Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HGL DEVELOPMENT CORPORATION represented by its President, Henry G. Lim,
Petitioner,

- *versus* -

HON. RAFAEL O. PENUELA, in his capacity as Acting Presiding Judge of the Regional Trial Court, 6th Judicial Region, Branch 13, Culasi, Antique and **SEMIRARA COAL CORPORATION (now SEMIRARA MINING CORPORATION),**
Respondents.

G.R. No. 181353

SERENO,* *CJ.*,
LEONARDO-DE CASTRO,** *J.*,
Acting Chairperson,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:

JUN 06 2016

x---x

DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition filed by petitioner HGL Development Corporation (HGL) against private respondent Semirara Mining Corporation (Semirara Mining) and public respondent Judge Rafael O. Penuela (Penuela), presiding judge of the Regional Trial Court, Branch 13, of Culasi, Antique (RTC-Culasi), to be treated either as a (1) Petition for Indirect Contempt based on Rule 71, Section 4 of the Rules of Court; or (2) Petition for *Certiorari* under Rule 65 of the Rules of Court. HGL is essentially assailing in its Petition Judge Penuela's issuance, upon motion of Semirara Mining, of the Order dated July 18, 2007 which dismissed with prejudice Civil Case No. C-146 on the ground of forum shopping, in sheer and blatant defiance of the Decision[1] and Resolution[2] of the Court in G.R. No. 166854, bearing the title *Semirara Coal Corporation (now Semirara Mining Corporation) v. HGL Development Corporation* (*Semirara Coal Corporation case*).

---

* On leave.
** Per Special Order No. 2354 dated June 2, 2016.
1 539 Phil. 532 (2006).
2 G.R. No. 166854, February 14, 2007.

ANTECEDENT FACTS

The institution of Civil Case No. C-146 before RTC-Culasi

Through a Coal Operating Contract dated July 11, 1977, the Department of Energy (DOE) tasked Semirara Mining with the exploration, conservation, and development of all coal resources that could be found in the entire Island of Semirara, Antique, with a total area of approximately 5,500 hectares.

HGL was granted Forest Land Grazing Lease Agreement (FLGLA) No. 184 by the Department of Environment and Natural Resources (DENR) covering 367 hectares of land located in the *barrios* of Bobog and Pontod, Island of Semirara, Municipality of Caluya, Province of Antique (subject land), for a term of 25 years effective from August 28, 1984 to December 31, 2009. HGL had been grazing cattle on the subject land since the effectivity of FLGLA No. 184.

Sometime in 1999, Semirara Mining sought from HGL permission so the trucks and other equipment of Semirara Mining could pass through a portion of the subject land. HGL granted such permission believing that Semirara Mining would only use the portion of the subject land as an alternate route to its mining site. HGL later discovered that Semirara Mining had already undertaken the following activities on the subject land: erected several buildings for its administrative offices and employees' residences; constructed an access road to the mining site; conducted blasting and excavation activities; and maintained a stockyard for its extracted coals. The objections of HGL against the continuing activities of Semirara Mining on the subject land went unheeded. Said activities of Semirara Mining had severe adverse effects on the cattle grazing on the subject land, eventually leading to the decimation of the cattle of HGL.

HGL complained against Semirara Mining before the DENR through a letter dated October 29, 1999. HGL asked the DENR to conduct an investigation of Semirara Mining and to order the latter to pay damages to HGL. There was no showing that the DENR took any action on said letter-complaint of HGL. On December 6, 2000, however, the DENR issued an Order unilaterally cancelling FLGLA No. 184 for failure of HGL to pay annual rental dues and surcharges and submit grazing reports from 1986 to 1999; and ordering HGL to vacate the subject land. HGL filed a letter of consideration dated January 12, 2001 which was denied by the DENR in its Order dated December 9, 2002. The DENR stated in said Order that it had to cancel the lease agreement with HGL after the DENR was informed by the DOE of the existence of coal deposits on the subject land and the DENR had to give way to the jurisdiction of the DOE over coal-bearing lands. HGL wrote the DENR another letter of reconsideration dated March 6, 2003, which was unacted upon until HGL withdrew said letter on August 4, 2003.

On November 17, 2003, HGL simultaneously instituted two actions before different courts. *First*, HGL instituted before the RTC, Branch 21, of Caloocan City (RTC-Caloocan), an action against the DENR for specific performance and damages, with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction, docketed as **Civil Case No. C-20675**. HGL primarily prayed in Civil Case No. C-20675 that the DENR be compelled to perform its contractual obligations under FLGLA No. 184, specifically, to respect and recognize HGL as a valid and lawful occupant of the subject land until December 31, 2009. Semirara Mining later intervened as defendant in said case. *Second*, HGL instituted before RTC-Culasi an action against Semirara Mining for recovery of possession of the subject land and damages with prayer for TRO and/or writ of preliminary mandatory injunction, docketed as **Civil Case No. C-146**, proceedings in which are the subject of the instant Petition.

In its Complaint[3] in Civil Case No. C-146, HGL alleged that it had been in lawful possession of the subject land based on FLGLA No. 184 when it was ousted therefrom by Semirara Mining through deceit and force. HGL, thus, prayed for recovery of possession of the subject land and award of actual, moral, and exemplary damages, as well as attorney's fees and litigation expenses. HGL likewise prayed for preliminary mandatory injunction and/or TRO to enjoin Semirara Mining from continuing to encroach and take over the subject land and to restore HGL to rightful possession of said land while the case was being heard.

Semirara Mining contended in its Answer[4] that its right to possess the subject land was based on the Coal Operating Contract executed in its favor by the DOE on July 11, 1977 covering the entire Island of Semirara. The entire Island of Semirara (including the subject land) was declared a Coal Mining Reservation Area as early as the 1940s; and said Coal Operating Contract was executed in favor of Semirara Mining by the DOE pursuant to its exclusive jurisdiction over the exploration, utilization, and conservation of all coal resources in the said Island under Presidential Proclamation No. 649, and subsequent amendments and/or enactments related thereto.

Semirara Mining also averred that the DENR, through its Orders dated December 6, 2000 and December 9, 2002, unilaterally cancelled FLGLA No. 184 by virtue of paragraph 2 of said Agreement, which stated that the same was subject to cancellation, among other grounds, should there be a "prior and existing valid claim or interest" over the land it covered. In addition, HGL already lost its right to appeal or assail the validity of said DENR Orders since these were not elevated for review before the Office of the President and, thus, already attained finality.[5]

---

3 Records, Volume 1, pp. 6-31.
4 Id. at 124-135.
5 Id.

Trial and Appellate Court Proceedings Re: Writ of Preliminary Mandatory Injunction

RTC-Culasi, then presided by Judge Antonio B. Bantolo (Bantolo), initially heard the motion of HGL for issuance of a TRO or a writ of preliminary injunction.[6] HGL presented the testimony of Oscar Lim (Lim), administrator of HGL for the subject land, after which, it offered its documentary exhibits in open court.[7] RTC-Culasi later admitted the evidence offered by HGL over the objections of Semirara Mining.[8]

When it was the turn of Semirara Mining to present evidence, its counsel failed to appear on the scheduled hearings. Victor Consunji (Consunji), President of Semirara Mining, sent a letter dated March 19, 2004 to Judge Bantolo, and received by RTC-Culasi on March 22, 2004, asking for the postponement and resetting of the hearings set on March 23 and 24, 2004 because of the resignation of the counsel of Semirara Mining. During the hearing on March 24, 2004, HGL opposed the postponement of the hearing because (1) Consunji's letter was not in the form of a motion for postponement; (2) HGL was not furnished a copy of Consunji's letter; and (3) there was no showing that Consunji was duly authorized to represent Semirara Mining in the case.

RTC-Culasi issued an Order[9] on March 24, 2004 declaring that counsel for Semirara Mining failed to appear without justification at the hearing scheduled that day despite due notice. In addition to the grounds for opposition to the postponement propounded by HGL, RTC-Culasi also noted that there was nothing in the records to show that counsel for Semirara Mining had already withdrawn from the case and that Semirara had accepted its counsel's resignation. Hence, upon motion of HGL, RTC-Culasi already submitted for resolution the issue of whether or not a writ of preliminary mandatory injunction should be issued *pendente lite*. RTC-Culasi, in the same Order scheduled a Pre-Trial Conference in the case.

Semirara Mining filed on April 15, 2004 before RTC-Culasi an Omnibus Motion,[10] claiming accident and/or excusable negligence and existence of a meritorious defense, and praying for the following: (1) reversal of the Order dated March 24, 2004; (2) admission of its attached documentary evidence against the motion of HGL for a TRO or preliminary mandatory injunction; and (3) setting of the case for preliminary hearing of its special and affirmative defenses. In the alternative, Semirara Mining prayed for the dismissal of the case on the ground of forum shopping, questioning the propriety of the simultaneous filing by HGL of Civil Case

---

6 Id. at 32-33.
7 Id. at 41, 43, 45, 47, and 61-62.
8 Id. at 32-33, 61, 75, 92, 108, and 166.
9 Id. at 171-172.
10 Id. at 176-217.

No. C-146 before RTC-Culasi and Civil Case No. C-20675 before RTC-Caloocan.

In a Resolution[11] dated June 21, 2004, RTC-Culasi denied for lack of merit the Omnibus Motion of Semirara Mining. RTC-Culasi found no reason to reverse its Order dated March 24, 2004 because there was no satisfactory proof that Semirara Mining accepted its counsel's resignation; the counsel of Semirara Mining did not file her withdrawal as such and did not furnish the opposing party with a copy of said withdrawal; and Consunji's letter dated March 19, 2004 was not a motion for postponement and was a mere scrap of paper. RTC-Culasi further refused to admit the documentary evidence attached to the Omnibus Motion of Semirara Mining for they did not undergo the proper procedure for presentation of evidence laid down in the Rules of Court, but Semirara Mining was not precluded from presenting the same evidence during trial proper. RTC-Culasi lastly denied the prayer of Semirara Mining for preliminary hearing on its affirmative defenses, taking into account the allegation of HGL in its Complaint on the urgency for the issuance of the injunctive relief because it was continuing to suffer damages from the acts of Semirara Mining. RTC-Culasi held:

> In short, the grounds relied upon in the Omnibus Motion is either not supported by convincing document/evidence and/or are evidentiary in nature that could be well threshed out and/or could be well presented during the trial on the merits. [Semirara Mining] had shut off the opening door of March 23 and March 24, 2004 the opportune time granted him.
>
> WHEREFORE, premises considered, [Semirara Mining's] Omnibus Motion dated April 13, 2004 is hereby denied for lack of merit.
>
> Let the Order of March 24, 2004 stands.

Semirara Mining filed a Motion for Reconsideration of the foregoing Resolution (to which HGL subsequently filed an Opposition) as well as a Request for Admission of documents proving the cancellation of FLGLA No. 184.[12] RTC-Culasi did not act on both Motions of Semirara Mining.

On September 16, 2004, RTC-Culasi issued a Resolution[13] resolving the motion of HGL for the issuance of a writ of preliminary mandatory injunction. RTC-Culasi found that:

> [HGL's] Exhibit "A" with its sub-markings – Forest Land Grazing Agreement No. [184]-FLGA – establishes the rights of [HGL] over the subject land. It also established the physical actual possession and the right to the actual physical possession of [HGL] over the subject land. Consequently, with its Exhibit "A" as well as its sub-markings [HGL] falls within the ambit of Article 539 of the Civil Code which is hereunder reproduced for quick reference as follows:

---

11 Records, Volume 2, pp. 407-409.
12 Id. at 442-450, 454-459, and 483-488.
13 Id. at 495-506.

> "Article 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to his possession by the means established by the law and the Rules of Court."
>
> "A possessor deprived of his possession through forcible entry may within ten days from filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof."
> (see Art. 539, Civil Code)

RTC-Culasi also adjudged that the other documentary evidence submitted by HGL were supportive of the allegations in its Complaint of prior rightful possession of the subject land, eventual unlawful ouster from the same, and damages suffered. In contrast, RTC-Culasi stated that Semirara Mining failed to controvert the evidence of HGL despite due notice and/or opportunity to be heard. RTC-Culasi decreed in the end:

> WHEREFORE, premises considered, without prejudice to [Semirara Mining's] presentation of the evidence on the merits, in the meantime [HGL's] application for the Writ of Preliminary Mandatory Injunction over the subject land is granted upon a bond fixed in the amount of ₱1,000,000.00 conditioned to pay [Semirara Mining] whatever damages it may suffer by reason of injunction if it is found later that [HGL] is not entitled thereto.[14]

Semirara Mining did not seek reconsideration of the foregoing Resolution.

After HGL posted the required bond on October 5, 2004, RTC-Culasi issued the Writ of Preliminary Mandatory Injunction[15] on October 6, 2004, ordering the Provincial Sheriff of Antique as follows:

> NOW, THEREFORE, you the Provincial Sheriff of Antique or your deputy, Culasi, Antique, is hereby commanded to restrain [Semirara Mining] or any of its agent, employee or representatives to cease and desist from encroaching the subject land or conducting any activities therein, and to restore the possession of the subject land to [HGL] or to any of its authorized agent, representative and/or administrator.

Giovanni R. Relator, Sheriff IV of RTC-Culasi, submitted a Sheriff's Report[16] dated October 11, 2004 on the service and attempted enforcement of the Writ of Preliminary Injunction, pertinent portions of which are reproduced below:

---

14 Id. at 504.
15 Records, Volume 3, pp. 530-532.
16 Id. at 528-529;

> That on October 8, 2004, the undersigned together with [HGL's] representatives, Atty. Don Carlo Ybañez, Atty. Marc Antonio, and Oscar Lim, and three (3) police officers namely: PO3 Remus Bayawa, PO2 Arnel Cuadernal and SPO1 Faustito Cagay of 315th Mobile Group, Esperanza, Culasi, Antique, went to the Semirara Coal Corporation located at Semirara, Caluya, Antique to implement and execute the Writ of Preliminary Mandatory Injunction, wherein, I personally contacted and tendered to Mr. [Juniper A. Baroquillo], Administrative Officer of [Semirara Mining] at the Sitios Bobog and Pontod, Semirara, Caluya, Antique, copies of Resolution dated September 16, 2004, Notification and the Writ of Preliminary Mandatory Injunction which he received but vehemently refused to acknowledge receipt of the same.
>
> Mr. [Juniper A. Baroquillo] categorically informed me in the presence of the representative and counsel of the HGL Corporation that he and his company will not abide by any means with the Order of this Court to restore [HGL] in the premises and restrain [Semirara Mining] from conducting any activities within the area subject matter of the Writ of Preliminary Mandatory Injunction. Nevertheless, despite the refusal to abide nor acknowledge receipt of the lawful order of this Court; the undersigned delivered to him copies of Resolution, Notification and Writ of Preliminary Mandatory Injunction.
>
> Thereafter, I informed Mr. [Juniper A. Baroquillo] that by his acts and actuations of not abiding nor acknowledging the lawful order and/or processes of the court, the same is a good ground for [HGL] to take whatever legal action they may consider under the premises.

Semirara Mining filed on October 12, 2004 a Petition for *Certiorari*[17] before the Court of Appeals, docketed as CA-G.R. CEB-SP No. 00035, assailing the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 issued by RTC-Culasi. Semirara Mining raised, *inter alia*, the issue of forum shopping by HGL.[18]

---

17 CA *rollo* (Vol. I), pp. 2-168.

18 Semirara Mining cited the following grounds for its Petition for *Certiorari*:

1. [HGL] has no legal right or cause of action under the principal action or complaint, much less, to the ancillary remedy of injunction;
2. [HGL] did not come to court with clean hands;
3. [Judge Bantolo] unjustifiably and arbitrarily deprived [Semirara Mining] of its fundamental right to due process by not giving it an opportunity to present evidence in opposition to the mandatory injunction;
4. [Judge Bantolo] immediately granted the application for the issuance of a writ of mandatory injunction without first resolving the pending Motion for Reconsideration dated July 12, 2004 of [Semirara Mining];
5. [Judge Bantolo] did not consider or admit the certified copies of the official records of the DENR cancelling [HGL's] FLGLA as evidence against the mandatory injunction prayed for;
6. [Judge Bantolo] should have granted [Semirara Mining's] Motion for Preliminary Hearing on its affirmative defense that [HGL] under its complaint has no cause of action against [Semirara Mining];
7. **[Judge Bantolo] should have dismissed the complaint outright for violation of the rules on forum shopping by [HGL]**; and
8. The mandatory injunction issued in the instant case is violative of the provisions of Presidential Decree [No.] 605. (Id. at 10-11).

The Court of Appeals issued a TRO on October 13, 2004 enjoining the implementation of the assailed Resolution and Writ of RTC-Culasi.[19]

In its Decision[20] dated January 31, 2005, the Court of Appeals dismissed the Petition in CA-G.R. CEB-SP No. 00035 and affirmed the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 of RTC-Culasi. The Court of Appeals directly addressed five of the eight issues raised by Semirara Mining in its Petition. The issue of forum shopping by HGL was one of the three which the appellate court chose not to resolve for being "immaterial and irrelevant."

Without moving for reconsideration of the Court of Appeals Decision dated January 31, 2005, Semirara Mining filed before this Court a Petition for Review on *Certiorari*,[21] docketed as G.R. No. 166854. Among the grounds for its Petition before the Court,[22] Semirara Mining reiterated that Judge Bantolo of RTC-Culasi committed grave abuse of discretion in refusing or failing to dismiss outright the Complaint of HGL in Civil Case No. C-146 for being in violation of the rules against forum shopping. On March 2, 2005, the Court issued a TRO enjoining the implementation and enforcement of the appealed Decision of the appellate court.[23]

---

19 Id. at 170-171.

20 Id. at 443-452; penned by Associate Justice Arsenio J. Magpale with Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr. concurring .

21 Id. at 453-825.

22 Id. at 466-468; Grounds in support of Semirara Mining's petition in G.R. No. 166854:
The Honorable Court of Appeals committed serious errors of law in dismissing the petition for certiorari and in affirming the assailed resolution of public respondent granting the application for preliminary mandatory injunction considering that:
[I] The Resolution dated 16 September 2004 and the Writ of Preliminary Mandatory Injunction dated 6 October 2004 issued by public respondent are a patent nullity as [HGL] clearly has no legal right or cause of action under its principal action or complaint, much less, to the ancillary remedy of preliminary mandatory injunction;
[II] A Writ of Preliminary Mandatory Injunction cannot be used to take property out of the possession of one party and place it into that of another who has no clear legal right thereto;
[III] [HGL's] complaint in Civil Case No. C-146 is in the nature of an *accion publiciana*, not forcible entry; hence, a Writ of Preliminary Mandatory Injunction is not a proper remedy;
[IV] [Semirara Mining] was unjustifiably and arbitrarily deprived of its fundamental right to due process when it was denied the right to present evidence in opposition to the application for preliminary mandatory injunction;
[V] The public respondent deliberately withheld the resolution of [Semirara Mining's] Motion for Reconsideration dated 12 July 2004 and proceeded to prematurely issue the preliminary mandatory injunction in violation of [Semirara Mining's] right to fair play and justice;
[VI] Public respondent committed grave abuse of discretion when:
1) He refused or failed to admit in evidence and/or consider the certified public records of the DENR order cancelling [HGL's] FLGLA;
2) He refused or failed to conduct a hearing on these certified public documents which conclusively prove [HGL's] lack of cause of action under the principal action; and
3) **He refused or failed to dismiss the complaint outright for [violating] the rules on forum shopping by [HGL].**

23 Id. at 982-984.

The Court promulgated the *Semirara Coal Corporation case* on December 6, 2006.[24]

The Court noted at the beginning that the Petition in CA-G.R. CEB-SP No. 00035 should not have prospered before the Court of Appeals since Semirara Mining failed to first file a motion for reconsideration of the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 of RTC-Culasi. A motion for reconsideration is a condition *sine qua non* for the grant of the extraordinary writ of *certiorari*, as said motion was an available plain, speedy, and adequate remedy in the ordinary course of law, designed to give the trial court the opportunity to correct itself.

On the merits of the Petition of Semirara Mining, the Court ruled:

> The pivotal issue confronting this Court is whether the Court of Appeals seriously erred or committed grave abuse of discretion in affirming the September 16, 2004 Resolution of the Regional Trial Court of Antique granting the writ of preliminary mandatory injunction.
>
> Under Article 539 of the New Civil Code, a lawful possessor is entitled to be respected in his possession and any disturbance of possession is a ground for the issuance of a writ of preliminary mandatory injunction to restore the possession. Thus, [Semirara Mining's] claim that the issuance of a writ of preliminary mandatory injunction is improper because the instant case is allegedly one for *accion publiciana* deserves no consideration. This Court has already ruled in *Torre, et al. v. Hon. J. Querubin, et al.*, that prior to the promulgation of the New Civil Code, it was deemed improper to issue a writ of preliminary injunction where the party to be enjoined had already taken complete material possession of the property involved. However, with the enactment of Article 539, [HGL] is now allowed to avail of a writ of preliminary mandatory injunction to restore him in his possession during the pendency of his action to recover possession.
>
> It is likewise established that a writ of mandatory injunction is granted upon a showing that (a) the invasion of the right is material and substantial; (b) the right of complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage.
>
> In the instant case, it is clear that as holder of a pasture lease agreement under FLGLA No. 184, HGL has a clear and unmistakable right to the possession of the subject property. Recall that under the FLGLA, HGL has the right to the lawful possession of the subject property for a period of 25 years or until 2009. As lawful possessor, HGL is therefore entitled to protection of its possession of the subject property and any disturbance of its possession is a valid ground for the issuance of a writ of preliminary mandatory injunction in its favor. The right of HGL to the possession of the property is confirmed by [Semirara Mining] itself when it sought permission from HGL to use the subject property in 1999.

---

[24] *Semirara Coal Corporation (now Semirara Mining Corporation) v. HGL Development Corporation*, supra note 1.

In contrast to HGL's clear legal right to use and possess the subject property, [Semirara Mining's] possession was merely by tolerance of HGL and only because HGL permitted petitioner to use a portion of the subject property so that the latter could gain easier access to its mining area in the Panaan Coal Reserve.

The urgency and necessity for the issuance of a writ of mandatory injunction also cannot be denied, considering that HGL stands to suffer material and substantial injury as a result of [Semirara Mining's] continuous intrusion into the subject property. [Semirara Mining's] continued occupation of the property not only results in the deprivation of HGL of the use and possession of the subject property but likewise affects HGL's business operations. It must be noted that [Semirara Mining] occupied the property and prevented HGL from conducting its business way back in 1999 when HGL still had the right to the use and possession of the property for another 10 years or until 2009. At the very least, the failure of HGL to operate its cattle-grazing business is perceived as an inability by HGL to comply with the demands of its customers and sows doubts in HGL's capacity to continue doing business. This damage to HGL's business standing is irreparable injury because no fair and reasonable redress can be had by HGL insofar as the damage to its goodwill and business reputation is concerned.

[Semirara Mining] posits that FLGLA No. 184 had already been cancelled by the DENR in its order dated December 6, 2000. But as rightly held by the Court of Appeals, the alleged cancellation of FLGLA No. 184 through a unilateral act of the DENR does not automatically render the FLGLA invalid since the unilateral cancellation is subject of a separate case which is still pending before the Regional Trial Court of Caloocan City. Notably, said court has issued a writ of preliminary injunction enjoining the DENR from enforcing its order of cancellation of FLGLA No. 184.

The Court of Appeals found that the construction of numerous buildings and blasting activities by petitioner were done without the consent of HGL, but in blatant violation of its rights as the lessee of the subject property. It was likewise found that these unauthorized activities effectively deprived HGL of its right to use the subject property for cattle-grazing pursuant to the FLGLA. It cannot be denied that the continuance of [Semirara Mining's] possession during the pendency of the case for recovery of possession will not only be unfair but will undeniably work injustice to HGL. It would also cause continuing damage and material injury to HGL. Thus, the Court of Appeals correctly upheld the issuance of the writ of preliminary mandatory injunction in favor of HGL.[25] (Citations omitted.)

The decretal portion of the *Semirara Coal Corporation case* reads:

WHEREFORE, the instant petition is *DENIED*. The Decision dated January 31, 2005, of the Court of Appeals in CA G.R. CEB SP No. 00035, which affirmed the Resolution dated September 16, 2004 of the Regional Trial Court of Culasi, Antique, Branch 13, as well as the Writ of Preliminary Mandatory Injunction dated October 6, 2004 issued pursuant

---

25 Id. at 544-547.

> to said Resolution, is *AFFIRMED*. The temporary restraining order issued by this Court is hereby lifted. No pronouncement as to costs.[26]

Markedly, the Court mentioned in the *Semirara Coal Corporation case* the pendency of Civil Case No. C-20675 before RTC-Caloocan in which Semirara Mining challenged the unilateral cancellation of FLGLA No. 184 by the DENR, but it made no pronouncement as to the issue of forum shopping by HGL.

The Court denied with finality the Motion for Reconsideration of Semirara Mining in a Resolution[27] dated February 14, 2007. Per Entry of Judgment[28] dated March 13, 2007, the *Semirara Coal Corporation case* became final and executory.

Contempt Proceedings and Trial on the Merits of Civil Case No. C-146

On October 13, 2004, the same date that the Court of Appeals issued in CA-G.R. CEB-SP No. 00035 a TRO on the implementation of the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 of RTC-Culasi, HGL filed before RTC-Culasi a Motion to Cite (Semirara Mining) in Contempt with Motion for Issuance of Break Open Order.[29] HGL alleged in its Motion that:

> 7. In the present case, Mr. [Juniper A. Baroquillo (Baroquillo)] deliberately refused to obey the *Writ of Preliminary Mandatory Injunction* issued by this Honorable Court. He also showed arrogant, rude and offensive behavior before the branch sheriff and two (2) lawyers – all of whom are officers of this Honorable Court who were then in the performance of official business. Mr. Baroquillo likewise interfered with the proceedings of this Honorable Court by not honoring a lawful writ issued by the latter. By doing so, Mr. Baroquillo directly impeded, obstructed and degraded the administration of justice.
>
> 8. Mr. Baroquillo expressly stated that he was acting for and in behalf of his superiors who apparently ordered him to disobey this Honorable Court's orders. Mr. Baroquillo's superiors are no other than VICTOR A. CONSUNJI and GEORGE B. BAQUIRAN, the President and Vice-President for Special Projects[,] respectively.
>
> 9. Mr. Consunji and Mr. Baquiran willfully disobeyed the lawful order of the court through Mr. Baroquillo, who acted for and in their behalf. Hence, all these persons must be cited in contempt of court.
>
> 10. Section 4, Rule 71 of the Rules of Court provides that the Court can *motu proprio* initiate contempt proceedings. With the Sheriff's return, executed by the branch sheriff, attesting to these facts, there is

---

26 Id. at 547.
27 CA *rollo*, Volume 2, pp. 1530-1532.
28 CA *rollo*, Volume 1, p. 1231.
29 Records, Volume 3, pp. 538-544.

> more than enough basis for this Honorable Court to initiate contempt proceedings against Mr. Baroquillo, Mr. Consunji and Mr. Baquiran.
>
> x x x x
>
> 13. Moreover, [Semirara Mining] through the above-named persons, specifically stated that they would not follow this Court's orders. They will not vacate the subject premises even if this Honorable Court demands them to do so. Hence, there is clearly a need for this Honorable Court to issue a break-open order to allow the branch sheriff and [HGL's] duly authorized representatives to enter the subject property as well as any building constructed thereon.

Hence, HGL prayed that Consunji, George B. Baquiran (Baquiran), and Baroquillo be cited in direct contempt and that a break-open order be issued to allow HGL to enter the subject land and enforce the Writ of Preliminary Mandatory Injunction dated October 6, 2004.

In the meantime, Civil Case No. C-146 proceeded to pre-trial. The parties filed their respective Pre-Trial Briefs.[30] On September 30, 2004, RTC-Culasi terminated the pre-trial proceedings and issued a Pre-trial Order.[31] The Pre-Trial Order did not contain any stipulation of facts, but identified the issues the parties were submitting for resolution, as follows:

> [HGL] raised the issues for the decision of the Court:
>
> 1. Whether or not [Semirara Mining] encroached on the subject property which is leased to [HGL] for a period of 25 years and to expire on December 30, 2009;
>
> 2. Whether or not as a result of [Semirara Mining's] encroachment on the subject property, [HGL] suffered damages;
>
> 3. Whether or not [HGL] is entitled to actual [and] moral damages, and [Semirara Mining] be compelled to restore possession to [HGL] the subject land.
>
> x x x x
>
> The [issues] raised by [Semirara Mining] for the Court to decide:
>
> 1. Whether or not the Complaint be dismissed for lack of payment during the time of filing of the Complaint;
>
> 2. Whether or not the subsequent payment paid by [HGL] in the docket fees without leave of court is valid.

At the end of its Pre-Trial Order, RTC-Culasi gave the parties 10 days within which to file their comments, after the lapse of which, the matters stated in the said Order would be deemed conclusive and binding between the parties.

---

30 Records, Volume 2, pp. 269-274 and 275-281.

31 Id. at 509-512.

Semirara Mining filed on November 2, 2004 a Comment/Motion[32] before RTC-Culasi seeking the issuance of a new pre-trial order which would include for resolution the issues Semirara Mining raised in its pleadings and during the pre-trial proceedings but omitted in the Pre-Trial Order dated September 30, 2004, including the issue of whether or not HGL was guilty of forum shopping.

On November 12, 2004, Semirara Mining filed at the same time an Opposition to [HGL's] Motion to Cite [Semirara Mining] in Contempt and for Issuance of Break Open Order and a Motion for Deferment of Pre-Trial and Further Proceedings.[33] Semirara Mining prays for deferment of proceedings in light of the TRO issued by the Court of Appeals in CA-G.R. CEB-SP No. 00035 on October 13, 2004.

In an Order[34] dated November 18, 2004, RTC-Culasi set a hearing of Civil Case No. C-146 on January 13, 2005 "on the main case on the merits and the contempt proceedings successively." Prior to the scheduled hearing, RTC-Culasi issued a Resolution[35] dated January 10, 2005 acting on the two pending incidents in the case, *i.e.*, the Comment/Motion on the Pre-Trial Order dated September 30, 2004 and Motion for Deferment of Pre-Trial and Further Proceedings, both filed by Semirara Mining, thus:

> WHEREFORE, premises considered:
>
> 1. On the First Incident [Comment/Motion on the Pre-Trial Order dated September 30, 2004], being either: impliedly/expressly included in the portion of the aforequoted Pre-Trial Order of September 30, 2004, or a paraphrase of the same, or are evidentiary matters, or legal matters to be ironed out during the trial on the merits and/or among those proposals not admitted by [HGL], the matters raised in the instant Comment/Motion, as Comment, the same are hereby noted and [Semirara Mining] is not precluded from presenting evidence to that effect.
>
> As a motion – a relief applied as the basis for the issuance of the new Pre-Trial Order – the same [is] denied being improper and/or for lack of merit.

---

32 Records, Volume 3, pp. 566-569. According to Semirara Mining, the Pre-Trial Order dated September 30, 2004 did not include the following issues:

a) Whether or not complaint states a cause of action against [Semirara Mining].

b) Whether or not [HGL] may still file a case against [Semirara Mining] despite failing to exhaust all legal remedies available.

c) Whether or not regular courts [have] jurisdiction to rule that the property located in Semirara is outside the coverage of Proclamation 649.

d) Whether or not [HGL] acted with malice in deliberately failing to state that the FLGLA which is the basis of their possession has already been canceled.

e) Whether or not [Semirara Mining] is entitled to recover exemplary damages, moral damages, collection expenses, attorney's fees and cost of suit in its counterclaim.

f) Whether or not [HGL] is guilty of forum shopping.

33 Id. at 576-586 and 588-594.

34 Id. at 614-615.

35 Id. at 663-666.

> [2.] As to the Second Incident [Motion for Deferment of Pre-Trial and Further Proceedings], the period of sixty (60) days having expired and not extended as of this writing as well as the merit of this case is not included in the subject matter in the Court of Appeals CA. GR. CEB SP NO. 00035, the Second Incident is hereby denied for lack of merit.

During the hearing on January 13, 2005, Semirara Mining again moved for RTC-Culasi to issue a supplemental pre-trial order expressly incorporating the issues omitted from the Pre-Trial Order dated September 30, 2004.[36] RTC-Culasi, in its Order[37] dated February 15, 2005, denied the motion of Semirara Mining as the purportedly omitted issues, particularly, matters of damages and forum shopping, were still to be substantiated by evidence of the parties and there was no compelling reason for the trial court to issue such supplemental pre-trial order at that point in time. Unyielding, Semirara Mining filed a Motion for Clarification[38] of the statement of RTC-Culasi that all the issues raised by Semirara Mining were already "impliedly/expressly included" in the Pre-Trial Order dated September 30, 2004, but this Motion was no longer acted upon by the trial court.

Civil Case No. C-146 then proceeded to trial. Lim, HGL administrator for the subject land, was recalled to the witness stand to testify on matters relating to the main case. HGL next presented Sheriff Relator as witness in the contempt proceedings.[39]

Semirara Mining filed on February 1, 2005 a Motion for Inhibition of Presiding Judge (With Motion for Cancellation of Hearing),[40] which Judge Bantolo denied in a Resolution[41] of even date.[42] Judge Bantolo ordered in the same Resolution that the hearing of Civil Case No. C-146 would proceed as scheduled.

Yet, on March 11, 2005, RTC-Culasi issued an Order[43] holding in abeyance the contempt proceedings instituted by HGL in view of the TRO issued by the Court in G.R. No. 166854 until the Court had resolved the propriety of the issuance of the Writ of Preliminary Mandatory Injunction; but allowed HGL to continue with its presentation of evidence on the merits of the Complaint in Civil Case No. C-146 which was not covered by the TRO.

---

36 TSN, January 13, 2005, p. 4.

37 Records, Volume 4, p. 826.

38 Id. at 855-860.

39 Records, Volume 3, pp. 671 and 783-786.

40 Id. at 753-756.

41 Id. at 787-790.

42 Semirara Mining questioned Judge Bantolo's refusal to inhibit from hearing Civil Case No. C-146 before the Court, docketed as G.R. No. 168813. However, following Judge Bantolo's retirement on January 6, 2006, the Court issued a Resolution dated March 13, 2006 dismissing the Petition in G.R. No. 168813 for being moot and academic. Said Resolution became final and executory on April 21, 2006 (Records, Volume 5, pp. 1305-1306).

43 Records, Volume 4, pp. 867-868.

Semirara Mining filed another Omnibus Motion[44] on April 11, 2005 praying for the annulment of the trial court proceedings conducted on March 11, 2005, as well as for the cancellation of further proceedings in Civil Case No. C-146, insisting that the TRO issued by this Court in G.R. No. 166854 enjoining Judge Bantolo to maintain the *status quo*, pertained not only to the enforcement of the Writ of Preliminary Mandatory Injunction, but also to the continuation of the proceedings in the main case. Another witness for HGL, Elizabeth R. De Leon (De Leon), was able to give her testimony during the hearings on April 15, 2005 and May 3, 2005. Semirara Mining put on record their continuing objection to the proceedings and refused to cross-examine De Leon.[45] RTC-Culasi eventually denied the Omnibus Motion of Semirara Mining in a Resolution[46] dated July 4, 2005.

HGL made a formal offer of its documentary exhibits on July 5, 2005.[47] In a Resolution[48] dated July 25, 2005, RTC-Culasi admitted all the exhibits of HGL over the objection of Semirara Mining, and considered HGL to have rested its case.

Semirara Mining commenced the presentation of its evidence on July 29, 2005 by calling Baquiran to the witness stand. Baquiran, after being subjected to direct and cross-examinations, concluded his testimony on May 24, 2007.[49]

Meanwhile, Judge Bantolo retired from service on January 6, 2006, and in his place, Judge Penuela was appointed Presiding Judge of RTC-Culasi on January 26, 2006.

Semirara Mining filed on March 27, 2006 another Motion to Suspend Proceedings in Civil Case No. C-146 citing once more the pendency of G.R. No. 166854 before the Court and the issuance of the TRO by the Court in said case.[50] On May 30, 2006, RTC-Culasi, already presided by Judge Penuela, issued an Order[51] giving Semirara Mining two months within which to secure from the Court an order specifically enjoining the hearing of the main cause of action in Civil Case No. C-146. However, proceedings in Civil Case No. C-146 were effectively deferred even beyond the two-month period accorded to Semirara Mining in the Order dated May 30, 2006 of RTC-Culasi, with the proceedings in said case resuming only on January 24, 2007.[52]

To recall, in the interim, the Court promulgated the *Semirara Coal Corporation case* on December 6, 2006, which upheld the issuance by RTC-

---

44 Id. at 914-928.
45 Id. at 970-971 and 1016-1017.
46 Id. at 1056-1058.
47 Id. at 1036-1052.
48 Records, Volume 5, pp. 1081-1082.
49 Records, Volume 6, p. 1676.
50 Records, Volume 5, pp. 1213-1261.
51 Id. at 1262.
52 Id. at 1307.

Culasi of the Resolution dated September 16, 2004 and Writ of Preliminary Injunction dated October 6, 2004. The *Semirara Coal Corporation case* became final and executory on March 13, 2007.

Dismissal of Civil Case No. C-146 by RTC-Culasi on the ground of forum shopping by HGL

On March 26, 2007, Semirara Mining filed a Motion to Recall or Lift the October 6, 2004 Writ of Preliminary Mandatory Injunction and/or a Motion to Dismiss,[53] anchored on the following grounds:

> I.
>
> THE WRIT OF PRELIMINARY MANDATORY INJUNCTION SHOULD BE RECALLED OR LIFTED AS THERE HAS BEEN A CHANGE IN THE SITUATION OF THE PARTIES WHICH RENDERS ITS EXECUTION OR ENFORCEMENT UNTENABLE, UNJUSTIFIABLE AND INEQUITABLE;
>
> II.
>
> THE PRINCIPAL ACTION IN THIS CASE, THE COMPLAINT ITSELF, SHOULD BE DISMISSED FOR VIOLATION OF [HGL] OF THE MANDATORY RULES ON FORUM SHOPPING; and
>
> III.
>
> BOTH THE ISSUE OF WHETHER OR NOT THE WRIT OF PRELIMINARY MANDATORY INJUNCTION SHOULD BE RECALLED OR LIFTED AND THE ISSUE OF FORUM SHOPPING ARE PREJUDICIAL ISSUES WHICH MUST FIRST BE RESOLVED BEFORE THE MANDATORY INJUNCTION CAN BE IMPLEMENTED.[54]

As to the first ground, Semirara Mining manifested before RTC-Culasi that it had just obtained a Temporary Special Land Use Permit (TSLUP)[55] on March 12, 2007 from the DENR permitting Semirara Mining

---

53 Id. at 1434-1507.

54 Id. at 1435-1436.

55 Special Land Use Permit No. 03-2007 granted Semirara Mining the following authorization:

> In accordance with Section 57 of Presidential Decree No. 705, otherwise known as the Revised Forestry Code of the Philippines, as amended, Special Land Use Permit **OTHER LAWFUL PURPOSES (PLANT AND OTHER MINING FACILITIES SITES)** is hereby granted to **SEMIRARA MINING CORPORATION** with address at 2nd floor DMCI Plaza, 2281 Chino Roces Ave., Makati City for a period of three (3) years to occupy an aggregate area of 61.0 hectares of forestland located at Sitio Bobog and Pontod, Barrio Semirara, Caluya, Antique as described in the attached map which forms part of this Permit.
>
> This Permit is subject to existing Forest Laws, Rules and Regulations, Department Administrative Orders and other regulations which may hereafter be promulgated and the additional terms and conditions stipulated on the separate sheet(s) (marked as Annex "A") hereof.
>
> The privileges granted under this permit is to be used solely by the above-named permittee for Other Lawful Purposes (Plant and other Mining Facilities Sites) purposes only.
>
> This Permit is **NON-TRANSFERRABLE** and **NON-NEGOTIABLE** except as provided for in Section 61 of the aforesaid Decree and expires on March 12, 2010. (Id. at 1467.)

to occupy and use the subject land in connection with its mining operations. Semirara Mining asserted that this was a supervening event which rendered the enforcement of the Writ of Preliminary Mandatory Injunction already untenable, unjustifiable, and inequitable. Anent its second and third grounds, Semirara Mining argued that in order to prevent the possibility of conflicting decisions rendered by different *fora* upon the same subject matter and issues, RTC-Culasi must render a ruling on the issue of forum shopping which had always evaded resolution by RTC-Culasi, the Court of Appeals, and by the Court.

HGL filed on April 25, 2007 its Comment/Opposition[56] to the above-mentioned Motion.

HGL contended that the issuance of the TSLUP in favor of Semirara Mining was not a supervening event or a "change in the situation of the parties"[57] which would warrant the suspension of the execution of the Writ of Preliminary Mandatory Injunction. Semirara Mining secured the TSLUP just to create an artificial situation or a scheme to circumvent, evade, or spoil the final ruling of the Court in the *Semirara Coal Corporation case*.

HGL additionally pointed out that Semirara Mining had repeatedly raised the issue of forum shopping in its various motions and petitions filed before RTC-Culasi, the Court of Appeals, and the Court. Said motions and petitions were already resolved and decided by the said courts and although the rulings were silent on the issue of forum shopping, said issue should be presumed to have already been passed upon and settled by said courts based on the doctrine of *sub silencio* whereby "courts are presumed to have passed upon all points that were raised by the parties in their various pleadings, and that form part of the records of the case."[58]

After a further exchange of pleadings and submission of documentary evidence by the parties, RTC-Culasi issued an Order[59] dated July 18, 2007, granting the motion to dismiss Civil Case No. C-146 of Semirara Mining on the ground of forum shopping. RTC-Culasi reasoned:

> [T]his court believes the issue of forum shopping has not been touched upon and still exists which issue is now under consideration of this court.
>
> In both Regional Trial Courts of Caloocan and Culasi, Antique, [HGL] attempts to revive its cancelled FLGLA No. 184 by asking said court[s] to compel the [Semirara Mining and DENR] to respect its right over the land subject of the FLGLA. Again, it is the considered stand of this court that the issue of the validity and existence of the FLGLA would certainly resolve the cases in both Regional Trial Court[s]. In other words, there may not be identity of the parties as [Semirara Mining] is only an intervenor in RTC Caloocan, it could safely be said that in both courts

---

56 Records, Volume 6, pp. 1513-1565.
57 Id. at 1527.
58 Id. at 1537.
59 Id. at 1809-1824.

there is identity of interest represented. Forum shopping is the filing of multiple suits in different courts, either simultaneously or successively, involving the same parties by asking the courts to rule on the same or related causes of action to grant the same or substantially same reliefs. Such as in this case, the ruling on the possession and the right thereof is the primary issue to be resolved. To resolve the issue on possession, the validity of the FLGLA is the first issue to be resolved.

The test for determining whether a party violated the rule against forum shopping has been laid down in the case of Buan v. Lopez[,] 145 SCRA 34. Forum shopping exists where the elements of *litis pendencia* are present or where final judgment in one case will amount to res adjudicata [on] the other.

["]There thus exist[s] between the action before this Court and RTC Case No. 86-36563 identity of parties, or at least such parties represent the same interests in both actions, as well as the identity of rights asserted and relief prayed for, the relief being founded on the same facts[,] and the identity [on] the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res adjudicata* in the action under consideration[:] all requisites, in fine, of [*auter action pendent*].["]

Consequently, where a litigant (or one representing the same interest or person) sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of litis pendentia in one case is a bar to the others; and, a final judgment in one would constitute res adjudicata and this would cause the dismissal of the rest. x x x.

All the above requisites are present in the two cases filed by [HGL]. As observed by [Semirara Mining], the DENR and [Semirara Mining] have the same interests in the cases before the Caloocan Court and this Court. [HGL] asserts the validity of its FLGLA before the Caloocan Court despite its cancellation and wants the DENR to restore [HGL] the FLGLA area that is being claimed by [Semirara Mining].

The two cases filed by [HGL] was a deliberate violation of the rule on forum shopping. The principal issue that will have to be resolved by both the Caloocan and this court is the same; the validity of this FLGLA. In the Caloocan case, [HGL] is asking that the DENR Order canceling the FLGLA should not be enforced. In RTC, Culasi, Antique, [HGL] is recovering from [Semirara Mining] possession of the subject property because [HGL] has a right to the same by virtue of the FLGLA. In both cases, [HGL's] cause of action rests on the validity of the FLGLA. There are other different respondents (Semirara [Mining] is an intervenor in the Caloocan case) the ultimate objective in both actions is the same, to overturn the DENR's cancellation of the FLGLA. The objective is being litigated in these courts.

As to the recall or lifting of the Writ of Preliminary Injunction as there has been a change in the situation of the parties which renders its execution or enforcement untenable, the Temporary Special Land Use Permit is a supervening event that may cause the stay of execution of the Writ of Preliminary Injunction. Although it is temporary, the period of three (3) years was granted and will expire or lapse after said period of

> time. However, considering that this court finds that [HGL] has violated the rule on forum shopping, there is no more need to discuss the issue further, being ancillary to the main action.

Hence, the Court ruled:

> In View Thereof, for [HGL's] violation of the rule on Forum Shopping, this case is dismissed with prejudice.[60]

The Motion for Reconsideration of HGL filed on September 3, 2007 was denied by RTC-Culasi in its Order[61] dated November 20, 2007. HGL received notice of the denial of its Motion for Reconsideration on December 6, 2007.[62]

The Present Petition for Indirect Contempt or for Certiorari

HGL filed the present Petition on February 6, 2008.

As a Petition for Indirect Contempt under Rule 71, Section 3 of the Rules of Court, it charges Judge Penuela and Semirara Mining, as follows:

> [JUDGE PENUELA AND SEMIRARA MINING] SHOULD BE HELD LIABLE FOR INDIRECT CONTEMPT CONSIDERING THEIR WANTON AND UTTER DISOBEDIENCE, ABUSE AND UNLAWFUL INTERFERENCE WITH THE HONORABLE COURT'S DECISION AND PROCESSES, AS WELL AS CONDUCT TENDING TO DEGRADE THE ADMINISTRATION OF JUSTICE.
>
> I
>
> RESPONDENT JUDGE PENUELA IS GUILTY OF CONTEMPT CONSIDERING THAT:
>
> A. RESPONDENT JUDGE PENUELA UNDERMINED THE HONORABLE COURT'S *DECISION* DATED 06 DECEMBER 2006, WHICH FOUND THAT NO FORUM SHOPPING EXISTS IN THIS CASE WHEN HE RULED IN HIS QUESTIONED ORDERS DATED 18 JULY 2007 AND 20 NOVEMBER 2007 THAT PETITIONER HGL COMMITTED FORUM SHOPPING.
>
> B. RESPONDENT JUDGE PENUELA DISOBEYED THE HONORABLE COURT'S DIRECTIVE THAT PETITIONER HGL BE IMMEDIATELY RESTORED TO THE POSSESSION OF THE SUBJECT PROPERTY WHEN HE DISMISSED THE CASE *A QUO* THEREBY RENDERING INEFFECTIVE THE WRIT OF PRELIMINARY MANDATORY INJUNCTION.

---

60 Id. at 1824.
61 Id. at 1907-1914.
62 Id. at 1914A.

II

RESPONDENT SEMIRARA [MINING] IS GUILTY OF CONTEMPT CONSIDERING THAT:

A. RESPONDENT SEMIRARA [MINING] ENGINEERED ACTS TO UNDERMINE THE HONORABLE COURT'S *DECISION* DATED 06 DECISION 2006.

B. RESPONDENT SEMIRARA [MINING] COUNSELED *DISOBEDIENCE* TO THE HONORABLE COURT'S DECISION DATED 06 DECEMBER 2006 AND EMPLOYED A SCHEME TO ACCOMPLISH THIS OBJECTIVE.[63]

Alternatively, as a Petition for *Certiorari* under Rule 65 of the Rules of Court, it assails the Orders dated July 18, 2007 and November 20, 2007 of RTC-Culasi for having been issued with grave abuse of discretion, to wit:

I

RESPONDENT JUDGE PENUELA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN HE DISMISSED THE CASE *A QUO* ON THE GROUND OF FORUM SHOPPING CONSIDERING THAT:

A. THE HONORABLE COURT IN ITS *DECISION* IN G.R. NO. 166854 HAD ALREADY RESOLVED TO DENY WITH FINALITY THE ARGUMENT OF PRIVATE RESPONDENT SEMIRARA [MINING] THAT PETITIONER HGL IS GUILTY OF FORUM SHOPPING. THUS, RESPONDENT JUDGE PENUELA CONTRAVENED AND EFFECTIVELY REVERSED THE RESOLUTION OF THE HONORABLE COURT ON THE SAME ISSUE OF FORUM SHOPPING.

B. EVEN ASSUMING *ARGUENDO* THAT THE HONORABLE COURT FAILED TO RESOLVE THE ISSUE ON FORUM SHOPPING, THE ISSUE OF FORUM SHOPPING WAS NEVER REMANDED BY THE HONORABLE COURT TO RESPONDENT JUDGE PENUELA FOR HIS RESOLUTION.

C. PRIVATE RESPONDENT SEMIRARA [MINING] IS BARRED FROM RAISING FORUM SHOPPING AS A GROUND IN ITS *MOTION TO RECALL* IN VIEW OF ITS FAILURE TO RAISE THE SAME GROUND IN ITS *ANSWER* DATED 26 FEBRUARY 2004 OR IN A MOTION TO DISMISS.

II

EVEN ASSUMING ARGUENDO THAT THE GROUND OF FORUM-SHOPPING MAY STILL BE RAISED, PETITIONER HGL IS NOT GUILTY OF FORUM SHOPPING BECAUSE THE RTC CALOOCAN CASE AND THE *CASE A QUO* DO NOT INVOLVE THE SAME

---

63 *Rollo*, pp. 28-29.

PARTIES, SUBJECT MATTER AND RELIEFS; FURTHER, THE ISSUES IN THE RTC CALOOCAN CASE AND THE CASE A QUO ARE DIFFERENT AND DISTINCT FROM EACH OTHER.

III

RESPONDENT JUDGE PENUELA LIKEWISE COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE STATED IN HIS ASSAILED *ORDER* DATED 18 JULY 2007 THAT THE TEMPORARY LAND PERMIT MAY BE A SUPERVENING EVENT THAT WARRANTS THE STAY OF EXECUTION OF THE WRIT OF PRELIMINARY MANDATORY INJUNCTION CONSIDERING THAT, THE ISSUANCE OF THE SAID TEMPORARY LAND PERMIT IS PATENTLY UNTENABLE, UNJUSTIFIABLE AND INEQUITABLE.[64]

HGL prays of the Court that:

1. Respondent Judge Rafael [O.] Penuela and Semirara Mining Corporation through its responsible officers be declared and cited in contempt;

2. The appropriate sanctions be imposed by the Honorable Court against respondent Judge Rafael [O.] Penuela and Semirara Mining Corporation acting through its responsible officers;

3. The Order dated 18 July 2007 and the Order dated 20 November 2007 issued by respondent Judge Penuela be REVERSED and SET ASIDE considering that the same are contemptuous, and issued arbitrarily, whimsically and with grave abuse of discretion; and

4. A new Order be issued reinstating the case a quo and directing respondent Judge Penuela to immediately cause the execution of the writ of preliminary mandatory injunction dated 06 October 2004 and to proceed with the trial of the case *a quo*.

Other reliefs just and equitable are likewise prayed for.[65]

In its Comment/Opposition[66] to the instant Petition, Semirara Mining counters:

I.

[HGL] IS USING THE INSTANT PETITION FOR CONTEMPT TO CIRCUMVENT THE RULE ON TIME AND REVIVE THE LOST REMEDY OF APPEAL

II.

[JUDGE PENUELA] IS NOT GUILTY OF CONTEMPT

---

64 Id. at 63-64.
65 Id. at 77.
66 Id. at 462-492.

a.) [Judge Penuela] properly ruled that [HGL] committed forum shopping; the doctrine of sub silencio finds no application in this case; and

b.) [HGL] did not enforce the mandatory injunction; in fact, [HGL] agreed to defer its execution pending resolution of [Semirara Mining's] Motion to Dismiss;

III.

[SEMIRARA MINING] IS NOT GUILTY OF CONTEMPT

a.) The non-enforcement of the writ of preliminary mandatory injunction was not on account of the TSLUP; and

b.) [Judge Penuela] did not dismiss the case on the basis of the TSLUP.

IV.

THE ALTERNATIVE RELIEF OF PETITION FOR CERTIORARI CANNOT BE GIVEN DUE COURSE

a.) A petition for certiorari, under the circumstances, is not the proper remedy; and

b.) The disputed Order has long attained finality.

V.

THE INSTANT PETITION, EVEN IF TREATED AS A PETITION FOR CERTIORARI, IS DEVOID OF MERIT

a.) The issue of forum shopping is still valid and subsisting since said issue was never resolved;

b.) [Judge Penuela] properly ruled on the issue of forum shopping;

c.) The issue of forum shopping need not be raised in the Answer; and

d.) Petitioner [HGL] is guilty of forum shopping.[67]

Judge Penuela likewise filed his Comment[68] to the petition at bar, reiterating his findings that forum shopping existed in the simultaneous filing by HGL of Civil Case No. C-146 and Civil Case No. C-20675 before RTC-Culasi and RTC-Caloocan, respectively, which consequently, warranted the dismissal of Civil Case No. C-146. It was for this reason that Judge Penuela could no longer order the implementation of the Writ of Preliminary Mandatory Injunction, which was upheld by this Court in the *Semirara Coal Corporation case*, and not because of Judge Penuela's sheer disobedience to the ruling of the Court.

---

67 Id. at 462-464.

68 Id. at 493-496.

The respective Manifestations of the parties with regard to the status of Civil Case No. C-20675 before RTC-Caloocan

In its Manifestation[69] filed on October 20, 2008, Semirara Mining informed the Court of the subsequent developments in Civil Case No. C-20675 before RTC-Caloocan, the action for specific performance and damages instituted by HGL against DENR, and in which, Semirara Mining intervened. RTC-Caloocan, in its Orders dated June 10, 2005 and September 22, 2005, denied the Motion to Dismiss of Semirara Mining. Semirara Mining challenged the said Orders in *certiorari* proceedings before the Court of Appeals, docketed as CA-G.R. SP No. 92238. The appellate court promulgated its Decision on January 15, 2007 reversing and setting aside the assailed Orders of RTC-Caloocan, and ordering the dismissal of Civil Case No. C-20675 in view of the failure of HGL to appeal before the Office of the President the unilateral cancellation of FLGLA No. 184 by the DENR. HGL appealed before the Court in G.R. No. 177844. In a minute Resolution dated July 2, 2008, the Court denied with finality the appeal of HGL.

HGL relates in its Counter-Manifestation,[70] filed on November 24, 2008, that the DENR separately challenged via *certiorari* before the Court of Appeals, in CA-G.R. SP No. 92311, the Orders dated June 10, 2005 and September 22, 2005 of RTC-Caloocan, denying the Motion to Dismiss of Semirara Mining. The appellate court affirmed the said Orders of RTC-Caloocan. As a result, the DENR filed a Petition for Review on *Certiorari* before the Court, docketed as G.R. No. 180401. The Court issued a minute Resolution on June 4, 2008 denying with finality the Petition of the DENR. HGL maintains that since the Resolution dated June 4, 2008 of the Court in G.R. No. 180401 first attained finality, then it must prevail over the Resolution dated July 2, 2008 of the Court in G.R. No. 177844.

THE RULING OF THE COURT

The Court finds the Petition at bar to be partly meritorious.

RTC-Culasi erred in dismissing Civil Case No. C-146 on the ground of forum shopping.

At the outset, the Court addresses the issue of whether or not RTC-Culasi could still take cognizance of the issue of forum shopping by HGL. HGL claims that the issue had been previously raised by Semirara Mining before the trial and appellate courts and deemed already passed upon by said courts *sub silencio* adverse to the interest of Semirara Mining. Semirara

---

69 Id. at 499-536.

70 Id. at 675-710.

Mining asserts that the said issue had not yet been squarely passed upon by any court prior to the Orders dated July 18, 2007 and November 20, 2007 of RTC-Culasi.

The Court concurs with Semirara Mining.

The legal concept of *sub silencio* finds basis in Rule 131, Section 3(o) of the Revised Rules of Court:

> Sec. 3. *Disputable presumptions.* – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> x x x x
>
> (o) That all the matters within an issue raised in a case were laid before the court and passed upon by it; and in like manner that all matters within an issue raised in a dispute submitted for arbitration were laid before the arbitrators and passed upon by them[.]

So even if the ruling of the court is silent as to a particular matter, for as long as said matter is within an issue raised in the case, it can be presumed, subject to evidence to the contrary, that the matter in question was already laid before the court and passed upon by it. However, *sub silencio* does not apply to the issue of forum shopping in this case. Although Semirara Mining had repeatedly raised the issue of forum shopping at various stages of the case and before different courts, it was not directly addressed by any of the courts either because it was immaterial and irrelevant to the matter at hand or it was still premature to resolve without the parties presenting evidence on the same.

The Court retraces the proceedings in which Semirara Mining challenged the issuance by RTC-Culasi of the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 before the Court of Appeals in CA-G.R. CEB-SP No. 00035 and then the Court in G.R. No. 166854. Semirara Mining raised the issue of forum shopping as the seventh issue in its Petition in CA-G.R. CEB-SP No. 00035. In its Decision dated January 31, 2005, the appellate court wrote:

> The instant petition was brought to US by [Semirara Mining] assailing the propriety of the Resolution dated September 16, 2004 granting the prayer of [HGL] for the issuance of a writ of preliminary mandatory injunction commanding to restrain [Semirara Mining] or any of its agents from encroaching the subject land or from conducting any activities therein, and further, to restore the possession of the subject land to [HGL] or any of its agents or representatives.
>
> Thus, this Court sees **no reason to resolve or discuss issues** #II, VI, and **VII** for being **immaterial and irrelevant** to the question of whether or not the Resolution dated September 16, 2004 was issued with

> grave abuse of discretion amounting to lack or in excess of jurisdiction.[71] (Emphases supplied.)

In the *Semirara Coal Corporation case*, the Court affirmed the aforementioned Decision of the Court of Appeals. Even though the Court was silent on the issue of forum shopping, its affirmation of the judgment of the appellate court could only be construed as to include the latter's position with regard to the said issue.

During the preliminary stages in Civil Case No. C-146, Semirara Mining submitted several verbal and written motions for RTC-Culasi to already take cognizance of and resolve the issue of forum shopping. RTC-Culasi, then still presided by Judge Bantolo, consistently ruled that the issue required the presentation of evidence, thus, need not be resolved at that point in time. Notably, RTC-Culasi, already presided by Judge Penuela, issued Orders dated July 18, 2007 and November 20, 2007, dismissing Civil Case No. C-146 on the ground of forum shopping by HGL, only after an exchange of pleadings and submission of documentary evidence by the parties.

Yet, as to whether or not HGL violated the prohibition against forum shopping by simultaneously instituting Civil Case No. C-146 and Civil Case No. C-20675 before RTC-Culasi and RTC-Caloocan, respectively, the Court rules in the negative.

The rule against forum shopping is embodied in Rule 7, Section 5 of the Revised Rules of Court:

> Sec. 5. *Certification against forum shopping.* – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

---

[71] CA *rollo*, p. 447.

Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[72]

None of the above-mentioned elements existed in Civil Case No. C-146 before RTC-Culasi *vis-à-vis* Civil Case No. C-20675 before RTC-Caloocan.

There was no identity of parties in the two cases. In Civil Case No. C-146, HGL filed the action against Semirara Mining; while in Civil Case No. C-20675, HGL instituted the suit against DENR, and Semirara Mining intervened as an interested party.

There was also no identity of rights asserted and reliefs prayed for by HGL in Civil Case No. C-146 and Civil Case No. C-20675. Based on the material allegations of HGL in its Complaint in Civil Case No. C-146, it was clear that HGL was championing its **right of possession** of the subject land, of which it was unlawfully deprived by Semirara Mining. The reliefs sought by HGL were mainly (1) the recovery of possession of the subject land, and (b) the recovery of damages caused by the unlawful encroachment into and occupation of the subject land by Semirara Mining.[73] In comparison, in the material allegations in its Complaint in Civil Case No. C-20675, HGL was asserting its **right to compel DENR to comply with the latter's obligations under FLGLA No. 184**. HGL prayed for RTC-Caloocan to (1) enjoin the enforcement by the DENR of its Order dated December 6, 2000 unilaterally cancelling FLGLA No. 184; (2) order DENR to perform its obligations under FLGLA No. 184, specifically, to respect and recognize HGL as the valid and lawful occupant of the subject land until December 2009; and (3) award damages, attorney's fees, and costs of suit.[74]

Moreover, any judgment that could be rendered in Civil Case No. C-146 would not amount to *res judicata* on any judgment that could, in turn, be rendered in Civil Case No. C-20675, or *vice versa*.

---

72 *Yu v. Lim*, 645 Phil. 421, 431-432 (2010).
73 Records, Volume 1, pp. 10-12.
74 Id. 249-256.

Res judicata was defined in *Selga v. Brar*[75] as follows:

> *Res judicata* has two concepts. The first is bar by prior judgment under Rule 39, Section 47(b), and the second is conclusiveness of judgment under Rule 39, Section 47(c). These concepts differ as to the extent of the effect of a judgment or final order as follows:
>
> > SEC. 47. *Effect of judgments or final orders.* - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
> >
> > x x x x
> >
> > (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
> >
> > (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.
>
> Jurisprudence taught us well that *res judicata* under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions. The judgment in the first action is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. In contrast, *res judicata* under the second concept or estoppel by judgment exists when there is identity of parties and subject matter but the causes of action are completely distinct. The first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved herein. (Citations omitted.)

Neither concept of *res judicata* applied to Civil Case No. C-146 and Civil Case No. C-20675. There could be no bar by prior judgment because the two cases involved different parties, subject matter, and causes of action. On one hand, in Civil Case No. C-146, the parties were HGL as plaintiff and Semirara Mining as defendant; the subject matter was the subject land; and the causes of action were recovery of possession of the subject land and damages. On the other hand, in Civil Case No. C-20675, the parties were

---

75 673 Phil. 581, 592-593 (2011).

HGL as plaintiff, DENR as defendant, and Semirara Mining as intervenor; the subject matter was the contract between HGL and DENR, *i.e.*, FLGLA No. 184; and the causes of action were specific performance of the obligations of DENR under FLGLA No. 184 and recovery of damages. Given the lack of identity of parties and subject matter between Civil Case No. C-146 and Civil Case No. C-20675, then there could likewise be no conclusiveness of judgment or estoppel by judgment between them.

While Civil Case No. C-146 and Civil Case No. C-20675 were irrefragably related, they were not the same or so similar that the institution of said cases by HGL before two RTCs constituted forum shopping. Indeed, the right of possession of the subject land of HGL was based on FLGLA No. 184, but a judgment in Civil Case No. C-20675 sustaining the unilateral cancellation by DENR of FLGLA No. 184 on December 6, 2000 would not necessarily be determinative of Civil Case No. C-146 because when HGL was purportedly unlawfully deprived of possession of the subject land by Semirara Mining in 1999, FLGLA No. 184 was still valid and subsisting.

The present Petition is not the proper remedy for correcting the error of judgment of RTC-Culasi.

There is no question that RTC-Culasi had jurisdiction over the subject matter of Civil Case No. C-146. The issuance of RTC-Culasi of the Order dated July 18, 2007, dismissing with prejudice Civil Case No. C-146 on the ground of forum shopping, and Order dated November 20, 2007, denying the Motion for Reconsideration of HGL, was an error of judgment committed in the exercise of its jurisdiction.

In addition, the dismissal with prejudice of Civil Case No. C-146 constituted the final judgment of RTC-Culasi in the case. An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court.[76] A dismissal with prejudice is already deemed an adjudication of the case on the merits, and it disallows and bars the refiling of the complaint. It is a final judgment and the case becomes *res judicata* on the claims that were or could have been brought in it.[77]

Given the foregoing circumstances, the proper remedy available to HGL was to assail the Orders dated July 18, 2007 and November 20, 2007 of RTC-Culasi before the Court of Appeals by filing an ordinary appeal under Rule 41 of the Revised Rules of Court, relevant portions of which are quoted below:

---

76 *Magestrado v. People*, 554 Phil. 25, 33 (2007).

77 *Strongworld Construction, Inc. v. Parello*, 528 Phil. 1080, 1097 (2006).

RULE 41
Appeal from the Regional Trial Courts

Sec. 1. *Subject of appeal.* – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

x x x x

Sec. 2. *Modes of appeal.* –

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

x x x x

Sec. 3. *Period of ordinary appeal; appeal in habeas corpus cases.* – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, an appeal in *habeas corpus* cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (As amended by SC Resolution, A.M. No. 01-1-03-SC, June 19, 2001)

HGL did not file any notice of appeal with RTC-Culasi. Instead, it filed the present Petition for Indirect Contempt, or alternatively, a Petition for *Certiorari*.

The Petition for Indirect Contempt of HGL rests heavily on the argument that the filing by Semirara Mining of a motion to dismiss Civil Case No. C-146 on the ground of forum shopping, as well as the grant of said motion by Judge Penuela through the Orders dated July 18, 2007 and November 20, 2007, were in sheer and blatant defiance of the final ruling of the Court in the *Semirara Coal Corporation case*. HGL avers that Semirara Mining and Judge Penuela are guilty of indirect contempt for: (1) disobedience of, or resistance to, a lawful writ, process, order, or judgment of the court; (2) abuse or interference with court processes; and (3) improper conduct impeding, obstructing, and degrading the administration of justice.

The Petition for Indirect Contempt is completely baseless.

As the Court had previously observed, the *Semirara Coal Corporation case* adjudicated on the propriety and validity of the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 issued by RTC-Culasi. Based on the *Semirara Coal Corporation case*, HGL should be restored and kept in possession of the subject land during the pendency of Civil Case No. 146. The *Semirara Coal Corporation case* did not touch upon the issue of forum shopping, and neither did it prohibit RTC-Culasi from ever taking cognizance of and resolving said issue. Semirara Mining, in repetitively raising the issue of forum shopping through various motions and petitions and at different stages of Civil Case No. C-146, was tenacious, at worst, but not contumacious. RTC-Culasi, in refusing to rule on the issue of forum shopping during the preliminary stages of Civil Case No. C-146, only reasoned that the issue required the presentation of evidence by the parties. In *Panaligan v. Ibay*,[78] the Court declared:

> [I]t is settled that an act to be considered contemptuous must be clearly contrary or prohibited by the order of the court. "A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required." The acts of complainant in the case at bar is not contrary or clearly prohibited by the order of the court. (Citation omitted.)

Judge Penuela, for his part, acted in his official capacity and within the jurisdiction of his court when he issued the Orders dated July 18, 2007 and November 20, 2007. Although Judge Penuela erred in his finding that HGL committed forum shopping and in dismissing with prejudice Civil Case No. C-146 on the basis thereof, he merely made an error of judgment that was subject to appeal, and he did not in any way disobey or disrespect the Court for which he may be cited for indirect contempt.

Moreover, as a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, the instant Petition is the wrong remedy. The Court held in *Pure Foods Corporation v. National Labor Relations Commission*[79] that "[w]hen a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctible through the original civil action of *certiorari*."

The pronouncements of the Court in *Magestrado v. People*[80] is also particularly instructive in this case:

---

78 525 Phil. 22, 31 (2006).
79 253 Phil. 411, 422-423 (1989).
80 Supra note 76 at 33-35.

Certiorari generally lies only when there is no appeal nor any other plain, speedy or adequate remedy available to petitioners. Here, appeal was available. It was adequate to deal with any question whether of fact or of law, whether of error of jurisdiction or grave abuse of discretion or error of judgment which the trial court might have committed. But petitioners instead filed a special civil action for *certiorari*.

We have time and again reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 of the Revised Rules of Court lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law." *Certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for lost appeal.

As *certiorari* is not a substitute for lost appeal, we have repeatedly emphasized that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional, and that the failure to perfect an appeal renders the decision of the trial court final and executory. This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. Neither can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal.

The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action for *certiorari*. As this Court held in *Fajardo v. Bautista*:

> Generally, an order of dismissal, whether right or wrong, is a final order, and hence a proper subject of appeal, not *certiorari*. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. Accordingly, although the special civil action of *certiorari* is not proper when an ordinary appeal is available, it may be granted where it is shown that the appeal would be inadequate, slow, insufficient, and will not promptly relieve a party from the injurious effects of the order complained of, or where appeal is inadequate and ineffectual. Nevertheless, *certiorari* cannot be a substitute for the lost or lapsed remedy of appeal, where such loss is occasioned by the petitioner's own neglect or error in the choice of remedies. (Citations omitted.)

HGL further breached the principle of judicial hierarchy in directly filing its Petition for *Certiorari* before the Court. The concurrence of jurisdiction of this Court, the Court of Appeals, and the RTCs over petitions

for *certiorari* "does not give a party unbridled freedom to choose the venue of his action lest he ran afoul of the doctrine of hierarchy of courts." Instead, a becoming regard for judicial hierarchy dictates that petitions for the issuance of writs of *certiorari* against first level courts should be filed with the RTC, and those against the latter, with the Court of Appeals, before resort may be had before the Court.[81] HGL, lastly, filed its Petition for *Certiorari* out of time. HGL received a copy of the Order dated November 20, 2007 of RTC-Culasi, denying its Motion for Reconsideration, on December 6, 2007, but filed the present Petition only on February 6, 2008, two days beyond the 60-day period for filing a petition for *certiorari* set by Rule 65, Section 4 of the Revised Rules of Court.

Still, in the interests of substantive justice and equity, the Court reinstates Civil Case No. C-146 and remands it to RTC-Culasi for the determination of damages to be awarded HGL given that the Writ of Preliminary Mandatory Injunction in its favor, affirmed by a final and executory decision of the Court, was never implemented.

Despite the defects of the Petition at bar, the Court partly grants the same in the interests of substantive justice and equity. This is not the first time that the Court will relax the application of its procedural rules for compelling reasons or exceptional circumstances. As the Court ruled in *Victorio-Aquino v. Pacific Plans, Inc.*[82]:

> In any case, this Court resolves to condone any procedural lapse in the interest of substantial justice given the nature of business of respondent and its overreaching implication to society. To deny this Court of its duty to resolve the substantive issues would be tantamount to judicial tragedy as planholders, like petitioner herein, would be placed in a state of limbo as to its remedies under existing laws and jurisprudence.
>
> Indeed, where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction. Thus, a rigid application of the rules of procedure will not be entertained if it will only obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration. It is a prerogative duly embedded in jurisprudence, as in *Alcantara v. Philippine Commercial and International Bank*, where the Court had the occasion to reiterate that:
>
> > x x x In appropriate cases, the courts may liberally construe procedural rules in order to meet and advance the cause of substantial justice. Lapses in the literal observation of a

---

81 *A.L. Ang Network, Inc. v. Mondejar*, 725 Phil. 288, 297 (2014).

82 G.R. No. 193108, December 10, 2014, 744 SCRA 480, 498-500.

> procedural rule will be overlooked when they do not involve public policy, when they arose from an honest mistake or unforeseen accident, and when they have not prejudiced the adverse party or deprived the court of its authority. The aforementioned conditions are present in the case at bar.
>
> x x x x
>
> There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure. In these cases, we ruled that the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance. The reasons behind the failure of the petitioners in these two cases to comply with the required attachments were no longer scrutinized. What we found noteworthy in each case was the fact that the petitioners therein substantially complied with the formal requirements. We ordered the remand of the petitions in these cases to the Court of Appeals, stressing the ruling that by precipitately dismissing the petitions "the appellate court clearly put a premium on technicalities at the expense of a just resolution of the case."
>
> While it is true that the rules of procedure are intended to promote rather than frustrate the ends of justice, and the swift unclogging of court docket is a laudable objective, it nevertheless must not be met at the expense of substantial justice. This Court has time and again reiterated the doctrine that the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Considering that there was substantial compliance, a liberal interpretation of procedural rules in this labor case is more in keeping with the constitutional mandate to secure social justice." (Citations omitted.)

It is not lost upon the Court that HGL was able to secure a Writ of Preliminary Mandatory Injunction from RTC-Culasi on October 6, 2004, restoring possession of the subject land to HGL and restraining Semirara Mining from further encroaching on or conducting any activities on the said property, for the duration of Civil Case No. C-146. The attempt of the Sheriff to implement the said Writ on October 8, 2004 was thwarted by Semirara Mining. Sermirara Mining challenged the said Writ all the way to this Court but the Court affirmed the same in the *Semirara Coal Corporation case*, which became final and executory on March 13, 2007.

Just four months later, in an Order dated July 18, 2007, RTC-Culasi already dismissed with prejudice Civil Case No. C-146 on the ground of forum shopping, which, as a matter of course, already dissolved the Writ of Preliminary Injunction. The dismissal of Civil Case No. C-146 also put an end to the hearing of the motion to cite in contempt filed by HGL against Semirara Mining and several of its officers after the Sheriff's failed attempt to enforce the Writ of Preliminary Mandatory Injunction on October 8, 2004.

The Court emphasizes that the right of HGL to the Writ of Preliminary Mandatory Injunction was upheld by no less than this Court. Yet, the Writ of Preliminary Mandatory Injunction secured by HGL in its favor was but an empty victory. For no justifiable reason, said Writ was never enforced and HGL never enjoyed the protection and benefits of the same. For the duration the said Writ was not implemented, HGL suffered "continuing damage and material injury," expressly recognized by the Court in the *Semirara Coal Corporation case*, as a result of the failure of HGL to use the subject land for cattle-grazing. Substantive justice and equitable considerations, therefore, warrant that HGL be compensated for said damage and injury suffered 17 years ago, without having to institute yet another action.

The Court is not inclined to completely overturn the dismissal of Civil Case No. C-146 by RTC-Culasi on the ground of forum shopping, even when it constituted an error of judgment, because of the failure of HGL to duly appeal the same. Nonetheless, considering the extraordinary circumstances extant in this case, the Court deems it proper to reinstate Civil Case No. C-146 and to remand it to RTC-Culasi only for the purpose of hearing and determining the damages to which HGL is entitled because of the non-enforcement of the Writ of Preliminary Mandatory Injunction dated October 6, 2004.

WHEREFORE, in consideration of the extraordinary circumstances extant in this case and the interests of substantive justice and equity, the Court hereby **PARTIALLY GRANTS** the instant Petition. The Court **REINSTATES** Civil Case No. C-146 and **REMANDS** it to the Regional Trial Court, Branch 13, of Culasi, Antique, for the specific purpose of hearing and determining the damages to be awarded to HGL for the non-enforcement of the Writ of Preliminary Mandatory Injunction dated October 6, 2004.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

WE CONCUR:

On leave
MARIA LOURDES P. A. SERENO
Chief Justice

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice