

FORTUN
NARVASA
&
SALAZAR

LEGAL FINESSE

Year
in
Review
2004

OFFICIAL NEWSLETTER OF FORTUN NARVASA & SALAZAR

PHILIPPINE MINING ACT DECLARED CONSTITUTIONAL

FNS TAKES PART IN LANDMARK CASE

FNS joined the Philippine mining industry in hailing the Supreme Court's denial "with finality", on 2 February 2005, of the motion for reconsideration of the petitioners in LA BUGAL-B'LAAN TRIBAL ASSOCIATION INC., ET AL. vs. VICTOR O. RAMOS, ET AL. (G.R. No. 127882) asking the Tribunal to reverse its ruling last December 2004 allowing foreign mining firms to undertake mining exploration and development with the Government. The case stemmed from a petition questioning the constitutionality of the 1995 Financial and Technical Assistance Agreement (FTAA) between the government and Western Mining Corporation Philippines, now Tampakan Mineral Resources Corporation (co-represented by FNS) *, and R.A. 7942, the Philippine Mining Act, and its Implementing Rules and Regulations. Earlier, in January 2004, the Supreme Court declared the Philippine Mining Act unconstitutional and ruled that: "By allowing foreign contractors to manage or operate all the aspects of the mining operation, the above-cited provisions of R.A. 7942 have in effect conveyed beneficial ownership over the nation's mineral resources to these contractors, leaving the State with nothing but bare title thereto."

Nevertheless, in December 2004, the High Court, upon the motion for reconsideration of the respondents, overruled its earlier decision and found that foreign contractors who had infused much needed capital and technological know-how into mining ventures with the government were entitled to some leeway of management in the day-to-day activities as long as full control and supervision remained with the State. The Court, upon a more circumspect evaluation, ruled that the FTAA and the Mining Act were fundamentally and legally sound because the State, as the protector of both the country's natural resources and the people's interest in the nation's wealth, remained in control of the mining ventures through the safeguards present in both the FTAA and the Mining Act. The High Court, voting 10 to 4, ruled that the La Bugal-B'laan Tribal Association's motion for reconsideration failed to convince the Court, nor any of its members, to reverse its finding of the legality of the FTAA and the Mining Act. According to the Court, "all the conceivable aspects of this litigation-factual, constitutional, legal, philosophical, technical, financial, ecological, environmental and technological-have all been extensively taken up and addressed during the court's lengthy and purposeful debates and deliberations".

The latest ruling of the Court affirmed the December 2004 reversal when it declared: "The issue of how much 'profit' the nation should or could derive from the exploration, development and utilization of the country's mineral resources is a policy matter, over which we must allow the President and Congress maximum discretion in using the resources of our country in securing the assistance of foreign groups to eradicate the grinding poverty of our people and answer their cry for viable employment opportunities in the country". This ruling now validates the participation of foreign mining companies in exploration, processing and large scale mining activities in the Philippines. FNS expects new mining clients to avail of the Firm's services given its experience and expertise in mining law developed over the years.

* FNS represents other major mining clients such as Lafayette Mining Limited, Indophil Resources Ltd., Sur-American Gold Corporation, Mindoro Resources Limited, and Newmont Asia Mining Limited.

2 LEGISLATION

Anti-Violence Against Women and Their Children Act of 2004

Approved on March 8, 2004, Republic Act 9262, otherwise known as the "*Anti-Violence Against Women and Their Children Act of 2004*", sharply focused on the often ignored social issue of violence perpetrated against women and children (more specifically, domestic violence). The new law breathes life to the declared policy of the State which values the dignity of women and children and guarantees full respect for human rights.

The law provides stiff criminal penalties for a wide variety of acts constitutive of the crime of violence against women and their children, which include: (i) actual or threatened physical harm; (ii) restriction of the woman or her child's freedom of movement or conduct by force or intimidation; (iii) deprivation of financial support; (iv) engaging in conduct that alarms or causes substantial emotional or psychological distress to the woman or her child; and (v) sexual, verbal, or emotional abuse (Sec. 5).

But what perhaps may be considered as the most potent safeguard provided by the law for woman and child victims of violence is the "Protection Orders." As defined in the law, a protection order is that issued for the purpose of preventing further acts of violence against a woman and her child, as specified in the preceding paragraph. The relief granted under a protection order serves the purpose of saving the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control of her life and the child's. Relief comes in different forms: the perpetrator may be prohibited, under pain of punishment, from committing any of the unlawful acts defined in the law; removed or excluded from the residence of the victim; directed to provide support for the woman and her child; directed to make restitution for actual damages caused by the violence inflicted; and/or the woman victim may be awarded custody of her children. Courts are likewise authorized to grant such other forms of relief as necessary to protect and provide for the safety of the victim.

Incidentally, the power to issue protection orders is not exclusive to courts of law. Woman and child victims of violence may likewise apply for protection orders from the *Punong Barangay*, who is authorized to issue the so-called "Barangay Protection Orders."

NOTARIAL PRACTICE

Beginning August 1, 2004, all notaries public are required to observe the new Rules on Notarial Practice. The new Rules primarily seek to curb abuses in notarial practice, and modernize the Notarial Law which was promulgated way back in the 1940s. The following are the significant changes introduced by the new Rules:

A notary public may not perform a notarial act "outside his regular place of work or business". This means that no notarial act shall be performed outside the premises of a notary's office where he renders legal and notarial services. However, on certain "exceptional occasions or situations", a notarial act may be performed, at the request of the parties, in public offices, convention halls, public function areas in hotels and similar places, hospitals and other medical institutions, or any place where a party to the instrument requiring notarization is under detention, provided that the aforementioned sites are within the territorial jurisdiction of the court which issued the notary's commission.

A notary public is now disqualified from performing a notarial act if he is a party to the instrument to be notarized, or if he will receive any commission, fee or consideration except for the notarial fees and travel expenses allowed by the Supreme Court, or if he is a spouse, common-law partner, ancestor, descendant or relative by affinity or consanguinity of the principal within the fourth civil degree.

A notary public is prohibited from notarizing a blank or incomplete document, or one without the appropriate notarial certification.

A notary public is expressly prohibited from performing a notarial act if the signatory to the document (1) is not in his presence and (2) is not personally known by him or otherwise identified by him through "competent evidence of identity" which is limited to (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, or (b) the oath or affirmation of one credible witness who is personally known to the notary public and who personally knows the individual, or of two credible witnesses who each personally knows the individual and shows to the notary public documentary identification. Note that although the residence tax certificate is no longer sufficient to identify the principal, the latter must still present the same to the notary public, as required by C.A. 465.

See Page 8