**EN BANC**

**G.R. No. 195987 — PROVINCE OF PAMPANGA,** *petitioner,* ***versus*** **EXECUTIVE SECRETARY ALBERTO ROMULO AND DEPARMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR),** *respondents.*

Promulgated: January 12, 2021

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## CONCURRING OPINION

**CAGUIOA, *J.*:**

The instant Petition seeks to nullify Executive Order No. (EO) 224.[1] Petitioner claims that Section 1 of EO 224 infringes upon the Provincial Governor's exclusive power and authority to issue permits to extract gravel and sand within his territorial jurisdiction, while Section 4 thereof interferes with the Provincial Treasurer's authority to collect all local taxes, fees and charges in accordance with the Local Government Code of 1991 (LGC) and Republic Act No. (RA) 7942[2] (Mining Act).

I concur with the *ponencia* in denying the petition and upholding the validity and constitutionality of EO 224. I submit this concurring opinion to further emphasize that EO 224 was issued in the valid exercise of the President's constitutional duty to enforce and administer the laws.

For proper context, a brief history on the issuance of EO 224 is important to consider.

On January 11, 1999, then President Joseph Estrada issued Proclamation No. 66, *Declaring the Lahar Affected Rivers and Embankment Areas in the Provinces of Pampanga, Tarlac and Zambales as Environmentally Critical Areas and as Mineral Reservation under the Direct Supervision and Control of the Department of Environment and Natural Resources* (DENR). This issuance of Proclamation No. 66 was prompted by the continuing danger that lahar deposits pose to the lives and properties in the affected provinces, and the possible adverse impacts to the environment caused by the growing demand for the utilization of the sand and gravel/lahar deposits therein in connection with government and private sector infrastructure projects.[3] Thus, in order to protect and properly manage these

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1 RATIONALIZATING THE EXTRACTION AND DISPOSITION OF SAND AND GRAVEL/LAHAR DEPOSITS IN THE PROVINCES OF PAMPANGA, TARLAC AND ZAMBALES, approved on July 4, 2003.

2 Philippine Mining Act of 1995, approved on March 3, 1995.

3 The whereas clauses of Proclamation No. 66 states:
**WHEREAS,** the various rivers and river systems in the Provinces of Pampanga, Tarlac and Zambales have been greatly affected by the volcanic eruption and lahar deposits from the eruption of Mt. Pinatubo;

affected areas, the exploration, development, exploitation and utilization of the sand and lahar deposits in these provinces were placed under the control and supervision of the DENR.[4]

In 2002, then President Gloria Macapagal-Arroyo (PGMA) issued Proclamation No. 183,[5] revoking Proclamation No. 66 because the latter failed to recognize the rights and equitable share of the local government from the utilization and development of national wealth within their respective jurisdictions, as provided under the LGC.[6]

On July 4, 2003, PGMA issued the assailed EO 224. Unlike its predecessor, EO 224 recognized that the protection and proper management of the utilization and exploitation of sand and gravel/lahar deposits in the provinces of Pampanga, Tarlac and Zambales should be for the benefit of both local and national governments, *viz.*:

> **WHEREAS,** it is necessary to protect and properly manage the utilization of the sand and gravel/lahar deposits of the provinces of Pampanga, Tarlac and Zambales to improve the water flows of its river systems, ensure the integrity of the various protective dikes and infrastructures, and thereby reduce risks to lives and properties;
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> **WHEREAS,** it is in the interest of the State that said sand and gravel/lahar deposits be properly utilized for the benefit of both local

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**WHEREAS,** the lahar deposits continue to pose grave danger to lives and properties, public infrastructures like the mega-dike and critical bridges, as well as private infrastructures, particularly during extended rainy periods like the La Niña;
**WHEREAS,** these sand and lahar deposits have now become a very important source of sand materials for various government and private sector infrastructure and construction projects;
**WHEREAS,** it is in the interest of the State that the said sand and lahar materials be properly utilized for the benefit of the government and all concerned with due regard to any possible adverse environmental impacts;
**WHEREAS,** it is necessary to protect and properly manage these river systems and the exploitation and utilization of their sand and lahar deposits in order to maintain or improve their water flows, reduce risks to lives and properties, and to restrain inappropriate mineral exploitation and land-use[.]

4 Section 2 of Proclamation No. 66 states:
Section 2. Pursuant to Section 5 of R.A. 7942, the above-mentioned areas are also hereby established and set apart, subject to valid and existing private rights, as mineral reservation under the administration of the Department of Environment and Natural Resources, for the purpose of exploring, developing, exploiting, and utilizing of all the lahar deposits in these areas.

5 REVOKING PROCLAMATION NO. 66, SERIES OF 1999, DECLARING THE LAHAR-AFFECTED RIVERS AND EMBANKMENT AREAS IN THE PROVINCES OF PAMPANGA, TARLAC AND ZAMBALES AS ENVIRONMENTALLY CRITICAL AREAS AND AS MINERAL RESERVATION UNDER THE DIRECT SUPERVISION AND CONTROL OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, April 23, 2002.

6 The whereas clauses of Proclamation No. 183 states:
**WHEREAS,** Proclamation No. 66 dated January 11, 1999, declared the lahar-affected rivers and embankment areas in the provinces of Pampanga, Tarlac and Zambales as environmentally critical areas and as mineral reservation under the direct supervision and control of the Department of Environment and Natural Resources;
**WHEREAS,** the Local Government Code of 1991 mandates that local government units shall have an equitable share derived from the utilization and development of the national wealth within their respective areas, including sharing the same with the inhabitants by way of direct benefits;
**WHEREAS,** Proclamation No. 66, series of 1999, has virtually deprived the three (3) provinces aforementioned and/or their component cities and municipalities supervision and control over the river systems and embankment areas found within their respective territorial jurisdictions;
**WHEREAS,** sound governance demands that control and supervision over these river systems and the exploitation and utilization of the sand and lahar deposits in the area be returned to the local government units concerned.

> and the national governments and all concerned, with due regard to the environment.

The whereas clauses also indicate that EO 224 was issued to ensure that the provisions of the Mining Act and the LGC, in relation to the extraction and disposition of sand and gravel/lahar deposits in these three provinces, are properly implemented.[7]

To achieve these objectives, Section 2 of EO 224 created a Task Force – composed of the Regional Director of the Mines and Geosciences Bureau (MGB) and the Provincial Governor – primarily tasked "[t]o ensure compliance by all permit holders with the terms and conditions of their permits, properly monitor the volume of extracted materials, and collect the proper taxes and fees from sand and gravel/lahar operations." In fact, EO 224 reiterates that **the processing and issuance of permits shall be governed by Chapter 8 of the Mining Act[8] and that the appropriate share of the concerned local government in the taxes and fees on the sand and gravel operations, per Section 138 of the LGC, are duly remitted fully and on time**.[9]

Clearly, EO 224 is nothing but an issuance in exercise of the President's inherent ordinance making power[10] — to ensure that laws are faithfully executed.[11] EO 224 was plainly intended to safeguard the interests of both the local and national governments – as represented by the Provincial Governor and Regional Director of the MGB, respectively – by enforcing due observance of the relevant provisions of the Mining Act and the LGC, in relation to the sand and gravel operations of the lahar deposits in the three provinces.

Contrary to petitioner's assertion, EO 224 does not infringe upon the Provincial Governor's authority under the LGC to issue permits for extraction and removal of sand and gravel deposits within his territorial jurisdiction.

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7 The whereas clauses of EO 224 further states:
**WHEREAS,** Section 17(3)(iii) of Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code of 1991, provides that a province shall, subject to the supervision, control and review of the Secretary of the Department of Environment and Natural Resources (DENR), enforce small-scale mining law and other laws on the protection of the environment;
**WHEREAS,** Sections 4 and 8 of R.A. No. 7942, otherwise known as the Philippine Mining Act of 1995, provides that the exploration, development, utilization and processing of mineral resources shall be under the full control and supervision of the State, that it may directly undertake such activities or it may enter into mineral agreements with contractors and that the DENR shall be the primary agency responsible for the conservation, management, development and proper use of the State's mineral resources;
**WHEREAS,** Executive Order (E.O.) No. 192 mandates that the DENR shall be the primary government agency responsible for the conservation, management, development and proper use of the country's environment and 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;
**WHEREAS,** Chapter 8 of R.A. 7942 further provides that industrial sand and gravel permit covering an area of more than five (5) hectares shall be issued by the Mines and Geosciences Bureau (MGB)[.]

8 EO 224, Sec. 1.

9 Id. at Sec. 4(d).

10 Executive Order No. 292, Administrative Code of 1987, Book III, Title I, Chapter 2, Sec. 2, July 25, 1987.

11 1987 CONSTITUTION, Article VII, Sec. 17.

Notably, Section 138 of the LGC, which confers upon the Provincial Governor the exclusive authority to issue permit to extract sand, gravel and other quarry resources, has been modified by Chapter 8 of the Mining Act. Under the Mining Act, the Provincial Governor is authorized to grant sand and gravel permit for areas not more than five hectares; while the MGB is authorized to grant sand and gravel permit for areas of more than five hectares.[12]

While Section 1 of EO 224 provides that acceptance, processing and evaluation of applications for permits to extract industrial sand and gravel/lahar deposits in the three provinces shall be undertaken through a Task Force composed of the MGB and the Provincial Governor, it nonetheless clearly and unequivocally mandates **that the issuance of permits by the MGB shall be governed by Chapter 8 of the Mining Act**. Thus, Section 1 simply authorizes the Task Force to supervise the processing and evaluation of the applications for sand and gravel permits. The respective authority and jurisdiction of the MGB and the Provincial Governor to issue sand and gravel permits under the Mining Act are maintained and respected.

There is also nothing repugnant between Section 4 of EO 224 and the Mining Act or its Implementing Rules and Regulations[13] (IRR) in relation to the collection of taxes. The IRR states that the required quarry fees shall be paid to the concerned Provincial/City Treasurer in accordance with pertinent provisions of the LGC.[14] In turn, Section 4 of EO 224 ensures that these taxes are duly paid and remitted **as required by the LGC**, to wit:

> **SEC. 4. Collection of Taxes, Fees and Charges.** The Task Force shall be responsible for the collection of all applicable local taxes, fees and charges and shall, among others:
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> a. Issue the required DR only to legitimate sand and gravel operators/permit holders and upon the issuance of Order of Payment by the PMRB;
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> **b. Ensure that the necessary taxes and fees due the local government are duly paid for prior to the issuance of any DRs;**
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> c. Assist in ensuring that the excise tax for mineral products is duly paid for prior to the issuance of such DRs; and

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[12] The Mining Act provides:

SEC. 46. *Commercial Sand and Gravel Permit.* — Any qualified person may be granted a permit by the provincial governor to extract and remove sand and gravel or other loose or unconsolidated materials which are used in their natural state, without undergoing processing from an area of not more than five hectares (5 has.) and in such quantities as may be specified in the permit.

SEC. 47. *Industrial Sand and Gravel Permit.* — Any qualified person may be granted an industrial sand and gravel permit by the Bureau for the extraction of sand and gravel and other loose or unconsolidated materials that necessitate the use of mechanical processing covering an area of more than five hectares (5 has.) at any one time. The permit shall have a term of five (5) years, renewable for a like period but not to exceed a total term of twenty-five (25) years.

[13] Revised Implementing Rules and Regulations of Republic Act No. 7942, Otherwise Known as the "Philippine Mining Act of 1995," DENR Administrative Order No. 96-40, December 19, 1996.

[14] Id. at Chapter VIII, Sec. 97.

> **d. Ensure that the appropriate share of the concerned Provinces, Municipalities and Barangays, as per Section 138 of the Local Government Code of 1991, are duly remitted fully and on time.**
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> e. Render an accounting to the Secretary of Environment and Natural Resources
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> Excise tax payments shall likewise be immediately remitted and shared in accordance with law. (Emphasis and underscoring supplied)

Hence, Section 4 — *read in its entirety* — merely authorized the Task Force to **oversee** "the collection of all necessary taxes and fees that may be derived from the extraction of industrial sand and gravel in the territorial jurisdiction of the concerned local government unit."[15] Section 4 therefore does not, in any way, contravene but, in fact, complements the Mining Act, its IRR and the LGC.

Furthermore, nothing in Section 4 even remotely suggests that the Task Force exercises control over the provincial government.

Control has been defined as "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for test of the latter."[16] Supervision, on the other hand, means "overseeing or the power or authority of an officer to see that subordinate officers perform their duties."[17] Officers in control "lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves."[18] On the other hand, "[s]upervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed."[19]

Section 4 does not grant the Task Force any authority to impose rules or regulations on how the local government should collect the appropriate taxes, fees or charges. Neither does it allow the Task Force to alter, modify, nullify or substitute the discretion of the local government with respect to the collection of the fees and taxes due to them. All that Section 4 mandates the Task Force to do is to ensure that all permit holders pay the necessary taxes and fees due the local government and that the appropriate share of the concerned local government are remitted on time and in full. This clearly is not control but a simple exercise of general supervision.

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15 *Rollo*, p. 54.
16 *Ganzon v. Court of Appeals*, G.R. No. 93252, 93746 & 95245, August 5, 1991, 200 SCRA 271, 283.
17 Id. at 283-284.
18 *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000, 336 SCRA 201, 215.
19 Id.

There is also nothing in EO 224 which can be construed as infringing upon the fiscal autonomy of local governments.

To be clear, fiscal autonomy is the power of local government units (LGUs) to create their own sources of revenues and to levy taxes, fees, and charges, subject to such guidelines and limitations as the Congress may provide, and which shall accrue exclusively to the local governments.[20] It also includes the power to allocate their resources in accordance with their own priorities.[21] Thus, I cannot see how authorizing the Task Force to **oversee** the collection of all applicable local taxes, fees and charges could violate local fiscal autonomy, when the authority to levy quarry fees and taxes and entitlement thereto remain with the provincial government and other concerned LGUs. Section 4 of EO 224 simply provides that "[t]he Task Force shall be responsible for the collection of all applicable local taxes, fees and charges." It did not, in any way, limit the provincial government's authority to levy taxes on quarrying operations under Section 138 of the LGC. Neither did it deprive the concerned LGUs of the revenue or income due to them under the LGC.

In *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*,[22] the Court *En Banc* struck down Sections 13 and 14 of RA 9167 as it completely deprived the LGUs of the income which otherwise inures to them as the taxing authority.[23] The Court found this "in clear contravention of the constitutional command that taxes levied by LGUs shall accrue *exclusively* to said LGU and is repugnant to the power of LGUs to apportion their resources in line with their priorities."[24] This is not the case with EO 224. Again, all that Section 4 of EO 224 does is to **ensure** "that the necessary taxes and fees due the local government are duly paid for prior to the issuance of any [Delivery Receipts]"[25] and "that the appropriate share of the concerned Provinces, Municipalities and Barangays, as per Section 138 of the Local Government Code of 1991, are duly remitted fully and on time."[26] Thus, to my mind, EO 224 does not contravene, but in fact, recognizes the fiscal autonomy granted to the local government. It is a basic precept in statutory construction that a law should be construed in harmony with and not in violation of the Constitution.[27] If a statute is susceptible to two or more constructions, the one which would not be in conflict with what is ordained in the Constitution is to be preferred.[28]

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20 1987 CONSTITUTION, Article X, Sec. 5. See also *Pimentel, Jr. v. Aguirre*, supra note 18, at 218, cited in *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736, 766-767; *Villafuerte, Jr. v. Robredo*, G.R. No. 195390, December 10, 2014, 744 SCRA 534, 560-561; and *Mandanas v. Ochoa, Jr.*, G.R. Nos. 199802 & 208488, July 3, 2018, 869 SCRA 440.

21 *Mandanas v. Ochoa, Jr.*, id.

22 G.R. No. 203754 & 204418, June 16, 2015, 758 SCRA 536 [En Banc, Per Justice Velasco Jr.].

23 Id.

24 Id. at 569.

25 EO 224, Sec. 4(b).

26 Id. at Sec. 4(d).

27 See *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, G.R. Nos. 180771 & 181527, April 21, 2015. 756 SCRA 513, 558.

28 Id.; see also *San Miguel Corporation v. Avelino*, G.R. No. L-39699, March 14, 1979, 89 SCRA 69, 75.

Indeed, courts should always exercise caution in dealing with constitutionality issues. Executive acts enjoy the presumption of constitutionality.[29] This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments.[30] To justify the nullification of any legislative or executive act, it must be shown that the statute or issuance violates the Constitution, clearly, palpably and plainly, and in such a manner as to leave no doubt or hesitation in the mind of the Court.[31] To doubt is to sustain the constitutionality of the assailed issuance.

In light of the foregoing, I concur with the *ponencia* in denying the present petition and upholding the validity and constitutionality of EO 224 in its entirety.

**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice



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29 *Garcia v. Executive Secretary*, G.R. No. 101273, July 3, 1992, 211 SCRA 219, 229.
30 See *Garcia v. Executive Secretary*, G.R. No. 100883, December 2, 1991, 204 SCRA 516, 523.
31 *Coconut Oil Refiners Association, Inc. v. Torres*, G.R. No. 132527, July 29, 2005, 465 SCRA 47, 63.