

Republic of the Philippines
Department of Environment and Natural Resources
MINES AND GEOSCIENCES BUREAU
MIMAROPA Region

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28 July 2022

MEMORANDUM

FOR : **The DENR Action Center/Hotline**
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City

FROM : **The Regional Director**
This Office

SUBJECT : **Reply Letter of Altai Philippines Mining Corporation to the Sangguniang Bayan/Barangay Resolutions and Letter Opposing the Mineral Production Sharing Agreement No. 304-2009-IVB**

We are respectfully forwarding copies of the letters both dated 25 July 2022 by Altai Philippines Mining Corporation (Altai) on the above subject.

Hereunder are Altai's position:

1. The Sangguniang Bayan/Barangay Resolutions (SB Resolutions) are unconstitutional.
 - a. The Decision [Resolution] of the Regional Trial Court – Romblon¹, declaring Executive Order No. 1, series of 2011 as unconstitutional, shall also apply to the above SB Resolutions as the concerned SB does not have the power to prohibit mining and has acted beyond the limits of their authority conferred by the law.
 - b. LGUs shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations pursuant to Section 12 of Executive Order No. 79.
 - c. SB Resolutions does not have the force and effect of a law.

*"Xxx... a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter."*²
 - d. The SB Resolution No. 83, s. 2022 violates the clause on non-impairment of contracts.³

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

¹ Sibuyan Nickel Properties Development Corporation vs. Hon. Eduardo C. Firmalo, et al, special Civil Action Case No. V-1906, RTC-Romblon Branch 81, January 17, 2013

² Municipality of Paranaque vs. V.M. Corporation, G.R. No. 127820, July 20, 1998

³ Article III, Section 10 of the 1987 Constitution

**"MINING SHALL BE PRO-PEOPLE AND PRO-ENVIRONMENT
IN SUSTAINING WEALTH CREATION AND IMPROVED QUALITY OF LIFE."**

- e. The SB Resolution No. 83, s. 2022 is a Bill of Attainder for only targeting Altai and likewise a violation of Altai's right to equal protection of the laws.
2. Altai explained that the damages cited in the SB Resolutions were premature and purely hypothetical since its current activities were intended only for exploration and the environmental threats raised in the said SB Resolutions has not been proven.
 3. There is a presumption of regularity in the issuance of the MPSA in favor of Altai.
 4. The 23 June 2022 Letter from Barangay Kagawad Donato R. Royo is patently false and misleading since the MPSA *"does not cover any farms or fish ponds, and does not reach the sea"*.
 5. Altai is simply exercising its rights under MPSA No. 304-2009-IVB and aims to provide help and livelihood to the local community through responsible mining.

For your information and reference.


GLENN MARCELO C. NOBLE

Enc'l: As stated

cf: **The Presidential Complaint Center**
pcc@malacanang.gov.ph
PCC Code No: PCC-GDP-06-13-2022-074
PCC Code No: PM-GDP-06-10-2022-051
PCC Code No: WG-NEM-06-23-2022-004

The Director
Mines and Geosciences Bureau
North Ave. Diliman, Quezon City

The Regional Executive Director
Department of Environment and Natural Resources
MIMAROPA Region



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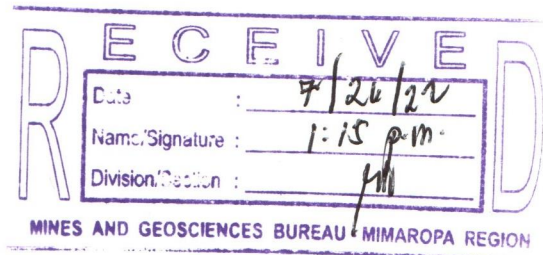
7/28/2022

Memorandum

ALTAI PHILIPPINES MINING CORPORATION

July 25, 2022

ENGR. GLENN MARCELO C. NOBLE
Regional Director
Mines and Geosciences Bureau
MIMAROPA Region
7th Floor DENR Bldg., 1515 Roxas Blvd.
Ermita, Manila



SUBJECT: REPLY-COMMENT TO SANGGUNIAN BAYAN RESOLUTION NO. 83, SERIES OF 2022 OF THE MUNICIPALITY OF SAN FERNANDO, PROVINCE OF ROMBLON

Dear Dir. Noble:

This refers to your letter dated 20 June 2022 directing **Altai Philippines Mining Corporation ("Altai")** to submit a reply-comment in connection with Sangguniang Bayan Resolution No. 83, Series of 2022 Issued by the Municipality of San Fernando, Province Of Romblon (hereafter referred to as "SB Resolution No. 83" for brevity), which was forwarded by the Presidential Complaint Center to the DENR Action Center/Hotline and to your Honorable Office for appropriate action.

SB Resolution No. 83 contains the following resolutions: (1) opposing the MPSA granted by the DENR in favor of Altai, which MPSA allows for the rational exploration, development and commercial utilization of mineral deposits in the area, such as nickel, iron, cobalt, etc.; (2) revoking all previous resolutions and mining applications issued in favor of Altai; and (3) requesting the President and the Congress of the Philippines to declare Sibuyan Island free from metallic mining and revoking all mining permits and applications in Sibuyan Island.

Unfortunately, however, in opposing the MPSA of Altai, the Sangguniang Bayan of San Fernando failed to prove, much less show, that Altai committed any violation of the conditions of its MPSA for it to oppose and revoke previously issued resolutions in favor of Altai. Bare allegations, unsubstantiated by evidence, are not equivalent to proof.

Altai thus comes before this Honorable Office to abate the overreaching of the Sangguniang Bayan of San Fernando and to restore the rule of law.

In light of the issuance of SB Resolution No. 83, Altai hereby respectfully submits the following comments in response:

I. SB Resolution No. 83 is an *ultra vires* issuance for being unconstitutional and thus should be invalidated.

A similar action by the Municipality of San Fernando has already been declared invalid in 2013.

As early as 2013, the attempt to completely ban mining in Sibuyan has already been declared unconstitutional by the Regional Trial Court of Romblon in the case of *Sibuyan*

*Nickel Properties Development Corporation vs. Hon. Eduardo C. Firmalo, et al.*¹, in its decision dated January 17, 2013, which has attained finality. In that case, the Joint Municipal Resolutions adopted by the Sangguniang Bayan of San Fernando, Cajidiocan, and Magdiwang, Romblon opposed all forms of mining in Sibuyan Island, and requested the Department of Environment and Natural Resources (DENR) to revoke all metallic mining permits in Sibuyan Island. Similarly, the Joint Resolutions also requested the President and the Philippine Congress to declare Sibuyan free from all forms of metallic mining. Then-Romblon Governor Firmalo subsequently issued a moratorium on the exploration, excavation, extraction, and utilization of metallic minerals in the Province of Romblon.

In the above-mentioned *Sibuyan Nickel* Case, the Court held that there is no constitutional ban against mining, and as such, any ordinance or law prohibiting mining enacted by the local legislative branch would be unconstitutional. As the Court stated in its decision:

"The Constitution does not prohibit mining, thus, any law, executive order or act of the legislative or executive branch of the government/ whether it be local or national that prohibits all forms of mining, even the legal ones, is unconstitutional.

xxx

If the State does not have the power to prohibit mining, but merely to regulate the same, then, with more reason that a local chief executive of the province has no power to prohibit mining for an indefinite period of time."

A copy of the Decision issued by the Regional Trial Court of Romblon dated January 17, 2013 in the case entitled *Sibuyan Nickel Properties Development Corporation vs. Hon. Eduardo C. Firmalo, et al.* is hereto attached as Annex "A", while the Resolution of the same Court dated June 14, 2013 denying the Motions for Reconsideration filed by the Local Government Units is likewise attached as Annex "B".

The same ruling applies to the Sangguniang Bayan of Fernando, who likewise does not have the power to prohibit mining. In fact, the RTC of Romblon ruled with finality that "Under paragraph 2, Section 12 of Executive Order No. 79, signed by President Benigno Simeon Aquino III, institutionalizing and implementing reforms in the Philippine Mining Sector, providing policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources, **LGUs shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations.**" Thus, it is clear that SB Resolution No. 83 is unconstitutional since it attempts to completely put a ban on mining, contrary to the Philippine Constitution and national laws.

It is respectfully submitted that the Sangguniang Bayan of San Fernando **may not make any issuance, which is inconsistent with the provisions of the Constitution or a statute, or which are in derogation of, or defeat, the purpose of the Constitution or a statute.** The Court has spoken and its Decision has attained finality. This should be respected.

¹ Special Civil Action Case No. V-1906

However, in issuing the Assailed Resolution, the Sangguniang Bayan of San Fernando acted beyond the limits of the authority conferred by law. Perforce, the Assailed Resolution is *ultra vires* issuance and as such, it should be declared void.

Moreover, since SB Resolution No. 83 is just a resolution and not an ordinance, then it does not have the force and effect of a law. As the Supreme Court has explained, "A municipal ordinance is different from a resolution. An ordinance is a law, *but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter*. An ordinance possesses a general and permanent character, but a resolution is temporary in nature."²

Given the nature and content of SB Resolution No. 83, then it is our humble opinion that it should not be given any weight by this Honorable Office.

II. Altai is only in the exploration phase of its MPSA, so there is no damage to speak of which would necessitate the revocation of its operations.

It is also worth pointing out that Altai's operations at this point are only for the exploration of nickel in the area—thus, the fear of damages cited by the Sangguniang Bayan in its Resolution are premature and purely hypothetical. No harm has been proven to be caused by Altai's operations, and the alleged damages that will be caused to rivers and tributaries in the area are speculative. In fact, the Sangguniang Bayan itself could not point to any wrongdoing on the part of Altai, since the environmental threats that it raised in the Resolution stemmed from *illegal* small-scale mining activities.

Since the alleged damage or injury raised by the Sangguniang Bayan is not immediate or even real, it is merely a hypothetical problem and is not a valid ground for action or intervention.

III. Sangguniang Bayan Resolution No. 83 is unconstitutional for violating the clause on non-impairment of contracts.

When MPSA No. 304-2009-IVB was granted in favor of Altai, it formed a Contract between the Philippine government and Altai, which provisions governed both parties.

The obligation arising from the contract (agreement) has the force of law between the parties and should be complied with in good faith.³ In characterizing the contract (agreement) as having the force of law between the parties, the law stresses the obligatory nature of a binding and valid agreement.⁴

Art. III, Sec. 10 of the 1987 Constitution reads: "Sec. 10. No law impairing the obligation of contracts shall be passed." And as the Supreme Court has held, "[T]he purpose of the non-impairment clause of the Constitution is to safeguard the integrity of contracts against

² Municipality of Parañaque vs. V.M. Realty Corporation, G.R. No. 127820 July 20, 1998

³ Article 1159 of the Civil Code.

⁴ William Golangco Construction Corporation vs. Philippine Commercial International Bank, G.R. No. 142830, March 24, 2006.

unwarranted interference by the State. As a rule, contracts should not be tampered with by subsequent laws that would change or modify the rights and obligations of the parties. **Impairment is anything that diminishes the efficacy of the contract. There is an impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.**⁵

Here, the Sangguniang Bayan in its Resolution impaired the contract between the government and Altai by suddenly opposing the MPSA and revoking all previous resolutions and applications in favor of Altai. By doing so, it diminished the rights granted to Altai under MPSA, because it is no longer allowed to operate within the municipality of San Fernando and comply with its obligations to the Philippine government.

IV. There is presumption of regularity in the issuance of the MPSA in favor of Altai.

The issuance of the Mineral Production Sharing Agreement (MPSA) No. 304-2009-IVB in favor of Altai by the DENR-MGB carries with it the presumption of regularity unless the contrary is proven.

The presumption of regularity in the performance of official functions favors the validity of Altai's MPSA. Under Section 3, Rule 131 of the Rules of Court, there is a disputable presumption that an official duty has been performed unless contradicted and overcome by evidence. Here, there is no iota of proof on record that will clearly and convincingly rebut such presumption.

The presumption of regularity in the performance of official duties is an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge. To this end, our body of jurisprudence has been consistent in requiring nothing short of clear and convincing evidence to the contrary to overthrow such presumption.⁶ This same presumption of regularity in the performance of official duties supports the validity of Altai's MPSA.

V. Sangguniang Bayan Resolution No. 83 is unconstitutional because it is a Bill of Attainder for only targeting Altai Philippines Mining Corporation and is likewise a violation of Altai's right to equal protection of the laws.

In SB Resolution No. 83, the Sangguniang Bayan categorically admitted that there are three (3) active mining operations in Sibuyan Island: **Fil-China Mining Development Corporation** to mine Feldspar in San Fernando, **Rommel Ibuna** to explore nickel in Magdiwang, and Altai Philippines Mining Corporation to explore nickel, iron and chromite. Yet despite admitting that there are three (3) active mining operations in Sibuyan, the

⁵ Goldenway Merchandising Corp. vs. Equitable PCI Bank, G.R. No. 195540, March 13, 2013

⁶ Susan A. Yap vs. Elizabeth Lagtapon, GR. No. 196347, January 23, 2017

Resolution only specifically opposed and singled out Altai's MPSA and revoked all of Altai's resolutions and applications.

Bills of attainder are legislative acts which inflict punishment on individuals or members of a particular group without a judicial trial.⁷ Meanwhile, the Constitution's equal protection clause aims to protect people from "against any form of undue hostility from the government."⁸ As explained by no less than the Supreme Court: "The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play,⁹ and it simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others."¹⁰

By opposing and revoking only Altai's MPSA and operations, despite the existence of other mining operations in Sibuyan, SB Resolution No. 83 clearly singled out and violated Altai's constitutional rights and unfairly discriminated against Altai. Evidently, the said Resolution was passed not to merely protect the environment, but as a way to target and penalize Altai Philippines Mining Corporation.

VI. Altai Philippines Mining Corporation is simply exercising its rights under MPSA No. 304-2009-IVB, and aims to provide help and livelihood to the local community through responsible mining.

Altai was granted MPSA No. 304-2009-IVB on December 23, 2009. Since then, Altai has been complying with its obligations under the Mineral Production Sharing Agreement, and has respected all of the government's orders in relation thereto, even when a Cease and Desist Order was issued against Altai on September 19, 2011. Finally, on September 9, 2021, the DENR lifted the Cease and Desist Order, and only then did Altai begin the process of resuming its operations for MPSA No. 304-2009-IVB. In fact, the DENR even renewed Altai's exploration period under MPSA No. 304-2009-IVB in a letter dated 12 July 2022, which allowed Altai to implement its proposed Exploration Work Program (ExWP) and its Environmental Work Program (EWP) immediately upon the date of its issuance. These developments show that Altai has been able to prove to the DENR and all concerned agencies that it has been faithfully complying with all of the requirements and that it should be allowed to continue with its operations.

Under the DENR and the MGB's watchful guidance and control, Altai will implement its full exploration work program, aimed to develop an economically mineable resource of nickel ore. The success of the exploration program could lead to successful nickel mining operations in the Province of Romblon under the principle of responsible and sustainable mining.

In light of the current pandemic and economic troubles prevailing in the country which resulted in the surge of unemployment that adversely affected the local community of

⁷ Executive Secretary, et al. vs. Court of Appeals, et al., G.R. No. 131719, May 25, 2004

⁸ Philippine Judges Association vs. Hon. Pete Prado, et al., G.R. No. 105371 November 11, 1993

⁹ Supra, note 7

¹⁰ Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform, G.R. No. 78742 July 14, 1989

Sibuyan Island, Altai aims to provide help through the implementation of its Two (2) Years Exploration Work Program. The program is expected to generate direct employment for over two hundred (200) local laborers from the Sibuyan community. Given the opportunity, we at Altai are confident that we will be able to show to the local government units and communities concerned that our operations will not negatively affect Sibuyan Island, and will in fact bring prosperity and development to its people.

Based on the foregoing, it is our opinion that Sangguniang Bayan Resolution No. 83 executed by the Municipality of San Fernando is invalid and has no basis for its issuance. As such, it should not be given any credence by the Mines and Geosciences Bureau and the Department of Environment and Natural Resources.

Thank you.

Sincerely,


HANNIEL T. NGO
President

Cf:

The Presidential Complaint Center

pcc@malacanang.gov.ph

PCC Code No: PCC-GDP-06-13-2022-074

The DENR Action Center/Hotline

Department of Environment and Natural Resources

denr@8888.gov.ph

The Presiding Officer

Sangguniang Barangay of España

San Fernando, Romblon

The Director

Mines and Geosciences Bureau

North Avenue, Diliman, Quezon City

Republic of the Philippines
REGIONAL TRIAL COURT
Fourth Judicial Region
BRANCH 81
Romblon, Romblon

SIBUYAN NICKEL PROPERTIES
DEVELOPMENT CORPORATION
Petitioner,

**SPECIAL CIVIL ACTION CASE
NO. V-1906**

-versus-

- for -

HON. EDUARDO C. FIRMALO in his
Capacity as Governor of Romblon,
HON. DINDO C. RIOS, in his capacity
as Mayor of San Fernando, HON.
MANUEL MADRID, ABNER PEREZ, FELIX
YLAGAN and VENIZAR MARAVILLA, in
their Capacity as Sangguniang Panlalawigan
of Romblon, HON. MABINI T. MACA, in his
Capacity as Vice Mayor of Cajidiocan, HON.
JESUSIMA R. CASTRO in her Capacity as Vice
Mayor of San Fernando, HON. DENISA R.
REPIZO, in her Capacity as Vice Mayor of
Magdiwang, Romblon, HON. HERMINIO R.
MORTEL, HAIDE R. RABINO, CONSTANCIO
M. GOTANGCO, RIZAL T. RUBA, RICHARD
D. ROTONI, JAIME M. LANGIT, LARRY V.
NOLASCO, FRANK ANTHONY R. REGALA,
ROBINSON R. ROYO, RENE L. BARANDA,
DAXIE BENEDICT R. RIOS, ZENAIDA A.
RENION, DOMINGO B. MARIN, ZORAIDA R.
REPIL, SAMUEL B. RODA, ADO V.
TANSIONGCO, ROMMEL AUGUSRUS R. RADAN,
ANTONIO R. MENESE, VILMA L. MOLO,
MARIO R. ROLDAN, in their Capacity as
Sangguniang Bayan Members of Cajidiocan,
Magdiwang and San Fernando, Romblon and
ESPAÑA BARANGAY CHAIRMAN HON.
DONATO ROYO, in his Capacity as Barangay
Chairman of España, San Fernando, Romblon,
Respondents.

**DECLARATORY RELIEF W/
PRAYER FOR ISSUANCE
TRO AND INJUNCTION**

X-----X

R E S O L U T I O N

CERTIFIED PHOTOCOPY

LEONARDO M. BANCUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

A verified petition for Declaratory Relief under Rule 63 of the Rules of Court was filed on April 26, 2012 by Sibuyan Nickel Properties Development Corporation through its President, Ms. Casiana Dalangin pursuant to a board resolution evidenced by Secretary's Certificate (Exhibit A) dated March 13, 2012, being the assignee of the Mineral Production Sharing Agreement No. 304-2009-IVB (ALTAI/SIBUYAN MPSA) praying for the declaration of nullity of Executive Order No. 001, Series of 2011 issued by Respondent Provincial Governor of Romblon, Hon. Eduardo C. Firmalo, in his capacity as such. Likewise, the nullity of Joint Municipal Resolutions No. 01-10 and 02-10 both dated August 20, 2010 adopted by the Respondent Members of the Sangguniang Bayan of San Fernando, Cajidiocan and Magdiwang, Romblon is being sought by the Petitioner.

On December 23, 2009, the Government of the Republic of the Philippines, through the then Secretary of the Department of Environment and Natural Resources, Jose L. Atienza, Jr., entered into a Mineral Production Sharing Agreement No. 304-2009-IVB (Exhibit B) with Altai Mining Corporation in accordance with Republic Act No. 7942, The Philippine Mining Act of 1995 the primary purpose of which is to provide for a rational exploration, development, and commercial utilization of nickel, iron, cobalt, chromite, and other associated mineral deposits existing within the contract area, and that is in the Municipality of San Fernando, Romblon. Altai Philippines Mining Corporation assigned its rights/properties to Sibuyan Nickel Properties Development Corporation, and constituted the latter as attorney-in-fact, for the purpose of instituting an action or claim against the area covered, pursuant to a deed of assignment (Exhibit C) dated September 7, 2010.

On August 20, 2010, the Sangguniang Bayan Members of the Municipalities of San Fernando, Cajidiocan and Magdiwang, Romblon, adopted Joint Resolution No. 01-10 (Exhibit D) opposing all forms of metallic mining in the Sibuyan Island, Romblon Province, and at the same time requested the Secretary of The Department of Environment and Natural Resources, Hon. Ramon Paje to revoke all metallic mining permits issued in Sibuyan Island. On the same day, another joint resolution, Joint Resolution No. 02-10 (Exhibit E), was passed requesting His Excellency, President Benigno Simeon C. Aquino, III, and the Congress of the Philippines to declare Sibuyan Island, Province of Romblon free from all forms of metallic mining.

On January 10, 2011, the Governor of Romblon, Hon. Eduardo C. Firmalo issued Executive Order No. 001, Series of 2011 (Exhibit F) declaring a moratorium on the exploration, excavation, extraction and utilization of metallic minerals in the province of Romblon. Said executive order also created a special task force to spearhead an assessment of all

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Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

mining applications, permits and operations existing in the province and to review the MPSA granted to Altai Philippines Mining Corporation. The same executive order further directed the Philippine National Police of the Province of Romblon to vigorously implement and enforce the Executive Order and all related mining laws and regulations. The executive order provides further that, it shall take effect immediately, without however, providing any clause for publication in newspaper of general circulation in the province.

On the same January 10, 2011, the Sangguniang Panlalawigan of Romblon passed a resolution, Resolution No. 01-2011-23 (Exhibit G) strongly supporting Executive Order No. 001, Series of 2011 on the declaration of the moratorium on all mining activities in the province of Romblon. On the same January 10, 2011 the Sangguniang Panlalawigan of Romblon passed another resolution, Resolution No. 01-2011-24 (Exhibit H) requesting the Philippine National Police, Provincial Director to immediately coordinate with other law enforcement agencies and arrest the source of illegal mercury that is smuggled in the Province of Romblon. On January 24, 2011, the Sangguniang Panlalawigan of Romblon passed another resolution, Resolution No. 01-2011-41 (Exhibit J) withdrawing support to Sangguniang Panlalawigan of Romblon Resolution No. 01-2011-23 strongly supporting Executive Order No. 001, Series of 2011 on the declaration of moratorium on all mining activities in the province of Romblon.

On September 13, 2011 Respondent Municipal Mayor of San Fernando, Dindo C. Rios wrote a letter (Exhibit K) to the Acting Director of Mines and Geosciences Bureau (MGB) Leo L. Jasareno requesting for issuance of Cease-and-Desist Order on the ground that the exploration will severely endanger the river and streams of Sibuyan and the fact that the respondent Provincial Governor has already issued Executive Order declaring a moratorium on all forms of mining activities in the Province of Romblon. And on September 19, 2011, the Mines and Geosciences Bureau, acting on the letter of the Mayor Dindo C. Rios and the previously issued Memorandum dated July 14, 2008 directing the Regional Office No. IV-B to conduct an investigation on the complaint of the Catholic Bishops Conference of the Philippines and other groups concerned against mining and to thoroughly review all mining operations and applications in Sibuyan Island, Acting Director, Leo Jasareno issued a cease and desist order (Exhibit L) against Altai Philippines Mining Corporation, disallowing the latter to conduct mining operations in the contract area covering 1,580.8010 hectares under MPSA No. 304-2009-IVB, pending the investigation and resolution of the issues that was never defined, as there was no appropriate summary or formal hearing conducted until February 8, 2012, according to the records on hand of this Court. The cease and desist order also provided for a fifteen day period from receipt of the Altai Philippines Mining Corporation within which to submit its comment on the

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LEONARDO M. BANZUELO
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RTC Branch 81, Romblon, Romblon
June 8, 2022

issues. On the same September 19, 2011 the Regional Director, Roland De Jesus of the Mines and Geosciences Bureau of Region IV-B, earnestly reiterated the cease and desist order issued by acting director of Mines and Geosciences Bureau, Leo L. Jasareno advising Altai Philippines Mining Corporation to refrain from conducting mining operation or any other related activities within the contract area covered by MPSA No.309-2004-IVB (sic) as evidenced by a letter, cited as Exhibit M. On September 21, 2011, Sibuyan Nickel Properties Development Corporation responded through its president, Atty. Casiana N. Dalangin asking for the lifting of the cease and desist order issued by Mines and Geosciences Bureau Acting Director Jasareno as evidenced by a letter cited as Exhibit N. On October 3, 2011 the counsel for the petitioner wrote a letter (Exhibit O) with an attached APPROVED Exploration Work Program, dated December 23, 2009, to the Acting Director Jasareno arguing that the cease and desist order has no basis in fact and in law. On October 4, 2011 counsel for the petitioner wrote a letter (Exhibit P) to the Secretary of the Department of Environment and Natural Resources, Hon. Ramon J.P. Paje, inquiring on the action taken by department and requested that the cease and desist order issued by the Mines and Geosciences Bureau be lifted.

Records also show that respondent Dindo C. Rios, denied the application of petitioner for issuance of mayor's permit, and respondent Donato R. Royo denied the application of the petitioner for issuance of barangay clearance on the ground that an executive order has already been issued by respondent Eduardo C. Firmalo.


The Petitioner maintains the unconstitutionality of Executive Order No. 001, Series of 2011 issued by Respondent Provincial Governor of Romblon, Eduardo C. Firmalo, in his capacity as such, as well as the Joint Municipal Resolutions No. 01-10 and 02-10 both dated August 20, 2010 adopted by the Respondent Members of the Sangguniang Bayan of San Fernando, Cajidiocan and Magdiwang, Romblon, and the illegality of the acts committed thereafter, citing laws and jurisprudence that are in their theory, applicable.

The Respondents on the other hand, maintain the constitutionality of the assailed Executive Order and Sangguniang Bayan Resolutions and the legality of the acts committed thereafter, likewise citing laws and jurisprudence that are in their theory, applicable.

7 There are no factual issues to be resolved in the instant Petition, since the facts are undisputed.

This Court has only one issue to be resolved in this Petition, and that is, whether or not Executive Order No. 001, Series of 2011 issued by Respondent Eduardo C. Firmalo, in his capacity as the Provincial Governor

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LEONARDO M. BANZUELO
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RTC Branch 81, Romblon, Romblon
June 8, 2022

of Romblon, is constitutional. The other issues are merely incidental to the main issue to be resolved.

This Court finds three grounds for the unconstitutionality of the Executive Order No. 001, series of 2011.

I.

The Constitution does not prohibit mining, thus, any law, executive order or act of the legislative or executive branch of the government, whether it be local or national that prohibits all forms of mining, even the legal ones is unconstitutional. Section 1 of the assailed executive order issued by the respondent provincial governor was totally prohibitive in nature for an indefinite period of time, to wit:

"Section 1. A MORATORIUM in the exploration, excavation, extraction and utilization of metallic minerals in the Province of Romblon until all issues fears and concerns raised by different sectors, organizations, associations and inhabitants in the local communities are genuinely addressed."

The 1987 Constitution does not prohibit mining, which on the other hand ordains the same under Section 2, Article XII, the relevant provision of which states that "The exploration, development, utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities or it may enter into co-production, joint venture, or production sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than 25 years, and under such terms and conditions as may provided by law. The Respondent's contention to the effect that such executive order is merely regulatory and not prohibitory in nature, must necessarily fail, because the ultimate effect of the executive order is to prohibit all forms of metallic mining and its immediate implementation, likewise offends the Constitution, considering that the legalized forms of mining are already placed in the same footing as the illegal ones for an indefinite period of time.

II.

7 The assailed executive order is an *Ultra Vires* act of the Provincial Governor of Romblon. This Court notes that the executive order issued by the Provincial Governor himself, prohibits all forms of metallic mining in the province of Romblon. A careful reading of Section 1 of the assailed executive order will show that it does not seek to enforce or implement the

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June 8, 2022

law or ordinance because there is no law or ordinance that prohibits or suspends all forms of metallic mining.

The Executive Order having the force and effect of the law, the same must originate from the local legislative body as an ordinance and not from the chief executive of the province. That being the case, the provincial governor acted beyond his power when he issued the said executive order.

This Court further observes that the issuance of the Cease and Desist Order by the Mines and Geosciences Bureau against the petitioner was anchored actually on the assailed executive order that takes the form, force and effect of the law. Such Cease and Desist Order was issued on September 19, 2011, well within the effectivity and immediate implementation of Executive Order No. 001, Series of 2011. The Department of Environment and Natural Resources through the Mines and Geosciences Bureau was in effect persuaded to issue cease and desist order on account of the letter dated September 13, 2011, of respondent Dindo C. Rios that informs the said department and bureau that there was a moratorium issued by respondent Eduardo C. Firmalo prohibiting all forms of metallic mining for an indefinite period of time.

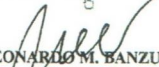
The cease and desist order would not be issued were it not for the executive order that takes the form, force and effect of the law. Thus, the contention of the respondents that assuming that the executive order will be declared unconstitutional by this Court, the Respondent cannot be obliged to issue permits or resolutions in favor the petitioner is untenable, because the actions of respondent Dindo C. Rios and Donato R. Royo, who obviously referred to the same executive order are independent matters that should be properly addressed in the proper forum, and therefore not a concern of this Court and not specifically in this action. The concern of this Court is to determine and check the act of the local chief executive of the province of Romblon in the light of his conformity with the fundamental law or the Constitution. In this case, the Provincial Governor went beyond his authority when he issued the assailed executive order, an ultra vires act.

III.

7 The assailed executive order issued by the Provincial Governor is inconsistent to the language and spirit of Section 465 of the Local Government Code of 1991, The Philippine Mining Act of 1995, Republic Act No. 7942, and Sec. 12, Executive Order No. 79, issued by His Excellency Benigno Simeon Aquino III.

Under paragraph b, subparagraph 2iii, Section 465 of the Local Government Code of 1991, "For the efficient, effective, and economical governance the purpose of which is general welfare of the province and

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
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inhabitants pursuant to Section 16 of this Code, the provincial governor shall:

2) Enforce all laws and ordinances relative to the governance of the province and the exercise of appropriate corporate powers, provided for under Section 22 of this Code, implement all approved policies, programs, projects, services and activities of the province and, in addition to the foregoing shall:

iii) Issue such executive orders for the faithful and appropriate enforcement and execution of laws and ordinances.

The argument of the respondents is misplaced, because there is no ordinance or law passed or enacted by the local legislative branch of the province of Romblon, and even assuming there was, the same is unconstitutional as there was no constitutional prohibition against mining. The assailed executive order is by itself a statute that prohibits all forms of metallic mining. If the State does not have the power to prohibit mining, but merely to regulate the same, then, with more reason that a local chief executive of the province has no power to prohibit mining for an indefinite period of time.

Under Section 2, Republic Act No. 7942, it is the policy of the State that "All mineral resources in public and private lands within the territory and exclusive economic zone are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance the national growth in a way that effectively safeguards the environment and protects the rights of the affected communities. And Section 26, a, of the same law provides that, "for purposes of mining operations, a mineral agreement may take the following forms as herein defines: a. Mineral production sharing agreement is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement."

7. It is clear that Republic Act No. 7942 regulates and sanctions legal mining activities in the Philippines. It does not totally prohibit the mining activities unlike the assailed executive order issued by the respondent provincial governor on Romblon. Such executive order ultimately placed the legal mining in the same standing as the illegal one, thus certain property rights of the petitioner under the contract was adversely affected. Such executive order cannot also create a special task force to spearhead an assessment of all mining applications, permits, and operations existing in

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LEONARDO M. BANZUELO

Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
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the province and the Mineral Production Sharing Agreement granted to Altai Philippines Mining Corporation, now represented by Sibuyan Nickel Properties Development Corporation, in the light of pertinent laws and strategic environment assessment, because such power is vested only in the Department of Environment and Natural Resources and the Mines and Geosciences Bureau, and the Local Government Units are merely expected to cooperate so that the environmental standards of mining laws, rules and regulations are fully and strictly enforced.

Under paragraph 2, Section 12 of Executive Order No. 79, signed by President Benigno Simeon Aquino III, institutionalizing and implementing reforms in the Philippine Mining Sector, providing policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources, LGUs shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations.

Considering that in the above provision, the local government shall ONLY confine themselves to the imposition of reasonable limitations on mining activities conducted within their territorial jurisdiction that are consistent with the national laws and regulations, respondent Eduardo C. Firmalo, in his capacity as the provincial governor of Romblon cannot validly issue a moratorium prohibiting all forms of metallic mining in the entire province of Romblon.

Likewise, Joint Resolution No. 01-10 and Joint Resolution No. 02-10 being a mere resolution of the Sangguniang Bayan addressed to the Secretary of the DENR and to the President of the Philippines and the Congress of the Philippines respectively; not being an ordinance, that prohibit mining, will not affect the activities of the petitioner considering the declaration of unconstitutionality of Executive Order No. 001, Series of 2011.

Finding the petition impressed with merit, the same is hereby **GRANTED.**

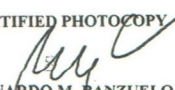
➤ **WHEREFORE,** Executive Order No. 1, Series of 2011, issued by respondent Eduardo C. Firmalo in his capacity as the Provincial Governor of Romblon is hereby declared **UNCONSTITUTIONAL.**

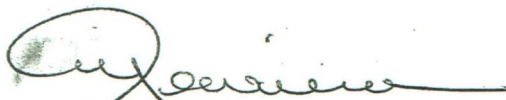
SO ORDERED.

Romblon, Romblon.

January 17, 2013.

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LEONARDO M. RANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022



RAMIRO R. GERONIMO

Executive Judge

RRG/abm

CERTIFICATION

This is to certify that copy of this Resolution were sent by registered mail to Atty. Roderick R.C. Salazar III, Atty. Karl Arian A. Castillo, Atty. John Michael S. Galauran, Atty. Francisco F. Benedicto, Jr., Atty. Abner R. Perez, Atty. Cesar M. Solis, Office of the Solicitor General, Gov. Eduardo C. Firmalo, Vice Gov. Manuel M. Madrid and Pros. Karen M. Silverio-Buffe, this 17th day of January 2013.



BEETHOVEN M. ALBAN

Clerk of Court VI

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LEONARDO M. BANZUELO

Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

Republic of the Philippines
REGIONAL TRIAL COURT
Fourth Judicial Region
BRANCH 81
Romblon, Romblon

SIBUYAN NICKEL PROPERTIES
DEVELOPMENT CORPORATION,
Petitioner,

SPECIAL CIVIL ACTION
CASE NO. V-1906

- versus -

- for -

HON. EDUARDO C. FIRMALO in his
capacity as GOVERNOR of ROMBLON,
HON. DINDO C. RIOS, in his capacity
as Mayor of San Fernando,
HON. MANUEL MADRID, HON. ABNER
R. PEREZ, HON. FELIX YLAGAN and
HON. VENIZAR MARAVILLA, in their
capacity as Sangguniang Panlalawigan
of Romblon, HON. MABINI T. MACA,
in his capacity as Vice Mayor of Cajidiocan,
HON. JESUSIMA R. CASTRO, in his
Capacity as Vice Mayor of San Fernando,
HON. DENISA R. REPIZO, in her capacity
as Vice Mayor of Magdiwang, Romblon,
HON. HERMINIO R. MORTEL, HAIDE R.
RABINO, CONSTANCIO M. GOTANGCO,
RIZAL T. RUBA, RICHARD D. ROTONI,
JAIME M. LANGIT, LARRY V. NOLASCO,
FRANK ANTHONY R. REGALA, ROBINSON
R. ROYO, RENE L. BARANDA, DAXIE
BENEDICT R. RIOS, ZENAIDA A. RENION,
DOMINGO B. MARIN, ZORAIDA R. REPIL,
SAMUEL B. RODA, ADO V. TANSIONGCO,
ROMMEL AUGUSTUS R. RADAN,
ANTONIO R. MENESE, VILMA L. MOLO,
MARIO R. ROLDAN, in their capacity as
Sangguniang Bayan Members of Cajidiocan,
Magdiwang and San Fernando, Romblon and
HON. DONATO ROYO, in his capacity as
Barangay Chairman of España, San Fernando,
Romblon.


DECLARATORY RELIEF
WITH PRAYER FOR
ISSUANCE OF TRO
AND INJUNCTION

Respondents.

X ----- X

RESOLUTION

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

For resolution are the two (2) Motions for Reconsideration filed by the Provincial Legal Officer of Romblon. Romblon as counsel for respondent Honorable Governor Eduardo C. Firmalo, Governor, Province of Romblon and by the Office of the Provincial Prosecutor through Karen M. Silverio-Buffe, Prosecutor I, as counsel for respondents.

Without discussing the issues raised by the respondents, this Court opted to deny the twin motions.

1. On the Motion for Reconsideration filed by counsel for respondent Governor Firmalo.

As correctly pointed out by the petitioner, the motion is defective.

Section 4, Rule 15 of the Rules of Court, provides, thus:

Section 4. Hearing on Motion. Except for motions which the Court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the Court for good cause sets the hearing on shorter notice.

In addition, counsel for respondent Governor Firmalo failed to comply Section 13, Rule 15 of the Rules of Court, which provides:

Section 13. Proof of Service. Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance of Section 7 of this Rule (Rule 13). If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender; or in lieu thereof the unclaimed letter together with the certificate of sworn copy of the notice given by the postmaster to the addressee.

The failure to comply of the above-cited provisions, this Court may deny outright the said motion or may not act on the same.

2. On Motion for Reconsideration filed by the Office of the Provincial Prosecutor.

Section 4, Rule 63 of the Rules of Court provides:

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

Section 4. Local Government Ordinance. In any action involving the validity of a local government ordinance, the corresponding prosecutor or attorney of the local governmental unit involved shall be similarly notified and entitled to be heard. If such ordinance is alleged to be unconstitutional, the Solicitor General shall also be notified and entitled to be heard.

To the mind of the Court, considering that the Honorable Governor was duly represented by the Provincial Legal Officer of the Province, the appearance and representation of the prosecutor shall be confined only to the three (3) municipalities involved.

In addition, the Joint Resolutions Nos. 01-10 and 02-10 both dated August 20, 2010 were not declared by this Court unconstitutional, hence, there is nothing to reconsider in so far as the said joint resolutions are concerned. Besides, in as much as a resolution is not an ordinance, the local government units concerned are not entitled to representation from the Provincial Prosecution Office, as their representation is limited to any action involving the validity of a local government ordinance (Sec. 4, Rule 63).

In fact as per Court record, the Office of the Solicitor General had no entry of appearance or authorized the Provincial Prosecutor to appear in their behalf despite notice to them by the petitioner.

WHEREFORE, in view of the foregoing the two **MOTIONS FOR RECONSIDERATION** are hereby **DENIED**.

SO ORDERED.

Romblon, Romblon.

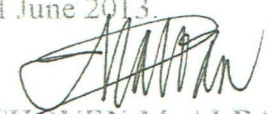
June 14, 2013.


RAMIRO R. GERONIMO
Executive Judge

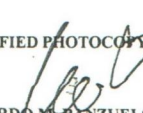
RRG gem

CERTIFICATION

This is to certify that copies of this *Resolution* were sent by registered mail to the Office of the Solicitor General, Atty. Francisco F. Benedicto, Jr., Atty. Karen M. Silverio-Buffe, Atty. Abner R. Perez, Atty. Cesar M. Solis and Atty. Roderick R.C. Salazar III, this 14th day of June 2013.


BEETHOVEN M. ALBAN
Clerk of Court VI

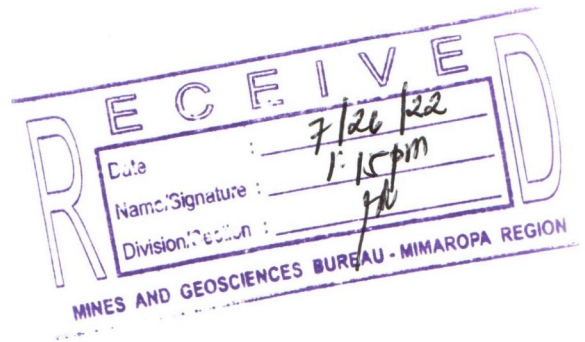
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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

ALTAI PHILIPPINES MINING CORPORATION

July 25, 2022

EDWIN M. MOJARES, Ph.D.
Chief – Geosciences Division
OIC – Office of the Regional Director
Mines and Geosciences Bureau
MIMAROPA Region
7th Floor DENR Bldg., 1515 Roxas Blvd.
Ermita, Manila



SUBJECT: REPLY-COMMENT TO: (1) SANGGUNIANG BAYAN RESOLUTION NO. 83, SERIES OF 2022 OF THE MUNICIPALITY OF SAN FERNANDO; (2) SANGGUNIANG BARANGAY RESOLUTION NO. 29 SERIES OF 2022 OF THE BARANGAY OF ESPAÑA; AND (3) 23 JUNE 2022 LETTER OF THE BARANGAY KAGAWAD OF ESPAÑA

Dear Dr. Mojares:

This refers to your letter dated 07 July 2022 directing Altai Philippines Mining Corporation ("Altai") to submit a reply-comment in connection with (1) Sangguniang Bayan Resolution No. 83, Series Of 2022 Issued by the Municipality of San Fernando, Province of Romblon (hereafter referred to as "SB Resolution No. 83" for brevity), (2) Sangguniang Barangay Resolution No. 29 Series of 2022 of the Barangay of España ("SB Resolution No. 29"); and (3) 23 June 2022 Letter of the Barangay Kagawad of España ("23 June Letter"), which were forwarded by the Presidential Complaint Center to the DENR Action Center/Hotline and to your office for appropriate action.

SB Resolution No. 83 contains the following resolutions: (1) opposing the MPSA granted by the DENR in favor of Altai, which MPSA allows for the rational exploration, development and commercial utilization of mineral deposits in the area, such as nickel, iron, cobalt, etc.; (2) revoking all previous resolutions and mining applications issued in favor of Altai; and (3) requesting the President and the Congress of the Philippines to declare Sibuyan Island free from metallic mining and revoking all mining permits and applications in Sibuyan Island.

SB Resolution No. 29 contains the following resolutions: (1) that Barangay España opposes any form of mining activities; (2) enforces that the Barangay be free from any forms of mining in the Municipality of San Fernando, Province of Romblon; and (3) to furnish copies of the said Resolution to the Office of the Mines and Geosciences Bureau of the DENR, the Provincial Mining Regulatory Board of Romblon, the Office of the Provincial Governor, and the Office of the Municipal Mayor, for their information and actions.

For ease of reference, SB Resolutions No. 83 and 29 are hereto collectively referred to as "Assailed SB Resolutions."

On the other hand, the **23 June Letter from Kagawad Donato R. Royo** stated that Altai has plans to mine in Sibuyan Island and seeking help from the Office of the President to stop Altai, claiming that such mining activities would affect the livelihood of the farmers and

fishers in the area. The letter also states that former President Fidel V. Ramos, through Proclamation No. 740, declared Mt. Guiting-Guiting as a Natural Park together with the whole Island of Sibuyan.

In light of the foregoing, Altai hereby respectfully submits the following comments in response:

I. The Assailed SB Resolutions are *ultra vires* issuances for being unconstitutional and thus should be invalidated.

A similar action by the Municipality of San Fernando has already been declared invalid in 2013.

The attempt to completely ban mining in Sibuyan has already been declared unconstitutional by the **Regional Trial Court of Romblon** in the case of ***Sibuyan Nickel Properties Development Corporation vs. Hon. Eduardo C. Firmalo, et al.***¹, in its decision dated January 17, 2013 which has attained **finality** (For your reference, copies of the January 17, 2013 Decision of Branch 81 of the Regional Trial Court of Romblon and the Resolution of the same Court dated June 14, 2013 denying the Motions for Reconsideration filed by the Local Government Units are herein attached). In that case, the Joint Municipal Resolutions adopted by the Sangguniang Bayan of San Fernando, Cajidiocan, and Magdiwang, Romblon opposed all forms of mining in Sibuyan Island, and requested the Department of Environment and Natural Resources (DENR) to revoke all metallic mining permits in Sibuyan Island. Similarly, the Joint Resolutions also requested the President and the Philippine Congress to declare Sibuyan free from all forms of metallic mining. Then-Romblon Governor Firmalo subsequently issued a moratorium on the exploration, excavation, extraction, and utilization of metallic minerals in the Province of Romblon.

In the above-mentioned *Sibuyan Nickel* Case, the Court held that there is no constitutional ban against mining, and as such, any ordinance or law prohibiting mining enacted by the local legislative branch would be unconstitutional. As the Court stated in its decision:

"The Constitution does not prohibit mining, thus, any law, executive order or act of the legislative or executive branch of the government/ whether it be local or national that prohibits all forms of mining, even the legal ones, is unconstitutional.

xxx

If the State does not have the power to prohibit mining, but merely to regulate the same, then, with more reason that a local chief executive of the province has no power to prohibit mining for an indefinite period of time."

The same ruling applies to the Sangguniang Bayan of San Fernando and the Sangguniang Barangay of España, which likewise do not have the power to prohibit mining. In fact, the RTC of Romblon ruled with finality that "Under paragraph 2, Section 12 of Executive Order No. 79, signed by President Benigno Simeon Aquino III, institutionalizing and implementing reforms in the Philippine Mining Sector, providing policies and guidelines to ensure

¹ Special Civil Action Case No. V-1906

environmental protection and responsible mining in the utilization of mineral resources, **LGUs shall confine themselves only to the imposition of *reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations.***” Thus, it is clear that SB Resolution No. 83 and SB Resolution No. 29 are invalid since they attempt to completely put a ban on mining, contrary to the Philippine Constitution and national laws.

It is respectfully submitted that the Sangguniang Bayan of San Fernando and the Sangguniang Barangay of España **may not make issuances which are inconsistent with the provisions of the Constitution or a statute, or which are in derogation of, or defeat, the purpose of the Constitution or a statute.** The Court has spoken and its Decision has attained finality. This should be respected.

However, in issuing the Assailed Resolutions, both Sangguniang Bayan of San Fernando and the Sangguniang Barangay of España acted beyond the limits of the authority conferred by law. Perforce, the Assailed Resolutions are *ultra vires* issuances and as such, they should be declared void.

Moreover, since SB Resolution No. 83 and SB Resolution No. 29 are just resolutions and not ordinances, then both do not have the force and effect of a law. As the Supreme Court has explained, “A municipal ordinance is different from a resolution. An ordinance is a law, *but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter.* An ordinance possesses a general and permanent character, but a resolution is temporary in nature.”²

Given the nature and content of SB Resolution No. 83 and SB Resolution No. 29, then it is our humble opinion that they should not be given any weight by this Honorable Office.

II. Altai is only in the exploration phase of its MPSA, so there is no damage to speak of, which would necessitate the revocation of its operations.

It is also worth pointing out that Altai’s operations at this point are only for the exploration of nickel in the area—thus, the fear of damages cited by the Sangguniang Bayan and the Sangguniang Barangay in their Resolutions are premature and purely hypothetical. No harm has been proven to be caused by Altai’s operations, and the alleged damages that will be caused to rivers and tributaries in the area are speculative. In fact, the Sangguniang Bayan itself could not point to any wrongdoing on the part of Altai, since the environmental threats that it raised in the Resolution stemmed from *illegal* small-scale mining activities within their Municipality.

Since the alleged damage or injury raised by the Sangguniang Bayan and the Sangguniang Barangay is not immediate or even real, it is merely a hypothetical problem and is not a valid ground for action or intervention.

III. Sangguniang Bayan Resolution No. 83 is unconstitutional for violating the clause on non-impairment of contracts.

² Municipality of Parañaque vs. V.M. Realty Corporation, G.R. No. 127820 July 20, 1998

When MPSA No. 304-2009-IVB was granted in favor of Altai, it formed a Contract between the Philippine government and Altai, which provisions governed both parties.

The obligation arising from the contract (agreement) has the force of law between the parties and should be complied with in good faith.³ In characterizing the contract (agreement) as having the force of law between the parties, the law stresses the obligatory nature of a binding and valid agreement.⁴

Art. III, Sec. 10 of the 1987 Constitution reads: "Sec. 10. No law impairing the obligation of contracts shall be passed." And as the Supreme Court has held, "[T]he purpose of the non-impairment clause of the Constitution is to safeguard the integrity of contracts against unwarranted interference by the State. As a rule, contracts should not be tampered with by subsequent laws that would change or modify the rights and obligations of the parties. **Impairment is anything that diminishes the efficacy of the contract. There is an impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.**"⁵

Here, the Sangguniang Bayan in its Resolution impaired the contract between the government and Altai by suddenly opposing the MPSA and revoking all previous resolutions and applications in favor of Altai. By doing so, it diminished the rights granted to Altai under MPSA, because it is no longer allowed to operate within the municipality of San Fernando and comply with its obligations to the Philippine government.

IV. There is a presumption of regularity in the issuance of the MPSA in favor of Altai.

The issuance of the Mineral Production Sharing Agreement (MPSA) No. 304-2009-IVB in favor of Altai by the DENR-MGB carries with it the presumption of regularity unless the contrary is proven.

The presumption of regularity in the performance of official functions favors the validity of Altai's MPSA. Under Section 3, Rule 131 of the Rules of Court, there is a disputable presumption that an official duty has been performed unless contradicted and overcome by evidence. Here, there is no iota of proof on record that will clearly and convincingly rebut such presumption.

The presumption of regularity in the performance of official duties is an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge. To this end, our body of jurisprudence has been consistent in requiring nothing short of clear and convincing evidence to the contrary to overthrow such presumption.⁶ This same presumption of regularity in the performance of official duties supports the validity of Altai's MPSA.

³ Article 1159 of the Civil Code.

⁴ William Golangco Construction Corporation vs. Philippine Commercial International Bank, G.R. No. 142830, March 24, 2006.

⁵ Goldenway Merchandising Corp. vs. Equitable PCI Bank, G.R. No. 195540, March 13, 2013

⁶ Susan A. Yap vs. Elizabeth Lagtapon, GR. No. 196347, January 23, 2017

V. Sangguniang Bayan Resolution No. 83 is unconstitutional because it is a Bill of Attainder for only targeting Altai and is likewise a violation of Altai's right to equal protection of the laws.

In SB Resolution No. 83, the Sangguniang Bayan categorically admitted that there are three (3) active mining operations in Sibuyan Island: **Fil-China Mining Development Corporation** to mine Feldspar in San Fernando, **Rommel Ibuna** to explore nickel in Magdiwang, and Altai Philippines Mining Corporation to explore nickel, iron and chromite. Yet despite admitting that there are three (3) active mining operations in Sibuyan, the Resolution only specifically opposed Altai's MPSA and revoked all of Altai's resolutions and applications.

Bills of attainder are legislative acts which inflict punishment on individuals or members of a particular group without a judicial trial.⁷ Meanwhile, the Constitution's equal protection clause aims to protect people from "against any form of undue hostility from the government."⁸ As explained by no less than the Supreme Court: "The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play,⁹ and it simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others."¹⁰

By opposing and revoking only Altai's MPSA and operations, despite the existence of other mining operations in Sibuyan, SB Resolution No. 83 singled out Altai and clearly violated Altai's constitutional rights and unfairly discriminated against Altai. Evidently, the said Resolution was passed not to merely protect the environment, but as a way to target and penalize Altai Philippines Mining Corporation.

Based on the foregoing, it is our humble opinion that Sangguniang Bayan Resolution No. 83 executed by the Municipality of San Fernando is invalid and has no basis for its issuance. As such, it should not be given any credence by the Mines and Geosciences Bureau and the Department of Environment and Natural Resources.

VI. The 23 June 2022 Letter from Barangay Kagawad Donato R. Royo is patently false and misleading.

In the 23 June Letter, Brgy. Kagawad Royo states that Altai's mining activities would affect the livelihood of small farmers and fishermen. However, this is untrue. Altai's mining operations are limited only to the area covered by MPSA No. 304-2009-IVB, which does not cover any farms or fish ponds, and does not reach the sea. Thus, Altai's operations will not affect local farmers or fishermen in any way.

More importantly, the 23 June Letter is misleading in several ways. First of all, Former President Ramos' Proclamation No. 740 refers to the "People's Park in the Sky" in Tagaytay,

⁷ Executive Secretary, et al. vs. Court of Appeals, et al., G.R. No. 131719, May 25, 2004

⁸ Philippine Judges Association vs. Hon. Pete Prado, et al., G.R. No. 105371 November 11, 1993

⁹ Supra, note 7

¹⁰ Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform, G.R. No. 78742 July 14, 1989

reserving the same for recreational and tourism purposes. The Presidential Proclamation that is relevant to Mt. Guiting-Guiting is actually Proclamation No. 746, which simply declares that Mount Guiting-Guiting Natural Park, covering an approximate area of 15,265.48 hectares, will be a Protected Area. Altai does not dispute Proclamation No. 746 and its contents, and applauds the DENR and the National Government for protecting the area as a Natural Park. However, it should be pointed out that only the 15,265.48 hectares of Mount Guiting-Guiting Natural Park is considered a terrestrial reserve. Altai's MPSA does not overlap any portion of the Protected Area. In fact, it is even well outside of the buffer zone provided by the DENR. Thus, Mount Guiting-Guiting shall remain protected and unaffected by Altai's operations. Finally, Kagawad Royo's statement that "the whole island of Sibuyan" was declared a Natural Park is completely untrue, because Proclamation No. 746 only refers to the conservation of Mount Guiting-Guiting Natural Park, described in the Proclamation as a "certain parcel of land of the public domain... situated in the Municipalities of Cajidiocan, Magdiwang, and San Fernando, Island of Sibuyan, Province of Romblon." Contrary to what the 23 June Letter states, there is **nothing** in the Proclamation which declares the whole Island of Sibuyan as a Natural Park and a protected area.

Therefore, 23 June 2022 Letter from Barangay Kagawad Donato R. Royo should not be considered by this Honorable Office for being patently untrue and misleading.

VII. Altai Philippines Mining Corporation is simply exercising its rights under MPSA No. 304-2009-IVB, and aims to provide help and livelihood to the local community through responsible mining.

Altai was granted MPSA No. 304-2009-IVB on December 23, 2009. Since then, Altai has been complying with its obligations under the Mineral Production Sharing Agreement, and has respected all of the government's orders in relation thereto, even when a Cease and Desist Order was issued against Altai on September 19, 2011. Finally on September 9, 2021, the DENR lifted the Cease and Desist Order, and only then did Altai begin the process of resuming its operations for MPSA No. 304-2009-IVB. In fact, the DENR even renewed Altai's exploration period under MPSA No. 304-2009-IVB in a letter dated 12 July 2022, which allowed Altai to implement its proposed Exploration Work Program (ExWP) and its Environmental Work Program (EWP) immediately upon the date of its issuance. These developments show that Altai has been able to prove to the DENR and all concerned agencies that it has been faithfully complying with all of the requirements and that it should be allowed to continue with its operations.

Under the DENR and the MGB's watchful guidance and control, Altai will implement its full exploration work program, aimed to develop an economically mineable resource of nickel ore. The success of the exploration program could lead to successful nickel mining operations in the Province of Romblon under the principle of responsible and sustainable mining.

In light of the current pandemic and economic troubles prevailing in the country which resulted in the surge of unemployment that adversely affected the local community of Sibuyan Island, Altai aims to provide help through the implementation of its Two (2) Years Exploration Work Program. The program is expected to generate direct employment for over two hundred (200) local laborers from the Sibuyan community. Given the opportunity, we at Altai are confident that we will be able to show to the local government units and

communities concerned that our operations will not negatively affect Sibuyan Island, and will in fact bring prosperity and development to its people.

Based on the foregoing, clearly, SB Resolution No. 83, SB Resolution No. 29, and the 23 June Letter from Brgy. Kagawad Royo are devoid of merit, and should not be given any consideration by your Honorable Office.

Thank you and we hope for your favorable action on this matter.

Sincerely,



HANNIEL T. NGO
President

Cf:

The Presidential Complaint Center

pcc@malacanang.gov.ph

PCC Code No: WG-NEM-06-23-2022-04

The DENR Action Center/Hotline

Department of Environment and Natural Resources

denr@8888.gov.ph

The Punong Barangay

Sangguniang Barangay of España

San Fernando, Romblon

Republic of the Philippines
REGIONAL TRIAL COURT
Fourth Judicial Region
BRANCH 81
Romblon, Romblon

SIBUYAN NICKEL PROPERTIES
DEVELOPMENT CORPORATION
Petitioner,

**SPECIAL CIVIL ACTION CASE
NO. V-1906**

-versus-

- for -

HON. EDUARDO C. FIRMALO in his
Capacity as Governor of Romblon,
HON. DINDO C. RIOS, in his capacity
as Mayor of San Fernando, HON.
MANUEL MADRID, ABNER PEREZ, FELIX
YLAGAN and VENIZAR MARAVILLA, in
their Capacity as Sangguniang Panlalawigan
of Romblon, HON. MABINI T. MACA, in his
Capacity as Vice Mayor of Cajidiocan, HON.
JESUSIMA R. CASTRO in her Capacity as Vice
Mayor of San Fernando, HON. DENISA R.
REPIZO, in her Capacity as Vice Mayor of
Magdiwang, Romblon, HON. HERMINIO R.
MORTEL, HAIDE R. RABINO, CONSTANCIO
M. GOTANGCO, RIZAL T. RUBA, RICHARD
D. ROTONI, JAIME M. LANGIT, LARRY V.
NOLASCO, FRANK ANTHONY R. REGALA,
ROBINSON R. ROYO, RENE L. BARANDA,
DAXIE BENEDICT R. RIOS, ZENAIDA A.
RENION, DOMINGO B. MARIN, ZORAIDA R.
REPIL, SAMUEL B. RODA, ADO V.
TANSIONGCO, ROMMEL AUGUSRUS R. RADAN,
ANTONIO R. MENESE, VILMA L. MOLO,
MARIO R. ROLDAN, in their Capacity as
Sangguniang Bayan Members of Cajidiocan,
Magdiwang and San Fernando, Romblon and
ESPAÑA BARANGAY CHAIRMAN HON.
DONATO ROYO, in his Capacity as Barangay
Chairman of España, San Fernando, Romblon,
Respondents.

**DECLARATORY RELIEF W/
PRAYER FOR ISSUANCE
TRO AND INJUNCTION**

X-----X

R E S O L U T I O N

CERTIFIED PHOTOCOPY

LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022


A verified petition for Declaratory Relief under Rule 63 of the Rules of Court was filed on April 26, 2012 by Sibuyan Nickel Properties Development Corporation through its President, Ms. Casiana Dalangin pursuant to a board resolution evidenced by Secretary's Certificate (Exhibit A) dated March 13, 2012, being the assignee of the Mineral Production Sharing Agreement No. 304-2009-IVB (ALTAI/SIBUYAN MPSA) praying for the declaration of nullity of Executive Order No. 001, Series of 2011 issued by Respondent Provincial Governor of Romblon, Hon. Eduardo C. Firmalo, in his capacity as such. Likewise, the nullity of Joint Municipal Resolutions No. 01-10 and 02-10 both dated August 20, 2010 adopted by the Respondent Members of the Sangguniang Bayan of San Fernando, Cajidiocan and Magdiwang, Romblon is being sought by the Petitioner.

On December 23, 2009, the Government of the Republic of the Philippines, through the then Secretary of the Department of Environment and Natural Resources, Jose L. Atienza, Jr., entered into a Mineral Production Sharing Agreement No. 304-2009-IVB (Exhibit B) with Altai Mining Corporation in accordance with Republic Act No. 7942, The Philippine Mining Act of 1995 the primary purpose of which is to provide for a rational exploration, development, and commercial utilization of nickel, iron, cobalt, chromite, and other associated mineral deposits existing within the contract area, and that is in the Municipality of San Fernando, Romblon. Altai Philippines Mining Corporation assigned its rights/properties to Sibuyan Nickel Properties Development Corporation, and constituted the latter as attorney-in-fact, for the purpose of instituting an action or claim against the area covered, pursuant to a deed of assignment (Exhibit C) dated September 7, 2010.

On August 20, 2010, the Sangguniang Bayan Members of the Municipalities of San Fernando, Cajidiocan and Magdiwang, Romblon, adopted Joint Resolution No. 01-10 (Exhibit D) opposing all forms of metallic mining in the Sibuyan Island, Romblon Province, and at the same time requested the Secretary of The Department of Environment and Natural Resources, Hon. Ramon Paje to revoke all metallic mining permits issued in Sibuyan Island. On the same day, another joint resolution, Joint Resolution No. 02-10 (Exhibit E), was passed requesting His Excellency, President Benigno Simeon C. Aquino, III, and the Congress of the Philippines to declare Sibuyan Island, Province of Romblon free from all forms of metallic mining.

On January 10, 2011, the Governor of Romblon, Hon. Eduardo C. Firmalo issued Executive Order No. 001, Series of 2011 (Exhibit F) declaring a moratorium on the exploration, excavation, extraction and utilization of metallic minerals in the province of Romblon. Said executive order also created a special task force to spearhead an assessment of all

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June 8, 2022

mining applications, permits and operations existing in the province and to review the MPSA granted to Altai Philippines Mining Corporation. The same executive order further directed the Philippine National Police of the Province of Romblon to vigorously implement and enforce the Executive Order and all related mining laws and regulations. The executive order provides further that, it shall take effect immediately, without however, providing any clause for publication in newspaper of general circulation in the province.

On the same January 10, 2011, the Sangguniang Panlalawigan of Romblon passed a resolution, Resolution No. 01-2011-23 (Exhibit G) strongly supporting Executive Order No. 001, Series of 2011 on the declaration of the moratorium on all mining activities in the province of Romblon. On the same January 10, 2011 the Sangguniang Panlalawigan of Romblon passed another resolution, Resolution No. 01-2011-24 (Exhibit H) requesting the Philippine National Police, Provincial Director to immediately coordinate with other law enforcement agencies and arrest the source of illegal mercury that is smuggled in the Province of Romblon. On January 24, 2011, the Sangguniang Panlalawigan of Romblon passed another resolution, Resolution No. 01-2011-41 (Exhibit J) withdrawing support to Sangguniang Panlalawigan of Romblon Resolution No. 01-2011-23 strongly supporting Executive Order No. 001, Series of 2011 on the declaration of moratorium on all mining activities in the province of Romblon.

On September 13, 2011 Respondent Municipal Mayor of San Fernando, Dindo C. Rios wrote a letter (Exhibit K) to the Acting Director of Mines and Geosciences Bureau (MGB) Leo L. Jasareno requesting for issuance of Cease-and-Desist Order on the ground that the exploration will severely endanger the river and streams of Sibuyan and the fact that the respondent Provincial Governor has already issued Executive Order declaring a moratorium on all forms of mining activities in the Province of Romblon. And on September 19, 2011, the Mines and Geosciences Bureau, acting on the letter of the Mayor Dindo C. Rios and the previously issued Memorandum dated July 14, 2008 directing the Regional Office No. IV-B to conduct an investigation on the complaint of the Catholic Bishops Conference of the Philippines and other groups concerned against mining and to thoroughly review all mining operations and applications in Sibuyan Island, Acting Director, Leo Jasareno issued a cease and desist order (Exhibit L) against Altai Philippines Mining Corporation, disallowing the latter to conduct mining operations in the contract area covering 1,580.8010 hectares under MPSA No. 304-2009-IVB, pending the investigation and resolution of the issues that was never defined, as there was no appropriate summary or formal hearing conducted until February 8, 2012, according to the records on hand of this Court. The cease and desist order also provided for a fifteen day period from receipt of the Altai Philippines Mining Corporation within which to submit its comment on the

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LEONARDO M. BANZUELO
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issues. On the same September 19, 2011 the Regional Director, Roland De Jesus of the Mines and Geosciences Bureau of Region IV-B, earnestly reiterated the cease and desist order issued by acting director of Mines and Geosciences Bureau, Leo L. Jasareno advising Altai Philippines Mining Corporation to refrain from conducting mining operation or any other related activities within the contract area covered by MPSA No.309-2004-IVB (sic) as evidenced by a letter, cited as Exhibit M. On September 21, 2011, Sibuyan Nickel Properties Development Corporation responded through its president, Atty. Casiana N. Dalangin asking for the lifting of the cease and desist order issued by Mines and Geosciences Bureau Acting Director Jasareno as evidenced by a letter cited as Exhibit N. On October 3, 2011 the counsel for the petitioner wrote a letter (Exhibit O) with an attached APPROVED Exploration Work Program, dated December 23, 2009, to the Acting Director Jasareno arguing that the cease and desist order has no basis in fact and in law. On October 4, 2011 counsel for the petitioner wrote a letter (Exhibit P) to the Secretary of the Department of Environment and Natural Resources, Hon. Ramon J.P. Paje, inquiring on the action taken by department and requested that the cease and desist order issued by the Mines and Geosciences Bureau be lifted.

Records also show that respondent Dindo C. Rios, denied the application of petitioner for issuance of mayor's permit, and respondent Donato R. Royo denied the application of the petitioner for issuance of barangay clearance on the ground that an executive order has already been issued by respondent Eduardo C. Firmalo.


The Petitioner maintains the unconstitutionality of Executive Order No. 001, Series of 2011 issued by Respondent Provincial Governor of Romblon, Eduardo C. Firmalo, in his capacity as such, as well as the Joint Municipal Resolutions No. 01-10 and 02-10 both dated August 20, 2010 adopted by the Respondent Members of the Sangguniang Bayan of San Fernando, Cajidiocan and Magdiwang, Romblon, and the illegality of the acts committed thereafter, citing laws and jurisprudence that are in their theory, applicable.

The Respondents on the other hand, maintain the constitutionality of the assailed Executive Order and Sangguniang Bayan Resolutions and the legality of the acts committed thereafter, likewise citing laws and jurisprudence that are in their theory, applicable.

7 There are no factual issues to be resolved in the instant Petition, since the facts are undisputed.

This Court has only one issue to be resolved in this Petition, and that is, whether or not Executive Order No. 001, Series of 2011 issued by Respondent Eduardo C. Firmalo, in his capacity as the Provincial Governor

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LEONARDO M. BANZUELO
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of Romblon, is constitutional. The other issues are merely incidental to the main issue to be resolved.

This Court finds three grounds for the unconstitutionality of the Executive Order No. 001, series of 2011.

I.

The Constitution does not prohibit mining, thus, any law, executive order or act of the legislative or executive branch of the government, whether it be local or national that prohibits all forms of mining, even the legal ones is unconstitutional. Section 1 of the assailed executive order issued by the respondent provincial governor was totally prohibitive in nature for an indefinite period of time, to wit:

"Section 1. A MORATORIUM in the exploration, excavation, extraction and utilization of metallic minerals in the Province of Romblon until all issues fears and concerns raised by different sectors, organizations, associations and inhabitants in the local communities are genuinely addressed."

The 1987 Constitution does not prohibit mining, which on the other hand ordains the same under Section 2, Article XII, the relevant provision of which states that "The exploration, development, utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities or it may enter into co-production, joint venture, or production sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than 25 years, and under such terms and conditions as may provided by law. The Respondent's contention to the effect that such executive order is merely regulatory and not prohibitory in nature, must necessarily fail, because the ultimate effect of the executive order is to prohibit all forms of metallic mining and its immediate implementation, likewise offends the Constitution, considering that the legalized forms of mining are already placed in the same footing as the illegal ones for an indefinite period of time.

II.

7 The assailed executive order is an *Ultra Vires* act of the Provincial Governor of Romblon. This Court notes that the executive order issued by the Provincial Governor himself, prohibits all forms of metallic mining in the province of Romblon. A careful reading of Section 1 of the assailed executive order will show that it does not seek to enforce or implement the

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June 8, 2022

law or ordinance because there is no law or ordinance that prohibits or suspends all forms of metallic mining.

The Executive Order having the force and effect of the law, the same must originate from the local legislative body as an ordinance and not from the chief executive of the province. That being the case, the provincial governor acted beyond his power when he issued the said executive order.

This Court further observes that the issuance of the Cease and Desist Order by the Mines and Geosciences Bureau against the petitioner was anchored actually on the assailed executive order that takes the form, force and effect of the law. Such Cease and Desist Order was issued on September 19, 2011, well within the effectivity and immediate implementation of Executive Order No. 001, Series of 2011. The Department of Environment and Natural Resources through the Mines and Geosciences Bureau was in effect persuaded to issue cease and desist order on account of the letter dated September 13, 2011, of respondent Dindo C. Rios that informs the said department and bureau that there was a moratorium issued by respondent Eduardo C. Firmalo prohibiting all forms of metallic mining for an indefinite period of time.

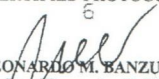
The cease and desist order would not be issued were it not for the executive order that takes the form, force and effect of the law. Thus, the contention of the respondents that assuming that the executive order will be declared unconstitutional by this Court, the Respondent cannot be obliged to issue permits or resolutions in favor the petitioner is untenable, because the actions of respondent Dindo C. Rios and Donato R. Royo, who obviously referred to the same executive order are independent matters that should be properly addressed in the proper forum, and therefore not a concern of this Court and not specifically in this action. The concern of this Court is to determine and check the act of the local chief executive of the province of Romblon in the light of his conformity with the fundamental law or the Constitution. In this case, the Provincial Governor went beyond his authority when he issued the assailed executive order, an ultra vires act.

III.

7 The assailed executive order issued by the Provincial Governor is inconsistent to the language and spirit of Section 465 of the Local Government Code of 1991, The Philippine Mining Act of 1995, Republic Act No. 7942, and Sec. 12, Executive Order No. 79, issued by His Excellency Benigno Simeon Aquino III.

Under paragraph b, subparagraph 2iii, Section 465 of the Local Government Code of 1991, "For the efficient, effective, and economical governance the purpose of which is general welfare of the province and

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LEONARDO M. BANZUELO
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RTC Branch 81, Romblon, Romblon
June 8, 2022

inhabitants pursuant to Section 16 of this Code, the provincial governor shall:

2) Enforce all laws and ordinances relative to the governance of the province and the exercise of appropriate corporate powers, provided for under Section 22 of this Code, implement all approved policies, programs, projects, services and activities of the province and, in addition to the foregoing shall:

iii) Issue such executive orders for the faithful and appropriate enforcement and execution of laws and ordinances.

The argument of the respondents is misplaced, because there is no ordinance or law passed or enacted by the local legislative branch of the province of Romblon, and even assuming there was, the same is unconstitutional as there was no constitutional prohibition against mining. The assailed executive order is by itself a statute that prohibits all forms of metallic mining. If the State does not have the power to prohibit mining, but merely to regulate the same, then, with more reason that a local chief executive of the province has no power to prohibit mining for an indefinite period of time.

Under Section 2, Republic Act No. 7942, it is the policy of the State that "All mineral resources in public and private lands within the territory and exclusive economic zone are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance the national growth in a way that effectively safeguards the environment and protects the rights of the affected communities. And Section 26, a, of the same law provides that, "for purposes of mining operations, a mineral agreement may take the following forms as herein defines: a. Mineral production sharing agreement is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement."

7. It is clear that Republic Act No. 7942 regulates and sanctions legal mining activities in the Philippines. It does not totally prohibit the mining activities unlike the assailed executive order issued by the respondent provincial governor on Romblon. Such executive order ultimately placed the legal mining in the same standing as the illegal one, thus certain property rights of the petitioner under the contract was adversely affected. Such executive order cannot also create a special task force to spearhead an assessment of all mining applications, permits, and operations existing in

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

the province and the Mineral Production Sharing Agreement granted to Altai Philippines Mining Corporation, now represented by Sibuyan Nickel Properties Development Corporation, in the light of pertinent laws and strategic environment assessment, because such power is vested only in the Department of Environment and Natural Resources and the Mines and Geosciences Bureau, and the Local Government Units are merely expected to cooperate so that the environmental standards of mining laws, rules and regulations are fully and strictly enforced.

Under paragraph 2, Section 12 of Executive Order No. 79, signed by President Benigno Simeon Aquino III, institutionalizing and implementing reforms in the Philippine Mining Sector, providing policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources, LGUs shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations.

Considering that in the above provision, the local government shall ONLY confine themselves to the imposition of reasonable limitations on mining activities conducted within their territorial jurisdiction that are consistent with the national laws and regulations, respondent Eduardo C. Firmalo, in his capacity as the provincial governor of Romblon cannot validly issue a moratorium prohibiting all forms of metallic mining in the entire province of Romblon.

Likewise, Joint Resolution No. 01-10 and Joint Resolution No. 02-10 being a mere resolution of the Sangguniang Bayan addressed to the Secretary of the DENR and to the President of the Philippines and the Congress of the Philippines respectively; not being an ordinance, that prohibit mining, will not affect the activities of the petitioner considering the declaration of unconstitutionality of Executive Order No. 001, Series of 2011.

Finding the petition impressed with merit, the same is hereby **GRANTED.**


↑ **WHEREFORE,** Executive Order No. 1, Series of 2011, issued by respondent Eduardo C. Firmalo in his capacity as the Provincial Governor of Romblon is hereby declared **UNCONSTITUTIONAL.**

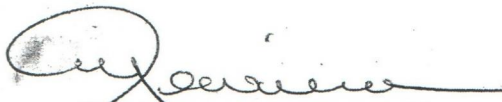
SO ORDERED.

Romblon, Romblon.

January 17, 2013.

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LEONARDO M. RANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022


RAMIRO R. GERONIMO
Executive Judge


RRG/abm

CERTIFICATION

This is to certify that copy of this Resolution were sent by registered mail to Atty. Roderick R.C. Salazar III, Atty. Karl Arian A. Castillo, Atty. John Michael S. Galauran, Atty. Francisco F. Benedicto, Jr., Atty. Abner R. Perez, Atty. Cesar M. Solis, Office of the Solicitor General, Gov. Eduardo C. Firmalo, Vice Gov. Manuel M. Madrid and Pros. Karen M. Silverio-Buffe, this 17th day of January 2013.


BEETHOVEN M. ALBAN
Clerk of Court VI

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

Republic of the Philippines
REGIONAL TRIAL COURT
Fourth Judicial Region
BRANCH 81
Romblon, Romblon

SIBUYAN NICKEL PROPERTIES
DEVELOPMENT CORPORATION.
Petitioner.

SPECIAL CIVIL ACTION
CASE NO. V-1906

- versus -

- for -

HON. EDUARDO C. FIRMALO in his
capacity as GOVERNOR of ROMBLON.
HON. DINDO C. RIOS, in his capacity
as Mayor of San Fernando.
HON. MANUEL MADRID, HON. ABNER
R. PEREZ, HON. FELIX YLAGAN and
HON. VENIZAR MARAVILLA, in their
capacity as Sangguniang Panlalawigan
of Romblon, HON. MABINI T. MACA,
in his capacity as Vice Mayor of Cajidiocan,
HON. JESUSIMA R. CASTRO, in his
Capacity as Vice Mayor of San Fernando,
HON. DENISA R. REPIZO, in her capacity
as Vice Mayor of Magdiwang, Romblon,
HON. HERMINIO R. MORTEL, HAIDE R.
RABINO, CONSTANCIO M. GOTANGCO,
RIZAL T. RUBA, RICHARD D. ROTONI,
JAIME M. LANGIT, LARRY V. NOLASCO,
FRANK ANTHONY R. REGALA, ROBINSON
R. ROYO, RENE L. BARANDA, DAXIE
BENEDICT R. RIOS, ZENAIDA A. RENION,
DOMINGO B. MARIN, ZORAIDA R. REPIL,
SAMUEL B. RODA, ADO V. TANSIONGCO,
ROMMEL AUGUSTUS R. RADAN,
ANTONIO R. MENESE, VILMA L. MOLO,
MARIO R. ROLDAN, in their capacity as
Sangguniang Bayan Members of Cajidiocan,
Magdiwang and San Fernando, Romblon and
HON. DONATO ROYO, in his capacity as
Barangay Chairman of España, San Fernando,
Romblon.


DECLARATORY RELIEF
WITH PRAYER FOR
ISSUANCE OF TRO
AND INJUNCTION

Respondents.

x-----x

RESOLUTION

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

For resolution are the two (2) Motions for Reconsideration filed by the Provincial Legal Officer of Romblon, Romblon as counsel for respondent Honorable Governor Eduardo C. Firmalo, Governor, Province of Romblon and by the Office of the Provincial Prosecutor through Karen M. Silverio-Buffe, Prosecutor I, as counsel for respondents.

Without discussing the issues raised by the respondents, this Court opted to deny the twin motions.

1. On the Motion for Reconsideration filed by counsel for respondent Governor Firmalo.

As correctly pointed out by the petitioner, the motion is defective.

Section 4, Rule 15 of the Rules of Court, provides, thus:

Section 4. Hearing on Motion. Except for motions which the Court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the Court for good cause sets the hearing on shorter notice.


In addition, counsel for respondent Governor Firmalo failed to comply Section 13, Rule 15 of the Rules of Court, which provides:

Section 13. Proof of Service. Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance of Section 7 of this Rule (Rule 13). If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender; or in lieu thereof the unclaimed letter together with the certificate of sworn copy of the notice given by the postmaster to the addressee.

The failure to comply of the above-cited provisions, this Court may deny outright the said motion or may not act on the same.

2. On Motion for Reconsideration filed by the Office of the Provincial Prosecutor.

Section 4, Rule 63 of the Rules of Court provides:

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LEONARDO M. BANZUELO
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RTC Branch 81, Romblon, Romblon
June 8, 2022

Section 4. Local Government Ordinance. In any action involving the validity of a local government ordinance, the corresponding prosecutor or attorney of the local governmental unit involved shall be similarly notified and entitled to be heard. If such ordinance is alleged to be unconstitutional, the Solicitor General shall also be notified and entitled to be heard.

To the mind of the Court, considering that the Honorable Governor was duly represented by the Provincial Legal Officer of the Province, the appearance and representation of the prosecutor shall be confined only to the three (3) municipalities involved.

In addition, the Joint Resolutions Nos. 01-10 and 02-10 both dated August 20, 2010 were not declared by this Court unconstitutional, hence, there is nothing to reconsider in so far as the said joint resolutions are concerned. Besides, in as much as a resolution is not an ordinance, the local government units concerned are not entitled to representation from the Provincial Prosecution Office, as their representation is limited to any action involving the validity of a local government ordinance (Sec. 4, Rule 63).

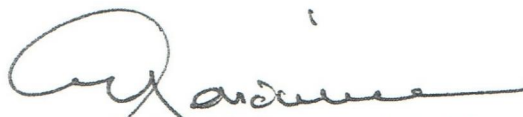
In fact as per Court record, the Office of the Solicitor General had no entry of appearance or authorized the Provincial Prosecutor to appear in their behalf despite notice to them by the petitioner.

WHEREFORE, in view of the foregoing the two **MOTIONS FOR RECONSIDERATION** are hereby **DENIED**.

SO ORDERED.

Romblon, Romblon.

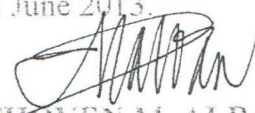
June 14, 2013.


RAMIRO R. GERONIMO
Executive Judge

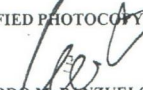
RRG gem

CERTIFICATION

This is to certify that copies of this *Resolution* were sent by registered mail to the Office of the Solicitor General, Atty. Francisco P. Benedicto, Jr., Atty. Karen M. Silverio-Buffe, Atty. Abner R. Perez, Atty. Cesar M. Solis and Atty. Roderick R.C. Salazar III, this 14th day of June 2013.


BEETHOVEN M. ALBAN
Clerk of Court VI

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022