoring supplied)

Quasi-judicial or **administrative adjudicatory power** is the power of the administrative agency to **adjudicate the rights of persons before it**. The administrative body exercises its quasi-judicial power when it performs **in a judicial manner** an act which is essentially executive or administrative in nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.[40]

"'*Adjudicate*' as commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, or settle. The dictionary defines the term as 'to settle finally (the rights and duties of parties to a court case) on the merits of issues raised: x x x to pass judgment on: settle judicially: x x x act as judge.'" [41] "In the legal sense, 'adjudicate' means: '[t]o settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;' and 'adjudge' means: '[t]o pass on judicially, to decide, settle, or decree, or to sentence or condemn. x x x. Implies a judicial determination of a fact, and the entry of a judgment.'"[42]

The OP's cancellation and/or revocation of the FTAA is obviously not an "adjudication" in the sense above-described. It cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The OP – at the instance of Redmont at that – was exercising an administrative function pursuant to the President's authority[43] to invoke the Republic's right under paragraph a (iii), Section 17.2 of the FTAA which reads:

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[40] See *Bedol v. Commission on Elections*, 621 Phil. 498, 511 (2009).

[41] *Republic v. Transunion Corporation*, G.R. No. 191590, April 21, 2014, 722 SCRA 273, 283-284, citing *Cariño v. Commission on Human Rights*, G.R. No. 96681, December 2, 1991, 204 SCRA 483, 496.

[42] *Id*.

[43] See Section 2, Article XII of the 1987 Constitution.

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17.2 Termination

a. Grounds. This Agreement may be terminated, after due process, for any of the following causes:

x x x xxx xxx

iii. any intentional and materially false statement or omission of facts by a Party;[44]

To contextualize the exercise, a brief discussion on the nature and legal parameters of an FTAA is apropos.

The basis for the State, through the President, to enter into an FTAA with another contracting party is found in the fourth paragraph of Section 2, Article XII of the 1987 Constitution:

Section 2. x x x.

xxx xxx xxx

The President may enter into **agreements** with foreign-owned corporations involving either **technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils** according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources. (Emphases supplied)

An FTAA is explicitly characterized as **a contract** in Section 3 (r) of RA 7942:

Section 3. Definition of Terms. – As used in and for purposes of this Act, the following terms, whether in singular or plural, shall mean:

xxx xxx xxx

(r) "Financial or technical assistance agreement" means **a contract** involving financial or technical assistance for large-scale exploration, development, and utilization of mineral resources. (Emphasis and underscoring supplied)

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[44] *Rollo*, p. 311.

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Since an FTAA is entered into by the President on the State's behalf, and it involves a matter of public concern in that it covers the large-scale exploration, development, and utilization of mineral resources, it is properly classified as a **government or public contract**, which is, according to jurisprudence, "generally subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals."[45] In *Sargasso Construction & Development Corporation v. Philippine Ports Authority*:[46]

> A government or public contract has been defined as a contract entered into by state officers acting on behalf of the state, and in which the entire people of the state are directly interested. It relates wholly to matter of public concern, and affects private rights only so far as the statute confers such rights when its provisions are carried out by the officer to whom it is confided to perform.
>
> A government contract is essentially similar to a private contract contemplated under the Civil Code. The legal requisites of consent of the contracting parties, an object certain which is the subject matter, and cause or consideration of the obligation must likewise concur. Otherwise, there is no government contract to speak of.
>
> x x x x x x x x x
>
> **x x x. Contracts to which the government is a party are generally subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals**. A government contract, however, is perfected only upon approval by a competent authority, where such approval is required.[47] (Emphasis and underscoring supplied)

Similar to private contracts, an FTAA involves terms, conditions, and warranties to be followed by the contracting parties, which are expressly stated in Section 35[48] of RA 7942.

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[45] *Sargasso Construction & Development Corporation v. Philippine Ports Authority*, 637 Phil. 259, 277 (2010).

[46] *Id*.

[47] *Id*. at 274-277.

[48] See Section 35, Terms and Conditions, of RA 7942.

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Likewise, Section 36 of RA 7942 provides that an FTAA goes through negotiation:

> Section 36. Negotiations. – A financial or technical assistance agreement shall be negotiated by the Department and executed and approved by the President. The President shall notify Congress of all financial or technical assistance agreements within thirty (30) days from execution and approval thereof.

In *La Bugal-B'laan Tribal Association, Inc. v. Ramos*[49] (*La Bugal-B'laan*), the Court differentiated an FTAA from a license. It pronounced that an FTAA involves **contract or property rights**, which merit protection by the due process clause of the Constitution; as such, it may not be revoked or cancelled in a blink of an eye, in contrast, say for instance, to a timber license, else the contractor be unduly deprived of its investments, which are ultimately intended to contribute to the general welfare of the people:

> 3. Citing *Oposa v. Factoran*[,] *Jr.* [G.R. No. 101083, July 30, 1993, 224 SCRA 792], Justice Morales claims that a service contract is *not a contract or property right which merits protection by the due process clause of the Constitution,* but merely a license or privilege which may be validly revoked, rescinded or withdrawn by executive action whenever dictated by public interest or public welfare.
>
> *Oposa* cites *Tan v. Director of Forestry* and *Ysmael v. Deputy Executive Secretary* [210 Phil. 244 (1983)] as authority. The latter cases dealt specifically with **timber licenses only**. *Oposa* allegedly reiterated 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; nor is it taxation. Thus this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights.*
>
> Should *Oposa* be deemed applicable to the case at bar, on the argument that natural resources are also involved in this situation? We do not think so. A grantee of a timber license, permit or license

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[49] 486 Phil. 754 (2004).

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agreement gets to cut the timber already growing on the surface; it need not dig up tons of earth to get at the logs. In a logging concession, the investment of the licensee is not as substantial as the investment of a large-scale mining contractor. If a timber license were revoked, the licensee packs up its gear and moves to a new area applied for, and starts over; what it leaves behind are mainly the trails leading to the logging site.

In contrast, the mining contractor will have sunk a great deal of money (tens of millions of dollars) into the ground, so to speak, for exploration activities, for development of the mine site and infrastructure, and for the actual excavation and extraction of minerals, including the extensive tunneling work to reach the ore body. **The cancellation of the mining contract will utterly deprive the contractor of its investments (i.e., prevent recovery of investments), most of which cannot be pulled out**.

To say that an FTAA is just like a mere timber license or permit and does not involve contract or property rights which merit protection by the due process clause of the Constitution, and may therefore be revoked or cancelled in the blink of an eye, is to adopt a well-nigh confiscatory stance; at the very least, it is downright dismissive of the property rights of businesspersons and corporate entities that have investments in the mining industry, whose investments, operations and expenditures do contribute to the general welfare of the people, the coffers of government, and the strength of the economy. Such a pronouncement will surely discourage investments (local and foreign) which are critically needed to fuel the engine of economic growth and move this country out of the rut of poverty. In sum, *Oposa* is not applicable.[50] (Emphases and underscoring supplied)

In *La Bugal-B'laan*, the financial interest of the contractor party to an FTAA was recognized by the Court as follows; hence, the need for its fair protection:

[T]he foreign contractor is in the game precisely to make money. In order to come anywhere near profitability, the contractor must first extract and sell the mineral ore. In order to do that, it must also develop and construct the mining facilities, set up its machineries and equipment and dig the tunnels to get to the deposit. The

[50] *Id*. at 894-895.

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contractor is thus compelled to expend funds in order to make profits. If it decides to cut back on investments and expenditures, it will necessarily sacrifice the pace of development and utilization; it will necessarily sacrifice the amount of profits it can make from the mining operations. In fact, at certain less-than-optimal levels of operation, the stream of revenues generated may not even be enough to cover variable expenses, let alone overhead expenses; this is a dismal situation anyone would want to avoid. In order to make money, one has to spend money. This truism applies to the mining industry as well.[51] (Underscoring supplied)

Meanwhile, in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*[52] (*Celestial*), the Court answered the question on who between the DENR Secretary, as one of the functionaries of the President under the Executive Department, and the POA had the authority to cancel mineral agreements. In *Celestial*, it was pronounced that the DENR Secretary, and not the POA, has the jurisdiction to cancel existing mineral lease contracts or mineral agreements. "The power of the DENR Secretary to cancel mineral agreements emanates from his administrative authority, supervision, management, and control over mineral resources under [Section 2,] Chapter I, Title XIV of Book IV of the Revised Administrative Code of 1987[:]"[53]

> Section 2. Mandate. – (1) The Department of Environment and Natural Resources shall be primarily responsible for the implementation of the foregoing policy.
>
> (2) **It shall, subject to law and higher authority, be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country's natural resources.** (Emphasis supplied)

"[And] [d]erived from the broad and explicit powers of the DENR and its Secretary under the Administrative Code of 1987

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[51] *Id*. at 897-898.

[52] 565 Phil. 466 (2007).

[53] *Id*. at 492.

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is the power to approve mineral agreements and necessarily to cancel or cause to cancel said agreements."[54]

In fact, Sections 8 and 29 of RA 7942 confer to the DENR Secretary specific authority over mineral agreements:

> Section 8. Authority of the Department. – The Department shall be the primary government agency responsible for the conservation, management, development, and proper use of the State's mineral resources including those in reservations, watershed areas, and lands of the public domain. **The Secretary shall have the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director**, promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act.
>
> Section 29. Filing and Approval of Mineral Agreements. – x x x.
>
> The filing of a proposal for a mineral agreement shall give the proponent the prior right to areas covered by the same. **The proposed mineral agreement will be approved by the Secretary** and copies thereof shall be submitted to the President. Thereafter, the President shall provide a list to Congress of every approved mineral agreement within thirty (30) days from its approval by the Secretary. (Emphases supplied)

In this relation, the Court, in *Celestial*, elaborated that a petition for the cancellation of an existing mineral agreement covering an area applied for by an applicant based on the alleged violation of any of the terms thereof, is not a 'dispute' involving a mineral agreement under [Section] 77 (b) of RA 7942,[55] which lists down the cases which fall within the jurisdiction of the POA:

> Section. 77. Panel of Arbitrators. – x x x. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

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[54] *Id*. at 493.

[55] See *id*. at 499-502.

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(a) Disputes involving rights to mining areas;
(b) Disputes involving mineral agreements or permits;
(c) Disputes involving surface owners, occupants and claimholders/concessionaires; and
(d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

This is because such matter "does not pertain to a violation by a party of the right of another. The applicant [who seeks cancellation] is not a real party-in-interest as he does not have a material or substantial interest in the mineral agreement but only a prospective or expectant right or interest in the mining area. He has no legal right to such mining claim and hence no dispute can arise between the applicant and the parties to the mineral agreement."[56] "[R]A 7942 x x x confers exclusive and primary jurisdiction on the DENR Secretary to approve mineral agreements, which is **purely an administrative function within the scope of his powers and authority**."[57]

With the legal treatment and parameters of an FTAA in mind, it becomes apparent that the OP's cancellation and/or revocation of the FTAA is **an exercise of a contractual right that is purely administrative in nature**, and thus, cannot be treated as an adjudication, again, in the sense above-discussed. As one of the contracting parties to the FTAA, the OP could not have adjudicated on the matter in which it is an interested party, as in a court case where rights and duties of parties are settled before an impartial tribunal. In a very loose sense, the OP's cancellation/revocation may be taken as a "decision" but only to the extent of considering it as its final administrative action internal to its channels. It is not one for which we should employ the conventional import of the phrase "final and executory," as accorded to proper judicial/quasi-judicial decisions, and its concomitant effect of barring further recourse of a party. To reiterate, being a government or public contract, the FTAA is subject to fundamental contract principles, one of which is the

[56] *Id*. at 503.

[57] *Id*. at 508 (emphasis and underscoring supplied).

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principle of mutuality of contracts which would definitely be violated if one were to accept the view that the OP, a contracting party, can adjudicate on the contract's own validity. The principle of mutuality of contracts is expressed in Article 1308 of the Civil Code, which provides:

> Article 1308. The contracts must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

At this juncture, the Court finds it fitting to clarify that Redmont's participation in these proceedings does not, by and of itself, make the OP's cancellation/revocation quasi-judicial. Strangely enough, Redmont's May 7, 2010 Petition was, in fact, taken cognizance by the OP albeit having been filed outside the existing state of procedure on FTAA conversion and cancellation. A brief run-through of these procedures would prove instructive.

A. Conversion.

Under Section 45 of DENR Administrative Order No. 2010-21, otherwise known as the "Revised Implementing Rules and Regulations of RA 7942, or the Philippine Mining Act of 1995" (RIRR), mining contractor may opt to convert totally or partially his existing mineral agreement, *e.g.*, an MPSA to an FTAA, by filing a Letter of Intent with the MGB, copy furnished the Regional Office where the area covered by said mineral agreement is located. Within sixty (60) days from the filing of the Letter of Intent, the contractor must comply with the requirements for the grant of an FTAA laid down in Sections 49 to 69, Chapter VII of the RIRR, as well as pay the conversion fee. The application for conversion shall be evaluated and eventually, approved upon compliance. Note that the term of the FTAA arising from such conversion shall be equivalent to the remaining period of its predecessor-mineral agreement.

Section 55 of the same DENR issuance requires a publication/posting/radio announcement of an FTAA application. Any adverse claim, protest, or opposition to the said FTAA should be filed directly to the Regional Office, Community Environment and Natural Resources Office, or Provincial Environment and Natural

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Resources Office concerned, within ten (10) days from the date of publication or from the last date of posting/radio announcement. The said adverse claim, protest, or opposition shall then be resolved by the POA of the DENR, whose ruling may then be appealed to the proper tribunals.[58] To this, it bears pointing out that Section 55 explicitly exempts "previously published valid and existing mining claims or FTAA applications originating from Exploration Permits that have undergone the [publication requirement]" from the aforesaid publication requirement.

From the foregoing, it may be inferred that the only time that third parties, *i.e.*, an entity other than the contractor/applicant, may pose an objection to an FTAA application is during the ten (10)-day window period given by Section 55 of the RIRR. However, this window period is only available in instances of "fresh" FTAA applications (meaning, that the same covers an area previously uncovered by any existing mineral agreements and/or FTAAs). Differently, in instances of conversion, *i.e.*, of an existing MPSA to an FTAA, publication is not required as such would have already been undertaken during the application of the original mineral agreement, pursuant to the exemption expressly contained in Section 55 of the RIRR. Absent any form of protest procedure at least under the prevailing rules, it appears that the process merely involves the concerned executive agency directly evaluating, *i.e.*, screening and checking, whether the contractor had complied with the pertinent requisites necessary for it to enter into a valid FTAA with the Republic. If the requisites have been met, the agency would then endorse the conversion application to the topmost executive levels, *i.e.*, the DENR Secretary, all culminating in the President's, through his/her duly appointed agents/representatives, *i.e*., the Executive Secretary, execution of the FTAA for and in behalf of the Republic, with the contractor as counter-party. Following these premises,

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[58] Under Section 78 of RA 7942 and Section 206 of the RIRR, decisions rendered by POA may be appealed to the MAB within fifteen (15) days from receipt of notice of said decision; otherwise, the OA decision will become final and executory. In turn, Section 79 of RA 7942 and Section 211 of the RIRR uniformly provide that a decision of the MAB may be reviewed by filing a petition for review on *certiorari* before the Supreme Court within thirty (30) days from receipt of the MAB decision.

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Redmont's opposition to petitioner's application for FTAA conversion was actually made beyond the prescribed course of procedure.

B. Cancellation.

Section 68 of the RIRR provides that the cancellation/ revocation/termination of an FTAA may only be done after due process. In relation, Section 77 of RA 7942, to reiterate, provides that the POA has the exclusive and original jurisdiction to hear and decide mining disputes:

> Section. 77. Panel of Arbitrators. – x x x. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:
>
> (a) Disputes involving rights to mining areas;
> (b) Disputes involving mineral agreements or permits;
> (c) Disputes involving surface owners, occupants and claimholders/concessionaires; and
> (d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

In *Gonzales v. Climax Mining Ltd.* (*Gonzales*),[59] it was clarified that "a mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, **FTAAs**, or permits, and (c) surface owners, occupants and claimholders/concessionaires."[60] Note that "the [POA's] jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience."[61] Thus, the Court, in *Gonzales*, ruled that **the POA is bereft of any jurisdiction over a complaint for declaration of nullity and/or termination of the subject contracts on the ground of fraud, oppression and violation of the Constitution**, *viz.*:

> We now come to the meat of the case which revolves mainly around the question of jurisdiction by the Panel of Arbitrators: Does the

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[59] 492 Phil. 682 (2005).

[60] *Id*. at 692; emphasis supplied.

[61] *Id.* at 693.

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Panel of Arbitrators have jurisdiction over the complaint for declaration of nullity and/or termination of the subject contracts on the ground of fraud, oppression and violation of the Constitution? This issue may be distilled into the more basic question of whether the *Complaint* raises a mining dispute or a judicial question.

A judicial question is a question that is proper for determination by the courts, as opposed to a moot question or one properly decided by the executive or legislative branch. A judicial question is raised when the determination of the question involves the exercise of a judicial function; that is, the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy.

x x x x x x x x x

x x x. Whether the case involves void or voidable contracts is still a judicial question. It may, in some instances, involve questions of fact especially with regard to the determination of the circumstances of the execution of the contracts. But the resolution of the validity or voidness of the contracts remains a legal or judicial question as it requires the exercise of judicial function. It requires the ascertainment of what laws are applicable to the dispute, the interpretation and application of those laws, and the rendering of a judgment based thereon. Clearly, the dispute is not a mining conflict. It is essentially judicial. The complaint was not merely for the determination of rights under the mining contracts since the very validity of those contracts is put in issue.[62]

The Court added that although mining rights may be raised as corollary issues, **the POA still has no jurisdiction to resolve cases which mainly involve a determination of a contract's validity**. Neither too would the mere involvement of an FTAA turn a case into a mining dispute that would fall under the POA's jurisdiction:

The *Complaint* is not about a dispute involving rights to mining areas, nor is it a dispute involving claimholders or concessionaires. The main question raised was the validity of the *Addendum Contract*, the FTAA and the subsequent contracts. The question as to the rights of petitioner or respondents to the mining area pursuant to these contracts,

[62] *Id*. at 692 and 695.

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as well as the question of whether or not petitioner had ceded his mining claims in favor of respondents by way of execution of the questioned contracts, is merely corollary to the main issue, and may not be resolved without first determining the main issue.

The *Complaint* is also not what is contemplated by [RA] 7942 when it says the dispute should involve FTAAs. The *Complaint* is not exclusively within the jurisdiction of the Panel of Arbitrators just because, or for as long as, the dispute involves an FTAA. The *Complaint* raised the issue of the constitutionality of the FTAA, which is definitely a judicial question. The question of constitutionality is exclusively within the jurisdiction of the courts to resolve as this would clearly involve the exercise of judicial power. The Panel of Arbitrators does not have jurisdiction over such an issue since it does not involve the application of technical knowledge and expertise relating to mining. x x x.[63]

In this case, the OP cancelled/revoked the subject FTAA based on its finding that petitioners misrepresented, *inter alia*, that they were Filipino corporations qualified to engage in mining activities. Again, this is obviously an administrative exercise of a contractual right under paragraph a (iii), Section 17.2 of the FTAA, which finds legal basis in Section 99 of RA 7942 that states: "[a]ll statements made in the exploration permit, mining agreement and financial or technical assistance shall be considered as conditions and essential parts thereof x x x." A material misrepresentation, if so found by ordinary courts of law as enunciated in *Gonzales* upon a case duly instituted therefor, would then constitute a breach of a contractual condition that would entitle the aggrieved party to cancel/revoke the agreement.[64]

The scenario at hand does not involve a complaint for cancellation/revocation commenced before the ordinary courts of law. Hence, Redmont's recourse to the OP – that, on the assumption that it even had the legal standing to oppose an already executed FTAA which it was not a party to – was, by and of itself, done outside the correct course procedure. Observe that RA 7942 and its RIRR do not state that the OP has the power to take cognizance of a quasi-judicial proceeding involving a petition

[63] *Id*. at 695-696.

[64] See *id*. at 694.

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for cancellation of an existing FTAA. In fact, there is even no mention of a petition for cancellation or revocation to be taken by a third party before the OP. While it may be said that the OP has administrative control or supervision over its subordinate agencies, such as the POA,[65] again the jurisdiction of that body pertains only to mining disputes, and not those which involve judicial questions cognizable by the ordinary courts of law.

Thus, at least with respect to cases affecting an FTAA's validity, the Court holds that the OP has no quasi-judicial power to adjudicate the propriety of its cancellation/revocation. At the risk of belaboring the point, the FTAA is a contract to which the OP itself represents a party, *i.e.*, the Republic. It merely exercised a contractual right by cancelling/revoking said agreement, a purely administrative action which should not be considered quasi-judicial in nature. Thus, absent the OP's proper exercise of a quasi-judicial function, the CA had no appellate jurisdiction over the case, and its Decision is, perforce, null and void. With tis, it is unnecessary to delve into the other ancillary issues raised in the course of these proceedings.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 23, 2012 and the Resolution dated July 27, 2012 of the Court of Appeals in CA-G.R. SP No. 120409 are hereby declared **NULL** and **VOID** due to lack of jurisdiction. This pronouncement is without prejudice to any other appropriate remedy the parties may take against each other.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perez, JJ.,* concur.

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[65] Section 77 of RA 7942 states:

Section 77. Panel of Arbitrators. – There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. x x x