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THIRD DIVISION

[G.R. No. 159308, September 16, 2008]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
(DENR), PETITIONER, VS. PAGADIAN CITY TIMBER CO., INC.,
RESPONDENT.**

D E C I S I O N

NACHURA, J.:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court seeking to nullify and set aside the Decision^[2] dated October 18, 2001 and the Resolution^[3] dated July 24, 2003 of the Court of Appeals in CA-G.R. SP No. 59194 entitled "*Pagadian City Timber Co., Inc. v. Antonio Cerilles, as Secretary of the Department of Environment and Natural Resources (DENR) and Antonio Mendoza, as Regional Executive Director, DENR, Region IX.*"

The antecedent facts are as follows:

On October 14, 1994, petitioner, through the DENR, and respondent Pagadian City Timber Co., Inc. executed Industrial Forest Management Agreement (IFMA) No. R-9-040^[4] whereby petitioner, represented by then Regional Executive Director (RED) for Region IX, Leonito C. Umali, authorized respondent, represented by its President Filomena San Juan, to develop, utilize, and manage a specified forest area covering 1,999.14 hectares located in *Barangays* Langapod, Cogonan, and Datagan, Municipality of Labangan, Zamboanga del Sur, for the production of timber and other forest products subject to a production-sharing scheme.

Respondent later submitted the required Comprehensive Development and Management Plan (CDMP) which the DENR approved on August 17, 1995.

On October 8, 1998, in response to the numerous complaints filed by members of the Subanen tribe regarding respondent's alleged failure to implement the CDMP, disrespect of their rights as an indigenous people, and the constant threats and harassment by armed men employed by respondent, RED Antonio Mendoza, DENR Region IX, issued Regional Special Order No. 217 creating a regional team to evaluate and assess IFMA No. R-9-040.

Thus, the DENR sent a letter dated October 22, 1998 to respondent, giving notice of the evaluation and assessment to be conducted on the area from October 22-30, 1998 covering the years 1997 and 1998. In the notice, the DENR requested any representative of the company to appear at the CENRO Office, Pagadian City, and bring with him documents and maps concerning its IFMA operations.

On October 23, 1998, a DENR Evaluation Team composed of Aniceto Wenceslao

(Forester, DENR, Zamboanga del Sur), Isabelo Mangaya-ay (Intern Chief, RCBF/MCO), Philidor Lluisma (Forester II, Regional Office), Chanito Paul Siton (C. Forester, CENRO-Pagadian City), Adelberto Rouillo (Forester, CENRO, Pagadian City), and Francisco Martin (Carto LEP, CENRO, Pagadian City) went to the IFMA site. After a briefing conference between the Evaluation Team and respondent's Operations Manager, Inocencio Santiago, actual field evaluation and assessment followed.

On October 29, 1998, an exit conference and dialogue on post evaluation and assessment of IFMA R-9-04 was held between DENR officials, namely, CENR Officer Maximo O. Dichoso, IFMA Regional Team Leader, Forester Isabelo C. Mangaya-ay, and IFMA Regional Team Member, Forester Philidor O. Lluisma, and IFMA Representative and Operations Manager Inocencio Santiago at the CENRO, Pagadian City.^[5] The exit conference was called to order at 1:30 p.m. and was concluded at 3:00 p.m. Forester Mangaya-ay presented the representative results and findings of the Evaluation Team, to wit:

The presiding officer started with the mango plantation in the Noran, Langapod side. That out of the estimated number of seedlings planted of about 2,008 hills, within an equivalent area of 20 hectares, the result or finding of the inventory conducted at 100% intensity is only 98 hills of seedlings survived including the doubtful and badly deformed. The species planted along trails are Gmelina and Mahogany species. The said foot trail planted with the aforementioned species starts from the entrance of the IFMA are where the notice billboard is posted up to the only existing look-out tower. The estimated average of percent survival for Gmelina is more or less 30%. There are also portions where higher percentage of survival is recorded at 56% and lower at 14%. There are areas planted declared by Kagawad Cerning Becagas of Barangay Cogonan now covered by CSC. The areas covered by CSC, a waiver is needed to be issued by the IFMA holder.

CENR Officer Maximo O. Dichoso commented that during a meeting held before, the IFMA holder was willing to give up the said areas.

The presiding officer continued that on the courtesy call made to the Barangay Chairman of Barangay Cogonan, Mr. Roberto Palaran recounted the assistance extended by the IFMA holder to his barangay as Community Assistance/service which includes electric generator, handheld radio and laborers for the repair of Noburan - Cogonan road and the repair of the hanging bridge at Sitio Tialaic to which the said Barangay Chairman issued a duly signed certification to this effect.

With regards, the seedling stock within the nursery, there are approximately a total number of about 44,460 seedlings of Gmelina species. That the infrastructure implemented or constructed, there exist only one look-out tower of the reported 4 look-out towers constructed. Moreover, the team had also noted only 1 bunkhouse and 1 stockroom or shedhouse. There is also 1 Multi-purpose shed and 1 dilapidated or neglected notice billboard poster at the entrance trail leading to the IFMA area. That with regards the concrete monument, there are only 2 recorded. The other corners visible are those located at junctions of creeks and rivers. But the others cannot be visibly or never planted for

the same cannot be pinpointed or shown to the team allegedly for lack of knowledge by the representative of the IFMA holder. Finally, the presiding officer reminded the herein IFMA representative Mr. Inocencio Santiago that per actual survey, inspection and ground verification, the team believes that the other reported areas planted are located outside the designated IFMA area particularly the Noburan and Langapod sides.^[6]

After the presentation, Mangaya-ay asked Santiago if he had comments, suggestions, or questions regarding the matter and the manner of the conduct of the evaluation and assessment by the Evaluation Team. Santiago said he had none, but requested a copy of the report of the Evaluation Team. Mangaya-ay informed him that it was only RED Mendoza who may furnish him a copy of the report.

Later, the Evaluation Team submitted a report through a Memorandum^[7] dated November 6, 1998 to the DENR-RED of Region 9, Zamboanga City, on the evaluation and assessment of respondent under IFMA No. R-9-040. The said Memorandum stated -

In compliance with Regional Special Order No. 217, Series of 1998, please be informed that the herein information is the result or findings of the team for the conduct of evaluation and assessment following the guidelines set forth under Department Administrative Order (DAO) No. 11, Series of 1995 of Pagadian Timber Co., Inc. under IFMA No. R9-040 against their actual accomplishment as mandated under the terms and conditions of the IFMA including other applicable laws, rules and regulations of the department on the matter.

At the onset, the team conducted a briefing conference and dialogue with the IFMA holder, the CENR Officer of Pagadian City and personnel concerned for the proper and orderly implementation and conduct of the evaluation and assessment (please see attached).

The team was composed of the Regional Evaluating Team, the CENRO and PENRO representatives and the representatives of the IFMA holder. The team proceeded to the western portion of the area of the herein IFMA particularly Barangay Cogonan, Labangan, Zamboanga del Sur. The evaluation and assessment was then conducted on the main nursery, the established plantation, the look-out towers, the boundary of ISF and claimed or occupied areas, natural or residual forest, the IFMA boundary, monuments planted, foot trails, other improvements introduced and the billboard and signboard posted. The inspection, evaluation and assessment conducted were all undertaken in the presence of the IFMA holder, representatives, laborers and other personnel on the area. (please see attached report, tall sheets, pictorials and map).

In the conduct of the same, the IFMA representatives or laborers that assisted the team could only show the subject area under evaluation but the other areas alluded to as accomplished or undertaken by the company appeared upon actual verification and inspection to be negative and non-existent thus dispelling their allegation.

With regard the information and dissemination conducted by the IFMA

holder including other services extended to the communities within the IFMA area and vicinities, it is noteworthy for recognition the donations made by the company. (Please see attached minutes of the dialogue with the barangay officials of Barangay Cogonan and pictorials).

The evaluation conducted on the nursery operations show that the facilities and other necessary implements were generally below par. An inventory of the seedlings stock of pure Gmelina species have already lapsed its plantability or have overgrown in the seedbed with an average grand total of about 44,460 within the established 2-hectare main nursery area. There was no other subsidiary nursery established in the area. Also noted is the enrichment planting conducted along both sides of the foot-trail which extends approximately 18 kms. From the entrance of the IFMA area going to the lookout tower of the four (4) lookout towers reported, only one (1) has been noted remaining in the area and the rest were destroyed or burned (pls. see attached pictorials). The signboard posted was unattended and in the state of disrepair. There were no monument planted or any marking along the IFMA boundary and in residual forest except the monuments found in the ISF boundaries within the IFMA area (please see attached pictorials). The plantation established is composed of Gmelina species with 4 x 4 spacing over a total of about 10.18 hectares. Basing on 5% estimate inventory, the result is 43% seedling survival.

Thereafter, the team also conducted evaluation and assessment at the eastern portion particularly at Langapod, Labangan, Zamboanga del Sur. The team inspected and verified on the ground the reported 20 hectares mango plantation with a spacing of 10 x 10 meters at 100% intensity inventory. The accounted number of mango seedlings planted of about 2,008 hills, only 98 seedlings survived. Wherefore, it generally represents 5% seedling survival. (Please see attached)

Finally, the team conducted an exit conference with the CENR Officer, and the IFMA holder where the tentative and general findings of the evaluation and assessment was laid-out and presented to the body. (Please see attached)^[8]

On the basis of such findings, the Evaluation Team made the following recommendations -

1. The lessee should be required to explain why they failed to develop their IFMA area (Plantation Development) in accordance with the approved Comprehensive Development and Management Plan (CDMP);
2. The boundary and area coverage of IFMA No. R9-040 should be amended to exclude areas covered by Certificates of Stewardship Contracts (CSC) under the ISF Program with an area of 226.17 hectares, other areas previously identified as "occupied/claimed" and other conflict areas;

3. The amended boundary should be delineated/surveyed on the ground with a precise instrument and all corners appropriately marked/monumented;
4. The company should hire a full time forester.^[9]

Acting on the Memorandum dated November 6, 1998, RED Antonio M. Mendoza, DENR-IX, Zamboanga City, submitted to the DENR Secretary a Memorandum^[10] dated April 7, 1999 regarding the performance evaluation of IFMA No. R-9-040. The RED Memorandum reads -

This has reference with the instruction to validate the performance/accomplishment of IFMAs of Region IX, Western Mindanao. Validation of IFMAs is in accordance with the existing policy of the DENR, to determine the capabilities of the holders to develop their Lease areas in consonance with their submitted and approved Comprehensive Development Management Plan.

x x x x

On 6 November 1998, Foresters Isabelo C. Mangaya-ay and Philidor Lluisma, pursuant to Regional Special Order No. 217, Series of 1998, conducted the evaluation of the performance of IFMA No. R9-040 of Pagadian City Timber Company, Inc. located at Langapod and Cogonan, Municipality of Labangan and Datagan, Municipality of Sominot, all of Zamboanga del Sur. Result of the evaluation reveals that the holder violated the following DENR existing Rules and Regulations particularly Section 26 of DAO 97-04 GROUNDS FOR CANCELLATION of IFMA which provides that, "any of the following violations shall be sufficient grounds for the cancellation of IFMA."

1. Paragraph 26.5, *Section 26, DAO 97-04, Series of 1997*, provides that failure to implement the approved Comprehensive Development and Management Plan.

As of 1998, the 4th year of existence of IFMA No. R9-040, the holder must have developed a total of 1,597.0 hectares as per approved CDMP. However, based on the report submitted by the Evaluation Team only 365.2 hectares was planted which are about 22.8%. During the evaluation, however, the IFMA representative could not even pinpoint the planted areas.

Per report of the Pagadian *CENRO Composite Monitoring Team* conducted on 21 August 1998 the plantation area was burned resulting to the damage of about 300 hectares leaving only about 20.0 hectares undamaged. No report had been submitted/received since then.

In infrastructure, the holder managed to put up one (1) out of four (4) programmed look-out towers; developed one (1) out of two (2) forest nurseries and constructed only 6 km. foot trail which is only

about 27% accomplishment of the whole infrastructure.

2. Paragraph 26.8 of Section 26, DAO 97-04, specifically provides that failure to implement or adopt agreements made with communities and other relevant sectors.

Attached herewith, please find several petitions, sworn statements, affidavits and resolutions from various sectors particularly the Subanen Communities (IP's) within the area. The existence and approval of IFMA No. R9-040 contract is being protested and is demanding for its cancellation.

The primary complaint was a blatant disrespect to their rights as an *Indigenous People* and the non-peaceful co-existence between them and the holder of the IFMA R9-040. Accordingly, they were constantly threatened/harassed by armed men employed by the holder.

In the same Memorandum, RED Mendoza recommended to the DENR Secretary the cancellation of IFMA No. R-9-040. ^[11]

It appears that RED Mendoza issued a subsequent but similar Memorandum^[12] dated April 21, 1999 to the DENR Secretary relative to IFMA No. R-9-040. It stated -

This has reference with the instruction to validate the performance/accomplishment of IFMAs of Region IX, Western Mindanao. Validation of IFMAs is in accordance with the existing policy of the DENR to determine the capabilities of the holders to develop their Lease areas in consonance with their approved Comprehensive Development and Management Plan.

In furtherance thereto, Foresters Isabelo C. Mangaya-ay and Philidor Lluisma, pursuant to Regional Special Order No. 217, Series of 1998, conducted the evaluation of the performance of IFMA No. R9-040 of Pagadian City Timber Company, Inc. located at the Municipalities of Labangan, Datagan and Sominot, all of Zamboanga del Sur, on November 6, 1998. Result of the evaluation revealed that the holder violated Rules and Regulations which are sufficient ground for cancellation as stipulated under Section 26 of DAO 97-04, they are as follows

1. FAILURE TO IMPLEMENT THE APPROVED COMPREHENSIVE DEVELOPMENT AND MANAGEMENT PLAN.

Under the approved comprehensive and development plan, 1,597.0 ha of plantation should have been established from the Approval of the CDMP. However, only 365.2 ha were reportedly planted from CY 1995 to 1997. This represents only 28% of the targeted goal on plantation establishment.

Field validation of the reported established plantation revealed otherwise. The findings of the team are:

- A. Portion of the area reported as established plantation by the IFMA holder is an ISF project with an area of 226.17 ha. These are covered with Certificate of Stewardship;
- B. Locations and boundaries of reported plantations established from 1995 to 1997 cannot be located on the ground by the team neither by the representative of the IFMA holder who accompanied the validating team; and
- C. No plantation was established during CY 1998.

On Infrastructure, the holder constructed only one (1) lookout tower as against the goal of 4 towers; established one (1) nursery as against the goal of two (2); and constructed only 6km foot trail. These represent only 27% of the total infrastructure to be undertaken by the holder over the area.

2. FAILURE TO IMPLEMENT OR ADOPT AGREEMENT WITH COMMUNITIES AND OTHER RELEVANT SECTORS.

Attached herewith are copies of petitions, sworn statements, affidavit and resolutions from Subanen Communities (IP's) and other sectors in the area demanding the cancellation of IFMA R9-040.

The complaints and demand for cancellation by the people where the IFMA is located is a manifestation and proof of non-social acceptance of the project by the residents in the locality.

In view of the above findings, IFMA No. R9-040 is hereby recommended for cancellation.^[13]

Acting on the latter Memorandum from RED Mendoza, then DENR Secretary Antonio H. Cerilles, on June 7, 1999, issued an Order^[14] canceling IFMA No. R-9-040 for failure to implement the approved CDMP and for failure of the lessee to protect the area from forest fires. The dispositive portion of the Order reads:

WHEREFORE, premises considered, IFMA No. R9-040 issued to Pagadian City Timber Co., Inc. is hereby ordered cancelled. The IFMA holder is hereby ordered to immediately vacate the area and to surrender/return copy of the Agreement to the Regional Executive Director, DENR Region 9, Zamboanga City.

The RED concerned or his duly authorized representative is hereby directed to serve this Order; determine best end use of the land; take appropriate measures to protect the same and inform this Office immediately of his compliance.

SO ORDERED.^[15]

On July 2, 1999, respondent's President, Filomena S. San Juan, wrote DENR Secretary Cerilles that the company was surprised to receive the Order of the cancellation of IFMA No. R-9-040 on June 22, 1999. She claimed that -

The DENR regional office is fully aware that the company is doing its best to manage and develop the area by continually planting trees and protecting the area from forest fires and illegalities. No company would ever set fire on its own plantation for obvious reasons. The company observed precautionary measures especially during the time of the El Niño phenomenon. If there have been mistakes and miscommunications in the reports of the DENR field officers, these could have been threshed out by a conference between DENR and the Pagadian Timber Company Inc.

The company was not accorded due process before the order of cancellation was issued. The company was not furnished copy of the evaluation and recommendation of the DENR Regional Executive Director of Region IX. Had the company been given the opportunity to contest the findings, evaluation and recommendation of the said office, the result would be otherwise.^[16]

She appealed for the reconsideration of the Order asking that a re-investigation be conducted to comply with due process.

Even as the said letter for reconsideration was not yet acted upon, respondent appealed to the Office of the President (OP).

In the Resolution^[17] dated January 12, 2000, the OP affirmed the cancellation order based on the results of the actual evaluation and assessment of the DENR team. It ruled that the cancellation of IFMA No. R-9-040 was primarily and specifically governed by Section 26 of Department Administrative Order (DAO) 97-04. Relative to respondent's invocation of due process, the OP held that respondent was afforded the right to be heard when it filed its motion for reconsideration and its subsequent appeal to the OP.

The motion for reconsideration filed by respondent of the January 12, 2000 Resolution was denied by the OP in the Resolution^[18] dated May 8, 2000.

Respondent went up to the Court of Appeals (CA) via a petition for review with a prayer for the issuance of a writ of preliminary injunction against the implementation of the assailed Order dated June 7, 1999.

In its Resolution dated January 17, 2001, the CA issued the writ of preliminary injunction prayed for, "directing and ordering respondents (petitioner) and/or any other person acting under their command, authority and/or for and in their behalf, to DESIST from implementing the assailed Order of cancellation dated June 7, 1999, and/or taking over the IFMA premises of [respondent], pending the termination of this proceeding."

In its Decision^[19] dated October 18, 2001, the CA ruled in favor of respondents. In striking down the rulings of the OP and the Order dated June 7, 1999, the CA declared that IFMA No. R-9-040 was a contract that could not be unilaterally cancelled without infringing on the rights of respondent to due process and against impairment of contracts. The appellate court agreed with respondent when the latter argued that it was entitled to the benefits of Sections 35^[20] and 36^[21] of IFMA No.

R-9-040 such that respondent should have been given 30 days, after due notice, to remedy any breach or default of the provisions of the IFMA and/or that the dispute regarding the bases for the cancellation of the IFMA should have first been submitted to arbitration.

Petitioner moved to reconsider the CA Decision. In the Resolution^[22] dated July 24, 2003, the motion was denied for lack of merit. Hence, this petition based on the following grounds:

- I. The Court of Appeals gravely erred in ruling that IFMA No. R9-040 is a contract and not a mere privilege granted by the State to respondent.
- II. The Court of Appeals seriously erred in ordaining that respondent can rightfully invoke prior resort to arbitration or the option to mend its violations under IFMA No. R9-040.^[23]

In essence, petitioner argues that an IFMA is not an ordinary contract which is protected by the Constitution against impairment^[24] but a mere privilege granted by the State to qualified persons by means of a permit, license, franchise, agreement, or other similar concessions, which in this case is the exploration, development and utilization of the forest lands belonging to the State under its full control and supervision. Thus, the cancellation of the IFMA does not amount to a rescission of a contract but a mere withdrawal of this privilege. As such, the due process clause under the Constitution^[25] does not likewise apply since the IFMA area cannot be considered as property of respondent. According to petitioner, IFMA No. R-9-040, with the forest lands covered by it, is imbued with paramount considerations of public interest and public welfare such that whatever rights respondent may have under it must yield to the police power of the State. In this sense, respondent cannot take refuge in Sections 35 and 36 of IFMA No. R-9-040 to prevent the IFMA's cancellation.

Inasmuch as the grounds cited by petitioner are interrelated, they shall be jointly discussed hereunder.

The petition is impressed with merit.

IFMA No. R-9-040 is a license agreement under Presidential Decree (P.D.) No. 705 (Revised Forestry Code), the law which is the very basis for its existence.^[26] Under Section 3, paragraph (dd) thereof, a license agreement is defined as "a **privilege**^[27] granted by the State to a person to utilize forest resources within any forest land with the right of possession and occupation thereof to the exclusion of others, except the government, but with the corresponding obligation to develop, protect and rehabilitate the same in accordance with the terms and conditions set forth in said agreement." This is evident in the following features, among others, of IFMA No. R-9-040, to wit:

1. The State agreed to devolve to the holder of IFMA No. R-9-040 the responsibility to manage the specified IFMA area for a period of 25 years, specifically until October 14, 2019, which period is automatically renewable for another 25 years thereafter;

2. The State imposed upon respondent, as holder of IFMA No. R-9-040, the conditions, the means, and the manner by which the IFMA area shall be managed, developed, and protected;
3. The State, through the DENR Secretary, shall not collect any rental within the first five (5) years of the IFMA, after which it shall be entitled to annual rental of fifty centavos (P0.50) per hectare from the sixth to the tenth year thereof, and one peso (P1.00) per hectare thereafter;
4. The IFMA area, except only the trees and other crops planted and the permanent improvements constructed by the IFMA holder, remains the property of the State; and
5. Upon cancellation of the IFMA through the fault of the holder, all improvements including forest plantations existing within the IFMA area shall revert to and become the property of the State.

An IFMA has for its precursor the Timber License Agreement (TLA), one of the tenurial instruments issued by the State to its grantees for the efficient management of the country's dwindling forest resources. Jurisprudence has been consistent in holding that license agreements are not contracts within the purview of the due process and the non-impairment of contracts clauses enshrined in the Constitution. Our pronouncement in *Alvarez v. PICOP Resources, Inc.* [28] is enlightening -

In unequivocal terms, we have consistently held that such licenses concerning the harvesting of timber in the country's forests cannot be considered contracts that would bind the Government regardless of changes in policy and the demands of public interest and welfare. (citing *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 811) Such unswerving verdict is synthesized in *Oposa v. Factoran, Jr.*, (*id.*, at pp. 811, 812) where we held:

In the first place, the respondent Secretary did not, for obvious reasons, even invoke in his motion to dismiss the non-impairment clause. If he had done so, he would have acted with utmost infidelity to the Government by providing undue and unwarranted benefits and advantages to the timber license holders because he would have forever bound the Government to strictly respect the said licenses according to their terms and conditions regardless of changes in policy and the demands of public interest and welfare. He was aware that as correctly pointed out by petitioners, into every timber license must be read Section 20 of the Forestry Reform Code (P.D. No. 705) which provides:

"x x x Provided, that when the national interest so requires, the President may amend, modify, replace or rescind any contract, concession, permit, licenses or any other form of privilege granted herein x x x."

Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the constitution. In *Tan vs. Director of Forestry*, [125 SCRA 302, 325 (1983)] this Court held:

"x x x A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.

"A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right; nor is it taxation (37 C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights. (*People vs. Ong Tin*, 54 O.G. 7576). x x x"

We reiterated this pronouncement in *Felipe Ysmael, Jr. & Co., Inc. vs. Deputy Executive Secretary* [190 SCRA 673, 684 (1990):

"x x x Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause. [See Sections 3(ee) and 20 of Pres. Decree No. 705, as amended. Also, *Tan v. Director of Forestry*, G.R. No. L-24548, October 27, 1983, 125 SCRA 302]."

Since timber licenses are not contracts, the non-impairment clause, which reads:

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

cannot be invoked.

Even assuming *arguendo* that an IFMA can be considered a contract or an agreement, we agree with the Office of the Solicitor General that the alleged property rights that may have arisen from it are not absolute.

All Filipino citizens are entitled, by right, to a balanced and healthful ecology as declared under Section 16,^[29] Article II of the Constitution. This right carries with it the correlative duty to refrain from impairing the environment,^[30] particularly our diminishing forest resources. To uphold and protect this right is an express policy of the State.^[31] The DENR is the instrumentality of the State mandated to actualize this policy. It is "the primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, including those in reservation and watershed areas, and lands of the public domain, as well as the licensing and regulation of all natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos."^[32]

Thus, private rights must yield when they come in conflict with this public policy and common interest. They must give way to the police or regulatory power of the State, in this case through the DENR, to ensure that the terms and conditions of existing laws, rules and regulations, and the IFMA itself are strictly and faithfully complied with.

Respondent was not able to overturn by sufficient evidence the presumption of regularity in the performance of official functions of the Evaluation Team when the latter inspected, assessed, and reported the violations respondent committed under DAO No. 97-04 which eventually led to the cancellation of IFMA No. R-9-040.

It is worthy to note that petitioner followed regular procedure regarding the assessment of IFMA No. R-9-040. It gave notice of the evaluation on October 22, 1998 to be held within the period October 22-30, 1998. Respondent admitted through the affidavits of its President,^[33] Operations Manager,^[34] and workers^[35] that an Evaluation Team arrived at the IFMA area on October 23, 1998. On October 23, 1998, prior to the actual assessment, a briefing was held on the conduct thereof in the presence of the IFMA representatives. On October 29, 1998, an exit conference with IFMA Operations Manager Inocencio Santiago was held at the CENRO Office, Pagadian City, where the results of the assessment were presented. That day, the DENR officials asked Santiago if he had any questions or comments on the assessment results and on the manner the evaluation was conducted, but the latter replied that he had none.

We do not understand why Santiago did not lift a finger or raise an objection to the assessment results, and only much later in his Affidavit executed almost ten months thereafter, or on August 12, 1999, to claim so belatedly that there was no notice given on October 22, 1998, that the Evaluation Team did not actually extensively inspect the IFMA area on October 23, 1998, and that there was no proper exit conference held on October 29, 1998. The same observation applies to respondent's President herself, who instead claimed that she vehemently opposed the appointment of then DENR Secretary Cerilles because he was bent on canceling the IFMA at all costs, prior to the cancellation of IFMA No. R-9-040.

Besides, the detailed findings on the failure of respondent to implement its CDMP under its IFMA, as shown by the November 6, 1998 Report of the Evaluation Team and the Memoranda dated April 7, 1999 and April 21, 1999, together with all its attachments, belie respondent's claim that there was no actual evaluation and assessment that took place on October 23, 1998. That the Evaluation Report was dated November 6, 1998 does not conclusively show that the evaluation was actually held on that date. Neither was this properly proven by the Memoranda of RED Mendoza which stated that the evaluation was conducted on November 6, 1998, since RED Mendoza could have been merely misled into such an assumption because of the date of the Evaluation Report. The sweeping denials made by the IFMA representatives and their self-serving accomplishment reports cannot prevail over the actual inspection conducted, the results of which are shown by documentary proof.

Respondent, likewise, cannot insist that, pursuant to Section 35 of IFMA No. R-9-040, it should have been given notice of its breach of the IFMA and should have been given 30 days therefrom to remedy the breach. It is worthy to note that Section 35 uses the word "may" which must be interpreted as granting petitioner the discretion whether or not to give such notice and allow the option to remedy the breach. In this case, despite the lack of any specific recommendation from the Evaluation Team for the cancellation of the IFMA, DENR Secretary Cerilles deemed it proper to cancel the IFMA due to the extent and the gravity of respondent's violations.

It is also futile for respondent to claim that it is entitled to an arbitration under Section 36 of IFMA No. R-9-040 before the license agreement may be canceled. A reading of the said Section shows that the dispute should be based on the provisions of the IFMA to warrant a referral to arbitration of an irreconcilable conflict between the IFMA holder and the DENR Secretary. In this case, the cancellation was grounded on Section 26 of DAO No. 97-04, particularly respondent's failure to implement the approved CDMP and its failure to implement or adopt agreements made with communities and other relevant sectors. The contrary notwithstanding, what remains is that respondent never refuted the findings of the Evaluation Team when given the opportunity to do so but waited until IFMA No. R-9-040 was already cancelled before it made its vigorous objections as to the conduct of the evaluation, harping only on its alleged right to due process.

Indeed, respondent was given the opportunity to contest the findings that caused the cancellation of its IFMA when it moved to reconsider the Order of cancellation and when it filed its appeal and motion for reconsideration before the OP.

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is the absolute absence of the opportunity to be heard; hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side.

[36]

WHEREFORE, the Decision dated October 18, 2001 and the Resolution dated July 24, 2003 of the Court of Appeals in CA-G.R. SP No. 59194 are **REVERSED** and **SET**

ASIDE, and the Order dated June 7, 1999 of then DENR Secretary Antonio Cerilles, and the Resolutions of the Office of the President dated January 12, 2000 and May 8, 2000 affirming the said Order, are **REINSTATED** and **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] *Rollo*, pp. 10-37.

[2] *Id.* at 42-55.

[3] *Id.* at 56.

[4] *Id.* at 57-66; also referred to as IFMA No. R9-040 and IFMA No. R-9-04.

[5] Per Excerpts, *id.* at 67-68.

[6] *Id.*

[7] *CA rollo*, pp. 277-279.

[8] *Id.* at 277-278.

[9] *Id.* at 278-279.

[10] *Rollo*, pp. 69-70.

[11] *Id.* at 70.

[12] *CA rollo*, pp. 282-283.

[13] *Id.*

[14] *Rollo*, pp. 71-72.

[15] *Id.*

[16] *Id.* at 73.

[17] *CA rollo*, pp. 44-49.

[18] *Id.* at 50.

[19] Penned by Associate Justice Teodoro P. Regino, with Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga, concurring; *rollo*, pp. 42-55.

[20] 35. In the event of any default or breach of any provisions of this AGREEMENT by either party, the other party may, by notice to the party in default or breach, specify such default or breach and require the same to be remedied within thirty (30) days after service of notice.

[21] 36. Except for issues covering compensation addressed in paragraph 29 above, in the event of any dispute between the SECRETARY and the IFMA HOLDER which cannot be settled by mutual accord, such dispute shall be referred to arbitration which shall be held at a mutually acceptable location.

[22] *Supra* note 3.

[23] *Id.* at 19.

[24] CONSTITUTION, Art. III, Sec. 10. "No law impairing the obligation of contracts shall be passed."

[25] *Id.*, Section 1. "No person shall be deprived of life, liberty or property without due process of law x x x."

[26] *PICOP Resources, Inc. v. Calo*, G.R. No. 161798, October 20, 2004, 441 SCRA 46.

[27] Emphasis supplied.

[28] G.R. Nos. 162243, 164516, 171875, November 29, 2006, 508 SCRA 498, 532-535.

[29] SEC. 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

[30] *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 805.

[31] *C&M Timber Corporation v. Alcala*, 339 Phil. 589, 603 (1997).

[32] Section 4, Executive Order No. 192 (The Reorganization Act of the Department of Environment and Natural Resources).

[33] *CA rollo*, pp. 121-122.

[34] *Id.* at 146.

[35] *Id.* at 117-120.

[36] *Sarapat v. Salanga*, G.R. No. 154110, November 23, 2007, 538 SCRA 324, 333;
Audion Electric Co., Inc. v. NLRC, 367 Phil. 620, 633 (1999).



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