



Republic of the Philippines  
**Supreme Court**  
 Baguio City

EN BANC

**LNL ARCHIPELAGO MINERALS, INC.,** G.R. No. 209165  
 Petitioner,

Present:

SERENO, C.J.,  
 CARPIO,  
 VELASCO, JR.,  
 LEONARDO-DE CASTRO,  
 BRION,  
 PERALTA,  
 BERSAMIN,  
 DEL CASTILLO,  
 PEREZ,  
 MENDOZA,  
 REYES,  
 PERLAS-BERNABE,  
 LEONEN,  
 JARDELEZA,\* and  
 CAGUIOA, JJ.

- versus -

**AGHAM PARTY LIST (represented by its**  
**President Rep. Angelo B. Palmones),**  
 Respondent.

Promulgated:

April 12, 2016

x ----- *49 for Dangan Aramis*

**DECISION**

**CARPIO, J.:**

**The Case**

This is a petition for review on certiorari<sup>1</sup> assailing the Amended Decision dated 13 September 2013<sup>2</sup> of the Court of Appeals in CA-G.R. SP No. 00012.

\* No part.  
<sup>1</sup> Under Rule 45 of the 1997 Revised Rules of Civil Procedure.  
<sup>2</sup> *Rollo*, pp. 115-134. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Amelita G. Tolentino and Ramon R. Garcia concurring.

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### **The Facts**

Petitioner LNL Archipelago Minerals, Inc. (LAMI) is the operator of a mining claim located in Sta. Cruz, Zambales. LAMI's mining area is covered by Mineral Production Sharing Agreement<sup>3</sup> No. 268-2008-III dated 26 August 2008 by virtue of an Operating Agreement<sup>4</sup> dated 5 June 2007 with Filipinas Mining Corporation.

LAMI embarked on a project to build a private, non-commercial port in Brgy. Bolitoc, Sta. Cruz, Zambales. A port is a vital infrastructure to the operations of a mining company to ship out ores and other minerals extracted from the mines and make the venture economically feasible. Brgy. Bolitoc, about 25 kilometers away from the mine site, makes it an ideal location to build a port facility. In the area of Sta. Cruz, Shangfil Mining and Trading Corporation (Shangfil)/A3Una Mining Corporation (A3Una) and DMCI Mining Corporation, have been operating their own ports since 2007.

LAMI secured the following permits and compliance certificates for the port project: (1) Department of Environment and Natural Resources (DENR) Environmental Compliance Certificate<sup>5</sup> (ECC) R03-1104-182 dated 2 May 2011 covering the development of causeway, stockpile and related facilities on LAMI's property with an area of 18,142 sq.m.; (2) DENR provisional foreshore lease agreement with LAMI;<sup>6</sup> (3) Philippine Ports Authority (PPA) Clearance to Develop a Port;<sup>7</sup> (4) PPA Permit to Construct a Port;<sup>8</sup> (5) PPA Special Permit to Operate a Beaching Facility;<sup>9</sup> and (6) Tree Cutting Permit/Certification<sup>10</sup> from the Community Environment and Natural Resources Office (CENRO) of the DENR.

The Zambales Alliance, a group of other mining companies operating in Sta. Cruz, Zambales which do not have their own port, namely Eramen Minerals, Inc.; Zambales Diversified Metals Corporation; Zambales Chromite Mining Corporation, Inc.; BenguetCorp Nickel Mines, Inc., supported the port project of LAMI and issued Letters<sup>11</sup> of Intent to use the port facilities of LAMI upon completion.

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<sup>3</sup> Id. at 395-418.

<sup>4</sup> Id. at 419-429.

<sup>5</sup> Id. at 449-453.

<sup>6</sup> Id. at 454-455.

<sup>7</sup> Id. at 1146.

<sup>8</sup> Id. at 1186.

<sup>9</sup> Id. at 459-460.

<sup>10</sup> Id. at 461.

<sup>11</sup> Id. at 586-589.

The Bolitoc community – the *barangay*, its officials and residents – gave several endorsements<sup>12</sup> supporting the project. Even the *Sangguniang Bayan* of Sta. Cruz gave its consent to the construction of the port.<sup>13</sup>

However, LAMI allegedly encountered problems from the local government of Sta. Cruz, headed by Mayor Luisito E. Marty (Mayor Marty). LAMI stated that Mayor Marty unduly favored some mining companies in the municipality and allegedly refused to issue business and mayor's permits and to receive payment of occupation fees from other mining companies despite the necessary national permits and licenses secured by the other mining companies.

On 24 April 2012, Mayor Marty issued an order<sup>14</sup> directing LAMI to refrain from continuing with its clearing works and directed the Sta. Cruz Municipal Police Chief Generico Biñan to implement his order. On 26 April 2012, LAMI responded through a letter<sup>15</sup> explaining that Mayor Marty's order was illegal and baseless. Chief Biñan, together with two of his deputies, went to LAMI's port site to demand that LAMI cease its clearing works. LAMI's supervisor showed Chief Biñan all of LAMI's permits. In a Memorandum dated 3 May 2012, Chief Biñan made a report to his supervisor, S/Supt. Francisco DB Santiago, Jr. (S/Supt. Santiago), Zambales Police Provincial Director, that there was no leveling of a mountain on the port site. On 6 May 2012, S/Supt. Santiago made a Special Report re: Police Assistance<sup>16</sup> to the Philippine National Police (PNP) Regional Director citing the findings of Chief Biñan.

Thereafter, Rep. Dan Fernandez, a member of the Committee on Ecology of the House of Representatives, passed House Resolution No. 117 (HR 117) entitled "Resolution Directing the Committee on Ecology to Conduct an Inquiry, in Aid of Legislation, on the Implementation of Republic Act No. 7942, Otherwise Known as the Philippine Mining Act of 1995, Particularly on the Adverse Effects of Mining on the Environment." HR 117 was issued in order to conduct an alleged ocular inspection of the port site in aid of legislation. On 21 May 2012, the Committee on Ecology conducted an ocular inspection of the LAMI port site, as well as the other ports adjacent to LAMI's – those of Shangfil/A3Una and D.M. Consunji, Inc. The Committee allegedly never visited any mining site in the area of Sta. Cruz.

Meanwhile, on 30 April 2012, the DENR Environmental Management Bureau in Region III (DENR-EMB R3) received a letter dated 27 April 2012

<sup>12</sup> Id. at 550-553; dated 18 May 2012.

<sup>13</sup> Sangguniang Bayan Resolution No. 99-2224, series of 1999, id. at 469-470; Letter dated 4 June 2012 signed by all members of the Sangguniang Barangay, id. at 630-631; Sangguniang Bayan Resolution No. 12-84 dated 22 October 2012, id. at 2303-2305.

<sup>14</sup> Id. at 463.

<sup>15</sup> Id. at 464-468.

<sup>16</sup> Id. at 2199-2200.

from Mayor Marty inquiring if the ECC the DENR issued in favor of LAMI allowed LAMI to cut trees and level a mountain.

On 25 May 2012, representatives from the DENR Provincial Environment and Natural Resources Office (PENRO) in Zambales and the local government of Sta. Cruz conducted an ECC compliance monitoring of LAMI's property. The DENR PENRO team found that LAMI violated some of its conditions under the ECC. Accordingly, a Notice of Violation (NOV) dated 1 June 2012 was issued against LAMI for violation of certain conditions of the ECC with a cease and desist order from further constructing and developing until such time that the ECC conditions were fully complied.

On 8 June 2012, a technical conference was held where LAMI presented its reply to the NOV. The DENR-EMB R3 ascertained that LAMI's violations of the four conditions of its ECC constitute minor violations since they only pertain to non-submission of documents. However, the leveling of the elevated portion of the area was a major violation. A penalty was consequently imposed on LAMI, and the DENR-EMB R3 directed LAMI to (1) immediately cause the installation of mitigating measures to prevent soil erosion and siltation of the waterbody, and (2) submit a rehabilitation plan.

On 11 June 2012, LAMI wrote a letter<sup>17</sup> to the DENR-EMB R3 regarding the commitments agreed upon during the technical conference. LAMI signified compliance with the conditions of DENR-EMB R3. Attached to the letter were: (1) Official Receipt of payment of penalties under Presidential Decree (PD) No. 1586, (2) Matrix of Mitigation and Rehabilitation Plan, (3) Designation of Pollution Control Officer dated 6 May 2011, and (4) Tree Cutting Permit dated 17 April 2012 issued by DENR R3 CENRO.<sup>18</sup>

On 20-21 June 2012, the DENR composite team, composed of DENR-EMB R3, Mines and Geosciences Bureau (MGB) R3 and PENRO Zambales, conducted an investigation to determine whether mitigating measures done by LAMI were sufficient. The composite team found that LAMI's activities in its property would not result to any environmental damage to its surrounding communities.

Thereafter, the DENR-EMB R3 lifted the cease and desist order after LAMI was found to have complied with the requirements. In a Letter<sup>19</sup> dated 24 October 2012, Lormelyn E. Claudio (Dir. Claudio), the Regional Director of DENR-EMB R3 wrote:

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<sup>17</sup> Id. at 1021.

<sup>18</sup> Id. at 1022-1025.

<sup>19</sup> Id. at 2249-2250.

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The violated ECC conditions have been rectified and clarified while the penalty corresponding to such violation was fully paid and the required rehabilitation and mitigating measures were already implemented as committed. As such, the matter leading to the issuance of the NOV is now resolved.

As ECC holder, you are enjoined to ensure the effective carrying out of your Environmental Management and Monitoring Plan.<sup>20</sup>

Meanwhile, earlier, or on 6 June 2012, respondent Agham Party List (Agham), through its President, former Representative Angelo B. Palmones (Rep. Palmones), filed a Petition<sup>21</sup> for the issuance of a Writ<sup>22</sup> of Kalikasan against LAMI, DENR, PPA, and the Zambales Police Provincial Office (ZPPO).

Agham alleged that LAMI violated: (1) Section 68<sup>23</sup> of PD No. 705,<sup>24</sup> as amended by Executive Order No. 277,<sup>25</sup> or the Revised Forestry Code; and (2) Sections 57<sup>26</sup> and 69<sup>27</sup> of Republic Act No. 7942,<sup>28</sup> or the Philippine Mining Act of 1995 (Philippine Mining Act). Agham added that LAMI cut mountain trees and flattened a mountain which serves as a natural protective

<sup>20</sup> Id. at 2250.

<sup>21</sup> Docketed as G.R. No. 201918; id. at 227-237.

<sup>22</sup> Rule 7, Part III, A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases; approved on 13 April 2010.

<sup>23</sup> Sec. 68. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

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<sup>24</sup> Revising Presidential Decree No. 389, Otherwise Known as the Forestry Reform Code of the Philippines; took effect on 19 May 1975.

<sup>25</sup> Amending Section 68 of Presidential Decree (P.D.) No. 705, as amended, Otherwise Known as the Revised Forestry Code of the Philippines, for the Purpose of Penalizing Possession of Timber or Other Forest Products Without the Legal Documents Required by Existing Forest Laws, Authorizing the Confiscation of Illegally Cut, Gathered, Removed and Possessed Forest Products, and Granting Rewards to Informers of Violations of Forestry Laws, Rules and Regulations; signed on 25 July 1987.

<sup>26</sup> Section 57. Expenditure for Community Development and Science and Mining Technology – A contractor shall assist in the development of its mining community, the promotion of the general welfare of its inhabitants, and the development of science and mining technology.

<sup>27</sup> Section 69. Environmental Protection – Every contractor shall undertake an environmental protection and enhancement program covering the period of the mineral agreement or permit. Such environmental program shall be incorporated in the work program which the contractor or permittee shall submit as an accompanying document to the application for a mineral agreement or permit. The work program shall include not only plans relative to mining operations but also to rehabilitation, regeneration, revegetation and reforestation of mineralized areas, slope stabilization of mined-out and tailings covered areas, aquaculture, watershed development and water conservation; and socioeconomic development.

<sup>28</sup> An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation; approved on 3 March 1995.

barrier from typhoons and floods not only of the residents of Zambales but also the residents of some nearby towns located in Pangasinan.

On 13 June 2012, this Court remanded the petition<sup>29</sup> to the Court of Appeals for hearing, reception of evidence and rendition of judgment.

On 25 June 2012, LAMI filed its Verified Return dated 21 June 2012, controverting Agham's allegations. LAMI stated that it did not and was not violating any environmental law, rule or regulation. LAMI argued that: (1) LAMI had the necessary permits and authorization to cut trees in the port site; (2) LAMI had the necessary permits to construct its port; (3) LAMI consulted with and obtained the support of the Sangguniang Barangay and residents of Barangay Bolitoc; (4) LAMI's port site is located on private and alienable land; (5) there is no mountain on the port site; (6) the Philippine Mining Act is irrelevant and inapplicable to the present case; and (7) the other allegations of Agham that LAMI violated environmental laws, rules or regulations are likewise baseless, irrelevant and false. LAMI stated further that there is no environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities and provinces.

Public respondents DENR, PPA and ZPPO, filed with the Court of Appeals their Pre-Trial Brief dated 1 August 2012. In the Pre-Trial Brief, public respondents stated that they will present the following witnesses: (1) Dir. Claudio, Regional Director, DENR-EMB R3; two from the PPA – (2) Engineer Marieta G. Odicta (Engr. Odicta), Division Manager, Engineering Services Division, Port District Office, Manila, Northern Luzon; and (3) Emma L. Susara (Ms. Susara), Department Manager, Commercial Services of the PPA (NCR); and (4) S/Supt. Santiago, Provincial Director of the ZPPO.

The witnesses of public respondents submitted their Judicial Affidavits dated 6 August 2012. The testimonies of the witnesses were offered to prove the facts and allegations in the petition:

(1) Dir. Claudio<sup>30</sup> –

- a) That the issues presented by Agham were already subject of the complaint filed by Mayor Marty with the DENR-EMB R3;
- b) That the DENR-EMB R3 issued an ECC to LAMI;
- c) That the DENR-EMB R3 acted on the complaint of Mayor Marty with regard to construction by LAMI of its port facility;
- d) That the DENR-EMB R3 issued a NOV dated 1 June 2012 to LAMI;
- e) That the DENR-CENRO issued a tree cutting permit to LAMI;
- f) That there is no mountain within or inside the property of LAMI in Brgy. Bolitoc, Sta. Cruz, Zambales;

<sup>29</sup> Docketed as CA-G.R. SP No. 00012.

<sup>30</sup> *Rollo*, pp. 934-949.

- g) That the cutting of the trees and the partial leveling of a landform (which is determined to be an “elongated mound” but is alleged to be a “mountain” by the petitioner) conducted by LAMI in its property in Brgy. Bolitoc, Sta. Cruz, Zambales do not pose adverse environmental impact on the adjoining communities more so to the larger areas or the entire provinces of Zambales and Pangasinan.
- (2) Eng. Odicta<sup>31</sup> –
- a) That the PPA issued a permit to construct to LAMI only after due application and submission of the required documents;
  - b) That other private companies, namely: DMCI Mining Corporation and Shangfil/A3Una constructed port facilities along the Brgy. Bolitoc coastline and contiguous to where the port facility of LAMI is located.
- (3) Ms. Susara<sup>32</sup> –
- a) That the PPA issued a clearance to develop and a permit to operate to LAMI only after due application and submission of the required documents;
  - b) That other private port facilities, namely: DMCI Mining Corporation, Shangfil/A3Una are operating along the Brgy. Bolitoc coastline and contiguous to where the port facility of LAMI is located; and
  - c) That since the 1970’s, the coastline along Brgy. Bolitoc, Municipality of Sta. Cruz, Zambales, has been the location of port facilities necessary for mining operations in the province of Zambales.
- (4) S/Supt. Santiago<sup>33</sup> –
- a) That the members and officials of the ZPPO did not violate, or threaten with violation, petitioner’s right to a balanced and healthful ecology;
  - b) That the members and officials of the ZPPO did not cover-up any alleged illegal activity of LAMI; and
  - c) The contents of the Memorandum (Special Report re: Police Assistance) dated 6 May 2012 submitted by S/Supt. Santiago to the PNP Regional Director.

On 10 September 2012, Agham presented its first and only witness, former Rep. Angelo B. Palmones. Rep. Palmones was cross-examined by counsel for LAMI and counsel for public respondents DENR, PPA, and ZPPO.<sup>34</sup>

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<sup>31</sup> Id. at 1241-1247.

<sup>32</sup> Id. at 1060-1068.

<sup>33</sup> Id. at 1043-1055.

<sup>34</sup> Id. at 1311-1498.

On 26 September 2012, public respondents presented their witnesses.<sup>35</sup>

On 28 September 2012, LAMI manifested that it was adopting the testimonies of the witnesses of the public respondents. On the same hearing, LAMI presented its witness, Felipe E. Floria, LAMI's Vice-President and General Manager.<sup>36</sup>

In a Decision<sup>37</sup> dated 23 November 2012, the Court of Appeals decided the case in favor of petitioner. The appellate court found that the government, through the CENRO, authorized LAMI to cut trees and LAMI strictly followed the proper guidelines stated in the permit. The appellate court also stated that there can be no flattening of a mountain when there is no mountain to speak of. Thus, for failing to comply with the requisites necessary for the issuance of a Writ of Kalikasan, the Court of Appeals resolved to deny the petition. The dispositive portion of the Decision states:

WHEREFORE, premises considered, the petition is hereby DENIED.

SO ORDERED.<sup>38</sup>

Agham filed a Motion for Reconsideration with the Court of Appeals. In its Motion for Reconsideration, Agham argued that the alleged leveling of the subject hill by LAMI: (1) was not sanctioned by the DENR since LAMI allegedly had no ECC from the DENR; (2) affected the ecological balance of the affected towns and provinces since such leveling was done without the concurrence of its residents; and (3) instigated the gradual eradication of the strip of land mass in Sta. Cruz, Zambales that serves as protective barrier from floods brought about by the swelling or surging of the coastal water moving inward reaching other towns of Zambales and Pangasinan.<sup>39</sup>

On 4 February 2013, LAMI filed its Comment/Opposition to the Motion for Reconsideration. Agham then filed its Reply dated 21 February 2013.

In a Resolution dated 6 March 2013, the Court of Appeals declared that Agham's Motion for Reconsideration was submitted for resolution. Subsequently, Agham filed a Supplemental Reply dated 29 April 2013 reiterating the same arguments.

<sup>35</sup> Id. at 1499-1689.

<sup>36</sup> Id. at 1691-1786.

<sup>37</sup> Id. at 137-158. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Amelita G. Tolentino and Ramon R. Garcia concurring.

<sup>38</sup> Id. at 158.

<sup>39</sup> Id. at 2075.

In a Resolution<sup>40</sup> dated 31 May 2013, the Court of Appeals set Agham's Motion for Reconsideration for hearing on 13 June 2013. At the hearing, all parties were given time to argue their case. Thereafter, the Motion for Reconsideration was submitted for resolution.

Agham then filed a Manifestation dated 17 June 2013 summarizing its arguments. On 4 July 2013, LAMI filed a Motion to Expunge with Ad Cautelam Comment/Opposition. On 11 July 2013, the Court of Appeals, for the last and third time, submitted the Motion for Reconsideration for resolution.

In an Amended Decision dated 13 September 2013, the Court of Appeals reversed and set aside its original Decision dated 23 November 2012. The dispositive portion of the Decision states:

WHEREFORE, in view of the foregoing, the Decision dated November 23, 2012 is hereby RECONSIDERED and SET ASIDE and, in lieu thereof, another judgment is rendered GRANTING the petition for WRIT OF KALIKASAN as follows, to wit:

(1) respondent LNL Archipelago Minerals, Inc. (LAMI) is directed to PERMANENTLY CEASE and [DESIST] from scraping off the land formation in question or from performing any activity/ies in violation of environmental laws resulting in environmental destruction or damage;

(2) the respondent LAMI as well as the Secretary of Department of Environment and Natural Resources and/or their representatives are directed to PROTECT, PRESERVE, REHABILITATE and/or RESTORE the subject land formation including the plants and trees therein;

(3) the Secretary of DENR and/or his representative is directed to MONITOR strict compliance with the Decision and Orders of the Court; and make PERIODIC REPORTS on a monthly basis on the execution of the final judgment.

SO ORDERED.<sup>41</sup>

Hence, the instant petition.

### **The Issues**

The issues for our resolution are (1) whether LAMI violated the environmental laws as alleged by Agham, and (2) whether LAMI flattened any mountain and caused environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

<sup>40</sup> Id. at 2075-2076.

<sup>41</sup> Id. at 133.

### **The Court's Ruling**

Petitioner contends that it has the necessary permits and authorization to cut trees on the port site, controverting the allegation of Agham that it violated Section 68 of the Revised Forestry Code, as amended. Petitioner also insists that it did not violate nor is it violating the Mining Act as alleged by Agham. Petitioner argues that it is not conducting any mining activity on the port site since the mine site is about 25 kilometers away from the port site. Further, petitioner adds that after filing its Verified Return dated 21 June 2012, Agham never mentioned again the alleged violation of the Revised Forestry Code, as amended, and the Philippine Mining Act. Instead, Agham changed its position and later claimed that LAMI was flattening a mountain on the port site which was allegedly illegal *per se*. Petitioner insists that Agham did not even present evidence to establish any environmental damage which is required for the issuance of the privilege of the Writ of Kalikasan.

Respondents, on the other hand, assert that even if the subject land formation is not a mound, hill or mountain, the fact remains that the scraping and leveling done by petitioner caused serious environmental damage which affects not only the municipality of Sta. Cruz, Zambales but also the nearby towns of Zambales and Pangasinan.

The present case involves the extraordinary remedy of a Writ of Kalikasan which is under the Rules of Procedure for Environmental Cases.<sup>42</sup> Section 1, Rule 7, Part III of the said Rules provides:

Section 1. Nature of the writ. – The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

The Writ of Kalikasan, categorized as a special civil action and conceptualized as an extraordinary remedy,<sup>43</sup> covers environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. The writ is available against an unlawful act or omission of a public official or employee, or private individual or entity.

The following requisites must be present to avail of this remedy: (1) there is an actual or threatened violation of the constitutional right to a

<sup>42</sup> A.M. No. 09-6-8-SC; approved on 13 April 2010.

<sup>43</sup> *Paje v. Casiño*, G.R. No. 207257, 3 February 2015.

balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

In the present case, Agham, in its Petition for a Writ of Kalikasan, cited two laws which LAMI allegedly violated: (1) Section 68 of the Revised Forestry Code, as amended; and (2) Sections 57 and 69 of the Philippine Mining Act.

Section 68 of the Revised Forestry Code, as amended, states:

Sec. 68. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

x x x x

There are two distinct and separate offenses punished under Section 68 of PD 705:

(1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authorization; and

(2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations.<sup>44</sup>

In the present case, LAMI was given a Tree Cutting Permit<sup>45</sup> by the CENRO dated 17 April 2012. In the permit, LAMI was allowed to cut 37 trees with a total volume of 7.64 cubic meters within the port site, subject to the condition that the trees cut shall be replaced with a ratio of 1-30 fruit and non-bearing fruit trees. Thereafter, the Forest Management Service and Forest Utilization Unit, both under the DENR, issued a Post Evaluation Report<sup>46</sup> dated 3 May 2012 stating that LAMI properly followed the

<sup>44</sup> *Villarin v. People*, 672 Phil. 155 (2011), citing *Aquino v. People*, 611 Phil. 442, 450 (2009).

<sup>45</sup> *Rollo*, p. 461.

<sup>46</sup> *Id.* at 1009.

conditions laid down in the permit. The relevant portions of the Post Evaluation Report state:

x x x the following findings and observations are noted:

1. That the tree cutting implemented/conducted by the company was confined inside Lot No. 2999, Cad 316-D situated at Barangay Bolitoc, Sta. Cruz, Zambales and within the area previously granted for tree cutting;
2. It was found that the thirty seven (37) trees of various lesser-known species and fruit bearing trees with a total volume of 7.64 cubic meters as specified in the permit were cut as subject trees are located within the directly affected areas of the port facility project of the company;
3. The other trees previously inventoried and are not directly affected by the project within the same lot are spared; and
4. There are forty four (44) various species of miscellaneous trees counted and left with a computed volume of 6.04 cubic meters.

Relative the above findings and in compliance with the terms and conditions of the permit issued, the company should be reminded to replace the trees cut therein as specified in support with the environmental enhancement program of the DENR.

x x x x

Since LAMI strictly followed the permit issued by the CENRO and even passed the evaluation conducted after the issuance of the permit, then clearly LAMI had the authority to cut trees and did not violate Section 68 of the Revised Forestry Code, as amended.

Next, Agham submitted that LAMI allegedly violated Sections 57 and 69 of the Philippine Mining Act.

Sections 57 and 69 of the Philippine Mining Act state:

Section 57. Expenditure for Community Development and Science and Mining Technology – A contractor shall assist in the development of its mining community, the promotion of the general welfare of its inhabitants, and the development of science and mining technology.

Section 69. Environmental Protection – Every contractor shall undertake an environmental protection and enhancement program covering the period of the mineral agreement or permit. Such environmental program shall be incorporated in the work program which the contractor or permittee shall submit as an accompanying document to the application for a mineral agreement or permit. The work program shall include not only plans relative to mining operations but also to rehabilitation, regeneration, revegetation and reforestation of mineralized areas, slope stabilization of mined-out and tailings covered areas,

aquaculture, watershed development and water conservation; and socioeconomic development.

These two provisions are inapplicable to this case. First, LAMI is not conducting any mining activity on the port site. LAMI's mine site is about 25 kilometers away from the port site. Second, LAMI secured all the necessary permits and licenses for the construction of a port and LAMI's activity was limited to preparatory works for the port's construction. The Philippine Mining Act deals with mining operations and other mining activities. Sections 57 and 69 deal with the development of a mining community and environmental protection covering a mineral agreement or permit.

Here, Agham reasoned that LAMI was destroying the environment by cutting mountain trees and leveling a mountain to the damage and detriment of the residents of Zambales and the nearby towns of Pangasinan. Agham simply submitted a picture taken on 4 June 2012 where allegedly the backhoes owned by LAMI were pushing the remnants of the mountain to the sea.

This explanation, absent any concrete proof, is untenable.

Clearly, Agham did not give proper justifications for citing Sections 57 and 69 of the Philippine Mining Act. Agham did not even present any evidence that LAMI violated the mining law or any mining undertakings in relation to LAMI's construction of a port facility. Agham only alleged in very general terms that LAMI was destroying the environment and leveling a mountain without conducting any scientific studies or submitting expert testimonies that would corroborate such allegations.

Section 2(c), Rule 7, Part III of the Rules of Procedure for Environmental Cases provides:

Section 2. Contents of the petition. - The verified petition shall contain the following:

- (c) The environmental law, rule or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

The Rules are clear that in a Writ of Kalikasan petitioner has the burden to prove the (1) environmental law, rule or regulation violated or threatened to be violated; (2) act or omission complained of; and (3) the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Even the Annotation to the Rules of Procedure for Environmental Cases states that the magnitude of environmental damage is a condition *sine qua non* in a petition for the issuance of a Writ of Kalikasan and must be contained in the verified petition.

Agham, in failing to prove any violation of the Revised Forestry Code, as amended, and the Philippine Mining Act, shifted its focus and then claimed that LAMI allegedly flattened or leveled a mountain.

The mountain, according to Agham, serves as a natural protective barrier from typhoons and floods to the residents of Zambales and nearby towns of Pangasinan. Thus, Agham argues that once such natural resources are damaged, the residents of these two provinces will be defenseless and their life, health and properties will be at constant risk of being lost.

However, Agham, in accusing that LAMI allegedly flattened a mountain, did not cite any law allegedly violated by LAMI in relation to this claim. Agham did not present any proof to demonstrate that the local residents in Zambales, and even the nearby towns of Pangasinan, complained of any great danger or harm on the alleged leveling of the land formation which may affect their lives, health or properties. Neither was there any evidence showing of a grave and real environmental damage to the *barangay* and the surrounding vicinity.

To belie Agham's contentions, the records, from the testimonies of those experts in their fields, show that there is in fact no mountain in Brgy. Bolitoc, Sta. Cruz, Zambales.

First, in the Judicial Affidavit<sup>47</sup> dated 6 August 2012, the Regional Director of DENR EMB R3, Dir. Claudio, categorically declared that there is no mountain on LAMI's property. The relevant portions state:

32. Q: One of the complaints of Mayor Marty in his letter dated 27 April 2012, x x x, is that LAMI is "leveling a mountain" in its property in Barangay Bolitoc, Sta. Cruz, Zambales. Is there really a mountain in the property of LAMI in the said place?

A: None, sir. The subject landform is not considered as a mountain based on commonly accepted description of a mountain as having 300 meters to 2,500 meters height over base. The highest elevation of the project area is 23 meters.

33. Q: Do you have any proof that the landform in LAMI's property is not a mountain?

A: Yes, sir. The Mines and Geosciences Bureau (MGB), Regional Office No. III, through the OIC of the Geosciences Division, issued a Memorandum dated June 26, 2012 proving that there is no mountain in LAMI's property. The proper description of the landform, according to the said memorandum, is an "elongated mound"<sup>48</sup>

<sup>47</sup> Id. at 934-949.

<sup>48</sup> Id. at 944.

Second, LAMI, through the Judicial Affidavit<sup>49</sup> dated 3 August 2012 of Felipe E. Floria, LAMI's Vice-President and General Manager, was able to establish that Brgy. Bolitoc, Sta. Cruz had no mountain. The relevant portions provide:

126. Q: Why do you say that this elevated portion is not a "mountain"?

A: The port site where the alleged mountain is located is only 1.8 hectares of alienable and disposable land. It is private property, lawfully possessed by LAMI, with the latter exercising rights based on its occupation thereof. The mound and/or ridge within the private property is only about 23 meters high. The base or footing of the mound therein which the Petitioner insists is a mountain is only 1.5 hectares, and the height is approximately 23 meters. I have been advised that a mountain, as described by the United Nations Environment Programme – World Conservation Monitoring Centre ("UNEP-WCMC"), must be, at least, of a height greater than 300 meters or 984 feet in addition to other requirements on slope and local elevation range. In other countries, the United Kingdom for example, the minimum height requirement is 2,000 ft or 609.6 meters.<sup>50</sup>

Third, several government entities and officials have declared that there is no mountain on the port site: (1) in a Letter<sup>51</sup> to LAMI signed by the *Sangguniang Bayan* members of Sta. Cruz dated 4 June 2012, the *Sangguniang Bayan* members stated that there is no mountain in the area; (2) in a Memorandum<sup>52</sup> dated 4 June 2012, the CENRO concluded that the "mountain" is a "hill falling under Block I, Alienable and Disposable land per LC Map 635"; and (3) in a Special Report<sup>53</sup> re: Police Assistance dated 6 May 2012, the Provincial Director of PNP Zambales reported to the PNP Regional Director, citing the findings of the local chief of police, that no leveling of a mountain transpired in the area.

Last, in an Inspection Report<sup>54</sup> dated 26 June 2012, the Mines and Geosciences Bureau, Geosciences Division of the DENR concluded that the "mountain" is only an elongated mound. The findings and conclusion of the report provide:

#### FINDINGS

1. The Bolitoc LAMI Port Facility is approximately centered at the intersection of geographic coordinates 15°45'00.4" north latitude and 119°53'19.9" east longitude, x x x. It is bounded on the north by the West Philippine Sea (Bolitoc Bay), on the west and east by the continuation of the elevated landform, and to the south by an unnamed creek and a concrete barangay road connecting the Brgy. Bolitoc to the Zambales National Highway.

<sup>49</sup> Id. at 807-844.

<sup>50</sup> Id. at 828.

<sup>51</sup> Id. at 630-631.

<sup>52</sup> Id. at 645-646.

<sup>53</sup> Id. at 2199-2200.

<sup>54</sup> Id. at 1010-1012.

Brgy. Bolitoc also hosts the port facilities of the DMCI and the Shangfil Corporation both of which occupy the former loading site of the defunct Acoje Mining Corporation.

2. The landform of interest is characterized by a roughly east-west trending elevated and elongated landmass. Within the LAMI site, the elevated landform measures 164 meters in length and about 94 meters in width and is almost parallel to the coastline. It has a maximum elevation located at its eastern end of 26 meters above mean sea level more or less. Its western end has an elevation of 23 meters above mean sea level more or less x x x. The landform is about 16 meters higher than the barangay road and nearby houses x x x.

From the LAMI area, the landform continues eastwards to the DMCI and the Shangfil Port facilities and also westwards to the vicinity of Brgy. Bolitoc proper.

3. The area is underlain by interbedded calcareous sandstone, shale, and siltstone of the Cabaluan Formation (formerly Zambales Formation), x x x. Rock outcrops show the sedimentary sequence displaying almost horizontal to gently dipping beds cut by a minor fault. These rocks weather into a 1-2 meter silty clay.

#### DISCUSSION

Considering elevated landform of interest measures 164 meters in length and about 94 meters in width disposed in an elongate manner with a maximum elevation of 26 meters more or less above mean sea level and is about 16 meters higher than the barangay road and nearby houses and using the Glossary of Landforms and Geologic Terms x x x by Hawley and Parsons, 1980 above that **the elevated landform is neither a mountain or hill, but instead it is considered elongated landmass/or elongated mound.**

#### CONCLUSION

Based on the above geological and landform (geomorphic) classification, **considering its elevation of 23 to 26 meters above mean sea level and which is 16 meters above the barangay road and vicinity, the elevated landform present in the LAMI port facility is neither a hill or mountain. Its elevation of 16 meters above its vicinity is lower than a hill (30 meters). Its height above its vicinity can be possibly categorized as a mound** which is defined by the Dictionary of Geological terms (1976) prepared by the American Geological Institute as which defines a mound as “a low hill of earth, natural or artificial.” In the United Kingdom, mounds are also called hillocks or knolls. The term elongated is prefixed as a modifier to describe its east-west disposition. **Hence, the elevated landform of interest is considered as elongated mound.**<sup>55</sup> (Emphasis supplied)

On the other hand, the lone witness of Agham, former Rep. Palmones, admitted in the 10 September 2012 hearing conducted by the Court of

<sup>55</sup> Id. at 1011-1012.

Appeals that he was incompetent to prove that the elevated ground located in Brgy. Bolitoc is a mountain. The relevant portions<sup>56</sup> of Rep. Palmones' testimony provide:

Atty. Gallos: Mr. Congressman, you conducted an ocular inspection in Brgy. Bolitoc in Sta. Cruz, Zambales on May 21?  
Cong. Palmones: Yes.

x x x x

Atty. Gallos: That was the first time you were in Brgy. Bolitoc?  
Cong. Palmones: Yes.

Atty. Gallos: That was also the first and the last ocular inspection that you did so far in Brgy. Bolitoc?  
Cong. Palmones: Yes.

x x x x

**Atty. Gallos: What is the name of this mountain?**

**Cong. Palmones: I really don't know the name of the mountain, Your Honor.**

**Atty. Gallos: What is the elevation or height of this mountain?**

**Cong. Palmones: I really don't know the elevation of that mountain, Your Honors.**

**Atty. Gallos: What is the base of this mountain?**

**Cong. Palmones: I really don't know, Your Honors.**

**Atty. Tolentino: Your Honor, the witness is incompetent to answer the questions.**

**Cong. Palmones: I'm not competent to answer that question.**

**Atty. Gallos: Your Honor, that's exactly our point. He is claiming that there is a mountain but he cannot tell us the height, the slope, the elevation, the base, Your Honor. So you admit now that you do not know, you do not have the competence to state whether or not there is a mountain?**

**Cong. Palmones: I really don't know what is the technical description of a mountain but based on the information that we got from the community during the consultation it's full of vegetation before it was leveled down by the operation, Your Honors. (Emphasis supplied)**

Agham, in its Motion for Reconsideration with the Court of Appeals, then asserted that even if the subject land formation is not a mound, hill or mountain, the fact remains that the scraping and leveling done by petitioner caused serious environmental damage which affects not only Sta. Cruz, Zambales but also the nearby towns of Zambales and Pangasinan.

<sup>56</sup> Id. at 1403-1405, 1474-1477.

The Court of Appeals, in granting the Motion for Reconsideration embodied in its Amended Decision dated 13 September 2013, held that what LAMI did was not to simply level the subject land formation but scrape and remove a small mountain and, thereafter, reclaim a portion of the adjacent waters with the earth it took therefrom, making out of the soil gathered to construct a seaport. The Court of Appeals stated that the scraping off or the cutting of the subject land formation by LAMI would instigate the gradual eradication of the strip of land mass in Brgy. Bolitoc which serves as protective barrier to floods brought about by the swelling or surging of the coastal water moving inward reaching other towns of Zambales and Pangasinan. The Court of Appeals added that the port site is prone to frequent visits of tropical depression and that the coastal portions of the “Sta. Cruz Quadrangle – Zambales and Pangasinan province” are touted to be highly susceptible to landslide and flooding.

We do not subscribe to the appellate court’s view.

First, the Court of Appeals did not provide any basis, in fact and in law, to support the reversal of its original decision. Agham, in its Motion for Reconsideration, did not present new evidence to refute its claim that LAMI leveled a “mountain” or that there was an environmental damage of considerable significance that will harm the life, health and properties of the residents of the municipality of Sta. Cruz and its neighboring towns or cities, or even the provinces of Zambales and Pangasinan. The pleadings and documents submitted by Agham were just a reiteration of its original position before the original Court of Appeals’ decision was promulgated on 23 November 2012.

It is well-settled that a party claiming the privilege for the issuance of a Writ of Kalikasan has to show that a law, rule or regulation was violated or would be violated. In the present case, the allegation by Agham that two laws – the Revised Forestry Code, as amended, and the Philippine Mining Act – were violated by LAMI was not adequately substantiated by Agham. Even the facts submitted by Agham to establish environmental damage were mere general allegations.

Second, Agham’s allegation that there was a “mountain” in LAMI’s port site was earlier established as false as the “mountain” was non-existent as proven by the testimonies of the witnesses and reports made by environmental experts and persons who have been educated and trained in their respective fields.

Third, contrary to Agham’s claim that LAMI had no ECC from the DENR, the DENR restored LAMI’s ECC. After LAMI was issued a Notice of Violation of its ECC dated 1 June 2012 by the DENR-EMB R3, LAMI

complied with all the requirements and its ECC had been reinstated. In the Letter<sup>57</sup> dated 24 October 2012, Dir. Claudio wrote:

x x x x

Regarding the alleged cutting of trees and leveling of the mountain, we have verified that:

1. There is no illegal cutting of trees since a Tree Cutting Permit was issued by the Community Environment and Natural Resources Office (CENRO). Monitoring of the compliance with the conditions of the said Permit was also undertaken by the CENRO; and
2. There is no leveling of a mountain. As certified by the Mines and Geosciences Bureau Region 3, the landform in the area is an elongated mound which is 164 meters in length and 94 meters in width and its maximum elevation is 26 meters above mean sea level.

Further, we recognize your efforts in revegetating the exposed side slopes of the cut portion of the mound and the construction of drainage system and silt traps to prevent the siltation of the bay.

The violated ECC conditions have been rectified and clarified while the penalty corresponding to such violation was fully paid and the required rehabilitation and mitigating measures were already implemented as committed. As such, the matter leading to the issuance of the NOV is now resolved.

As ECC holder, you are enjoined to ensure the effective carrying out of your Environmental Management and Monitoring Plan.

Even Rep. Dan S. Fernandez, the Chairman of the Committee on Ecology of the House of Representatives, acknowledged that LAMI had fully complied with its ECC conditions. In a Letter<sup>58</sup> dated 26 February 2013 addressed to the DENR Secretary, Rep. Fernandez wrote:

x x x x

On 21 February 2013, the Committee on Ecology received a letter from Director Lormelyn E. Claudio, the Regional Director for Region III of the Environment Management Bureau of the DENR. The letter ascertains that, among other things, based on the investigation and monitoring conducted led by Dir. Claudio, LAMI is, to date, in compliance with its environmental commitments as required under the ECC and said Order.

In view thereof, the Committee would like to express its appreciation for the apt and prompt action on the matter. We expect that the subject company's conformity to environmental laws, as well as its activities' impact on the environment, will remain closely monitored and evaluated.

x x x x

<sup>57</sup> Id. at 2249-2250.

<sup>58</sup> Id. at 2252.

Last, the alleged scraping off or leveling of land at LAMI's port site is deemed insignificant to pose a detrimental impact on the environment.

Dir. Claudio testified at the hearing conducted by the Court of Appeals on 26 September 2012 that the cut and fill operations of LAMI only affected the port site but not the surrounding area and that the environmental effect was only minimal and insignificant. The relevant portions of Dir. Claudio's testimony provide:

A/Sol. Chua Cheng: Madam Witness, you made mention that the cut and fill operations involved the... or the causeway created during the cut and fill operation is 82 meters in length and 8 meters in width. What is the overall environment effect of this cut and fill operation in Barangay Bolitoc?

Dir. Claudio.: **It is minimal, insignificant and temporary in nature**, Sir, because as I mentioned, only 11,580 cubic meters had been stripped off and the tree cutting which had been issued with a permit is only less than about 37 trees based on the Post Evaluation Report done by the CENRO, Sir.

A/Sol. Chua Cheng: What about the effect of such cut and fill operations as regards the two provinces, Pangasinan and Zambales, does it have any effect or what is the extent of the effect?

Dir. Claudio: **It is just localized; it is just confined within the project area** because we required them to put up the drainage system, the drainage, the canals and the siltation ponds and the laying of armour rocks for the sea wall and the construction of causeway, Sir, to avoid erosion and sedimentation. We also required them to rehabilitate the exposed slopes which they already did.

x x x x

A/Sol. Chua Cheng: Only in the project area specifically located only in Brgy. Bolitoc?

Dir. Claudio: Brgy. Bolitoc, Sta. Cruz, Zambales, Sir. **It does not in any way affect or cannot affect the Province of Pangasinan as alleged**, Sir.<sup>59</sup> (Emphasis supplied)

Even the Geoscience Foundation, Inc., which conducted a scientific study on the port site regarding the possible damage to the environment from the construction of the port facility, found that the landform was too small to protect against typhoons, monsoons and floods due to heavy rains and storm surges. Its Report<sup>60</sup> on the Topographical, Geomorphological and Climatological Characterization of the LAMI Port undertaken in September 2012 stated:

6.0 Findings in Relation to the Petition for Writ of Kalikasan

x x x x

<sup>59</sup> Id. at 1650-1653.

<sup>60</sup> Id. at 2207-2234.

1. *The LAMI Port is partly situated in a hill and not a mountain.* The topographic and geologic maps of NAMRIA and the MGB do not show the presence of a mountain where the port is partly located. The detailed topographic survey moreover indicates that this hill had an original elevation of 23 m.MSL in the portion where it was excavated to accommodate the access road leading to the wharf.

Mountains attain much higher elevations than 23 m.MSL. Kendall et al. (1967), defines a mountain as having a height of at least 900 meters and are usually characterized by a vertical zonation of landscape and vegetation due to increasing elevations.

2. *No leveling of a mountain was done.* The construction of the access road required a V-cut through the hill that lowered it from 23 m.MSL to 7.5 m.MSL. This elevation is still much higher than the flat land surrounding the hill. The hill had an original length of 600 meters through which the V-cut, which has an average width of 26.5 meters, was excavated. Only a small portion of the hill was therefore altered.

The topographic survey further reveals that the total volume of earth material removed is 24,569 cubic meters, which would fit a room that has a length, width and height of 29 meters. This amount of earth material does not constitute the volume of a mountain.

3. *The hill is too small and not in the right location to protect against typhoons.* The hill cannot serve as a natural protective barrier against typhoons in Zambales and some towns of Pangasinan because it is too small compared to the magnitude of typhoons. Typhoons approach the country from east and move in a west to northwest direction through Zambales Province as clarified in Figure 7. They are even able to cross the Sierra Madre Range and the Zambales Range before reaching Zambales Province. Since the port is situated at the western coastline of Zambales, it would be the last thing a typhoon would pass by as it moves through Zambales.

4. *The hill is too small to protect against the Southwest Monsoon.* The hill does not shield any area from the heavy rains that batter the country during the Southwest Monsoon. It is too small to alter the effect of the Southwest Monsoon in the way that the Sierra Madre Range forces the Northwest Monsoon to rise over it and release much of its moisture as orographic precipitation on the windward side of the range such that the leeward side is drier.

5. *The hill is not in the right location to protect against flooding due to heavy rains.* The hill does not protect against the floods that occur from heavy rains. Since Zambales regionally slopes down to the west, flood water during heavy rains will move from east to west following the flow direction of rivers in the area. Flood water from the Zambales Range will inundate the coastal plain first before reaching the coastline where the hill is situated. Figure 11 depicts the flow direction of flood water in the municipality.

6. *The hill is too small to protect against floods due to storm surges.* Storm surges appear as large waves that are caused by the pushing of the wind on the surface of the sea or ocean during storm events. Since the hill has a present length of only 420 meters, it is too small to prevent flooding due to storm surges. The large waves will just skirt the hill and sweep through the low-lying coastland to the west and east of the hill.

The hill shields against the direct impact of large, south-moving waves to several homes located immediately south of the hill. Since the V-cut of the access road is small compared to the rest of the hill and terminates at a relatively high 7.5 m.MSL, this protection offered by the hill is not significantly diminished.<sup>61</sup>

Further, the DENR composite team, in its Report of Investigation<sup>62</sup> conducted on 20-21 June 2012 on LAMI's port site to ensure that LAMI undertook mitigating measures in its property, found that LAMI's activities posed only a minimal or insignificant impact to the environment. The relevant portions of the Report state:

Findings and Observations:

The composite team gathered data and the following are the initial observations:

1. Site preparation which includes site grading/surface stripping, low ridge cut and fill and reclamation works were observed to have been undertaken within the project area;

2. A total volume of approximately 11,580 cubic meters of soil cut/stripped from low ridge was noted being used for causeway construction. Part of the discarded soil with a volume of 5,843 cubic meters was already used for causeway preparation while the remaining 5,735 cubic meters was noted still on stockpile area;

3. Discarded soil generated from ridge cut and fill consists of clay with sandstone and shale;

**4. The partial low ridge cut and fill poses minimal or insignificant impact to the environment due to threats of storm surges, strong winds and flooding because the protective natural barriers against northeast monsoon are the mountain ranges in the eastern part of Zambales and Pangasinan which are geologically and historically effective as in the case of the adjoining and operational ports of the DMCI and Shang Fil.**

5. The height of the low ridge is still maintained at an elevation of 23.144 meters above sea level while the constructed access road to the causeway has an elevation of 7.46 meters with a width of 8 meters and length of 80-100 meters only.

Remarks and Recommendation:

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<sup>61</sup> Id. at 2225-2226.

<sup>62</sup> Id. at 1028-1031.

**The construction of the access road on the low ridge does not pose adverse environmental impact to the adjoining communities more so to the larger areas or the entire province of Zambales and Pangasinan.**

It was determined as a result of our verification and based on the above findings supported with field GPS reading that **there had been no leveling of the mountain undertaken in the project site as there is no mountain existing inside the area** covered by the ECC issued by EMB-Region 3. The landform claimed by Mayor Marty to be a mountain is actually an elongated low ridge with a peak of approximately 23 meters above sea level which is located in a private land falling under Block 1, Alienable and Disposable Land per LC Map 635 with Lot No. 2999 originally owned by Mr. Severo Monsalud which was transferred to Sta. Cruz Mineral Port Corporation with a Contract of Lease with LAMI (data provided by CENRO Masinloc through a Memorandum dated June 4, 2012). The proponent (LAMI) only implemented road cutting of low ridge in the middle to make an access way to the proposed marine loading facility. More so, tree cutting done by LAMI is covered by a Permit to Cut issued by DENR-Region 3-CENRO, Masinloc which is responsible for the inventory and monitoring of cut trees.

x x x x<sup>63</sup> (Emphasis supplied)

Thus, from all the foregoing, we agree with the appellate court, in its original Decision dated 23 November 2012, when it denied the petition for a Writ of Kalikasan:

As between the too general and very hypothetical allegation of large-scale environmental damage at one hand, and the remarks of government experts on the other, We are inclined to give more credit to the latter. Below is the further articulation of our stance:

#### Presumption of regularity

It is a legal presumption, born of wisdom and experience, that official duty has been regularly performed. Therefore, the fact that the “remarks and recommendation” of the composite team from EMB R3, MGB R3, and PENRO Zambales were made in the exercise of their government function, the presumption of regularity in the performance of such official duty stands. It is incumbent upon petitioner to prove otherwise, a task which it failed to do here.

#### Expert findings are afforded great weight

The findings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed. x x x.<sup>64</sup>

<sup>63</sup> Id. at 1029-1031.

<sup>64</sup> Id. at 155-156. Citations omitted.

In sum, contrary to the findings of the appellate court in its Amended Decision dated 13 September 2013, we find that LAMI did not cause any environmental damage that prejudiced the life, health or property of the inhabitants residing in the municipality of Sta. Cruz, the province of Zambales or in the neighboring province of Pangasinan. Agham, as the party that has the burden to prove the requirements for the issuance of the privilege of the Writ of Kalikasan, failed to prove (1) the environmental laws allegedly violated by LAMI; and (2) the magnitude of the environmental damage allegedly caused by LAMI in the construction of LAMI's port facility in Brgy. Bolitoc, Sta. Cruz, Zambales and its surrounding area. Thus, the petition for the issuance of the privilege of the Writ of Kalikasan must be denied.

**WHEREFORE**, we **GRANT** the petition. We **REVERSE and SET ASIDE** the Amended Decision dated 13 September 2013 of the Court of Appeals and **REINSTATE AND AFFIRM** the original Decision dated 23 November 2012 of the Court of Appeals in CA-G.R. SP No. 00012 which **DENIED** the petition for the issuance of the privilege of the Writ of Kalikasan.

**SO ORDERED.**

  
**ANTONIO T. CARPIO**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice



**PRESBITERO J. VELASCO, JR.**  
Associate Justice

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*Arturo D. Brion*  
**ARTURO D. BRION**  
Associate Justice

*Diosdado M. Peralta*  
**DIOSDADO M. PERALTA**  
Associate Justice

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
Associate Justice

*Mariano C. Del Castillo*  
**MARIANO C. DEL CASTILLO**  
Associate Justice

*Jose Portugal Perez*  
**JOSE PORTUGAL PEREZ**  
Associate Justice

*Jose Cabral Mendoza*  
**JOSE CABRAL MENDOZA**  
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*Bienvenido L. Reyes*  
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*Estela M. Perlas-Bernabe*  
**ESTELA M. PERLAS-BERNABE**  
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*Marvic M.V.F. Leonen*  
**MARVIC M.V.F. LEONEN**  
Associate Justice

*Francis H. Jardeleza*  
**FRANCIS H. JARDELEZA**  
Associate Justice

*Alfredo Benjamin S. Caguioa*  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



**MARIA LOURDES P. A. SERENO**  
Chief Justice