

ANTONIO BASIANA, SR., ROSA ODVINA BASIANA, WILHERMINA BASIANA KELLY, ANTONIO BASIANA, JR., AND ROMEO BASIANA, PETITIONERS-APPELLANTS, VS. CIPRIANO LUNA, FELIX LUNA, THE HONORABL...

G.R. Nos. L-34135-36. February 24, 1981

Ponente: FERNANDEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3ec54a3a6663/>

FERNANDEZ, J.:

This is a petition for review pursuant to Commonwealth Act No. 137, Mining Act, as amended of the decision of the Secretary of Agriculture and Natural Resources in DANR Case No. 3614 and DANR Case No. 3614-A involving conflicting or overlapping mining claims, the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING, the order of the Director of Mines, dated November 18, 1970, should be, as hereby it is, AFFIRMED with the modification that the mining claim 'Romeo 1' and the lease agreement covering the same should be, as hereby it is, declared valid, mining claims 'Ester I' and 'Ester 2' together with the lease agreement covering the same, should be, as hereby they are, declared null and void.

"SO ORDERED.

"Quezon City, Philippines, August 3, 1971."[1]

Both cases originated from the Bureau of Mines as protests filed by petitioners-appellants against the private respondents-appellees. The first case was docketed in the Bureau of Mines as Administrative Case No. V-457, and the second case as Mines Administrative Case No. V-477. The two cases were jointly heard. After the petitioners-appellants had closed their evidence, the private respondents-appellees moved to dismiss the protests. Acting on this motion, the Director of Mines dismissed the protests in an order dated November 18, 1970.

The protestants appealed to the Secretary of Agriculture and Natural Resources, assigning the following errors allegedly committed by the Director of Mines:

"1. The Bureau of Mines erred in holding that the Initial Post No. 1 of a neighboring or adjacent claim is not one of the valid tie points referred to by Section 47 of the Mining Act, considering the manner in which the Luna- Basiana Mining Property, and particularly the mining claims of appellants are being tied;

"2. The Bureau of Mines erred in holding that Romeo 1, registered on March 9, 1966 is the 'Mother Claim' or

sole tie point of all the adjacent or the rest of appellants' mining claims;

"3. The Bureau of Mines erred in holding that Romeo 1 which is tied to a Cliff (Exhibit C) and registered on March 9, 1966 is not a valid tie point;

"4. The Bureau of Mines erred in holding that appellants' mining claims are without tie points considering that they are tied to the Initial Post No. 1 of the adjacent or adjoining or neighboring claims with proper bearings and distances, and that three (3) of these claims out of the ninety-five (95) claims registered and assigned to appellants are granted lease contracts, namely:

- a. Romeo 1 - x x x Lode Lease Contract No. V-737 x x x;
- b. Ester 1 - x x x Lode Lease Contract No. V-739 x x x;
- c. Ester 2 - x x x Lode Lease Contract No. V-739 x x x;

and considering that thirty seven (37) mining claims of appellants were amended, and out of these thirty-seven (37) amended claims, the Corner Post No. 1 of the thirty amended claims are tied to the BLLM No. 2 of Jagupit, Cabadbaran, Agusan, with their corresponding bearings and distances x x x;

"5. The Bureau of Mines erred in holding that the proper remedy which appellants should have adopted is to make new locations, and not by amendments;

"6. The Bureau of Mines erred in not appreciating in favor of appellants the following exhibits and testimonies of witness, to wit:

x x x

"7. The Bureau of Mines erred in holding that appellant Antonio J. Basiana, Sr., needed a special power of attorney to prospect and locate mining claims for appellees;

"8. The Bureau of Mines erred in deciding MAC-V-477 without allowing appellants the chance to present their evidence in support of the same considering that reservation to that effect was made;

"9. The Bureau of Mines erred in not considering the lease areas of Romeo 1 (Exhibit H-1 and I), Ester 1 and Ester 2 (Exhibit H-2 and J), and Almanzor 1 (Exhibit U, U-1 to U-2) as proper reference points or tie points for the other adjacent or neighboring mining claims." [2]

On August 3, 1971, the Secretary of Agriculture and Natural Resources rendered a decision affirming the order of the Director of Mines with the only modification that the mining claim "Romeo 1" and the lease agreement covering the same should be declared valid and mining claims "Ester 1" and "Ester 2" together with the lease agreement covering the same should be declared null and void on the following factual findings and legal conclusions:

"It appears that appellant Antonio Basiana, Sr., prospected in the vicinity of Upper Asiga, Santiago (Paypay), Cabadbaran, Agusan sometime in the early part of February, 1966, for possible mining claims. On February 21, 1966, said appellant entered into an agreement with appellee Cipriano Luna, the terms and conditions of which were contained in a private document. In a nutshell, the agreement provides that of all the mining claims that could be prospected and registered in the name of Asiga Copper Mines, Luna would receive a share of 60% thereof in consideration of his assumption of all expenses for prospecting and registering the claims, and the balance thereof would go to Basiana.

"It also appears that Basiana prospected 183 claims. However, of these 183 claims, 93 were recorded in the Office of the Mining Recorder in the name of appellant Basiana and the members of his family, respectively; and the rest, in the name of appellees and the other members of the latter's family.

"Evidently realizing that there was something wrong in the declarations of location records, appellee Cipriano Luna, with the knowledge and consent of Basiana, filed on December 18, 1967, amended declarations with the end in view of correcting claim names and tie points. However, appellant Basiana disclaimed knowledge of an consent to the amended claims in his letter dated August 14, 1968, addressed to the Mining Recorder, which reads in part as follows:

'I am therefore giving notice that any amendments to my original declarations of locations filed in your office is without my knowledge and consent and that the same be not given due course or any declaration of location filed in your office that may or in any manner overlap my claims, I am requesting your good Office that I be notified of the same so that I can make my protest.' (Exhibit "CC")

"Consequently, appellee Cipriano Luna executed an affidavit of cancellation of the registration of mining claims and filed the same with the Mining Reporter. (Exh. "GG")

"In July, 1968, and thereabouts, appellees located the area covered by the original 183 claims, to the exclusion of appellants. These claims of appellees are what is now known as the 'Cicafe' and the 'Mirador' groups of claims. On learning of these locations by appellees, appellants filed a protest with the Director of Mines against appellees' claims which allegedly overlapped his and his family's claims, or the Basiana portion of the original 183 claims. From this protest, filed on December 2, 1968 and amended on December 23, 1968, arose Mines Administrative Case (MAC) No. V-457.

"In March, 1969, or thereabouts, and during the pendency of MAC No. V-457, appellants Antonio J. Basiana, Sr., and his wife, Rosa Basiana, allegedly located and claimed 73 mining claims, known as the 'ABA' group of claims, covering the Luna portion of the original 183 claims. They filed a protest on April 22, 1969, with the Bureau of Mines, alleging that the Luna mining claim (under the original 183 claims) are valid at their inception but are deemed abandoned for failure of the recorded locators to pay the occupation fees required by Section 241 of the National Internal Revenue Code and for failure to file the application for lease and/or survey in accordance with Section 68 of the Mining Act, as amended. It was further alleged that appellees' 'Cicafe' and 'Mirador' claims are null and void in accordance with Sections 60 and 68 of the Mining Act, as amended. This protest, praying that the 'ABA' claims be given preference over the 'Cicafe' and 'Mirador' claims, gave rise to MAC No. V-477.

"The two cases were jointly heard. After the protestants-appellants closed their evidence, protestees-appellees moved to dismiss the protests.

"The Director of Mines, in dismissing the protests in the order appealed from, relied on his finding that the 183 claims prospected by appellant Antonio J. Basiana Sr., and recorded in the names of different persons including himself, were null and void because: (1) Appellant Basiana did not have a power of attorney for whom he prospected the said claims; and (2) these claims did not have such tie points as authorized under Section 47 of the Mining Act.

"Going into the 1st, 2nd, 3rd, 4th, 5th and 9th alleged errors which are closely related to each other, we find that the discussion revolves around the mining claim 'Romeo 1' recorded in the name of appellant Antonio J. Basiana, Jr. This was the other claim to which all the mining claims were directly or indirectly tied to, as admitted by appellant Basiana.

"There were three (3) declarations of location covering this particular claim. The first or original one was recorded on March 11, 1966 with the Mining Recorder. According to this declaration, the claim was discovered by appellant Antonio Basiana, Sr., on February 3, 1966, and located on February 3-5, 1966; its location post No. 1 was tied to a point described as 'a cliff on Asiga River intersection of Soogon Creek and marked X'. Apparently, this mining claim is null and void pursuant to Section 34 of the Mining Act, which reads as follows:

'Sec. 34. Within thirty days after the completion of the acts of location of a mining claim, as hereinafter provided, the locator thereof shall record the same with the mining recorder of the province or district within which the claim is situated. A claim recorded after the prescribed period shall be null and void.' (Underscoring supplied)

"The acts of location were completed on February 5, 1966, but the recording of the claim was made on March 11, 1966, or beyond the thirty-day period prescribed by the above-quoted provision of law.

"The second declaration was an amended one. According to this particular declaration, the amendment of the claim took place from April 1-30, 1966, with a tie point described as 'BLLM No. 2, Jagupit, Cabadbaran, Agusan'. The reason given for the amendment was 'to orient the Bureau of Mines, Manila, with the actual location of the above mineral claim in connection with the application for order of survey this claim.' This declaration was recorded with the mining recorder on July 29, 1966. We find the mining claim under this declaration to be null and void.

"An amendment presupposes a valid claim. Since the amendment purports to effect a correction of a null and void claim necessarily the amended claim must also be null and void. Furthermore, this was filed beyond the thirty-day period prescribed for the recording of the same; its illegality was even admitted by appellant Basiana himself.

"The third declaration was in fact a declaration of relocation. According to this particular declaration, the claim was discovered on October 5, 1966, and located on October 6-8, 1966 with a tie point described as 'BLLM No. 2, Jagupit, Cabadbaran, Agusan.' It was recorded on October 20, 1966. Apparently, this is a valid declaration; hence, the mining claim is likewise valid, contrary to the findings of the Bureau of Mines, because it was recorded within the prescribed period and with a permanent or prominent tie point, BLLM No. 2, within the definition of the term as stated in Section 47 of the Mining Act. However, the validity and the legal existence of the mining claim commenced only upon the recording of the same, or on October 20, 1966.

"The rest of the mining claims, or the 182 others, when they were recorded originally, did not have their individual tie points such as authorized by Section 47 of the Mining Act, because 'Romeo 1' then did not still exist. As admitted by appellant Basiana himself, 'Romeo 1' was the mother claim to which the other claims were directly or indirectly tied. These 182 claims were not amended or relocated. As recorded, those were null and void.

"It is a fact that amended declarations of locations were filed with the end in view of tying the claims to some authorized tie points. These were filed by appellee Cipriano Luna on December 18, 1967; but due to the letter dated August 14, 1968 of appellant Basiana to the Mining Recorder, disclaiming knowledge of, or consent to, said amendments, said appellee filed with the same Mining Recorder an affidavit cancelling the registration of the amended claims. So, the original declarations of the 182 claims (discounting 'Romeo 1') after the filing of the affidavit of cancellation of the amended declarations, stood as they were at the time they were originally registered. Included in these claims are the thirty-seven claims of the appellants which appellee Cipriano Luna sought to have amended but disclaimed by appellant Basiana as earlier stated.

"Our attention is also called to the fact that the mining claims in question, three (3) are granted lease agreements, namely:

'Romeo 1' - Lode Lease Contract No. V-737

'Ester 1' - Lode Lease Contract No. V-739

'Ester 2' - Lode Lease Contract No. V-739

so that the Director of Mines was in error in finding that the claims have no tie points.

"The contract covering 'Romeo 1' was issued on the basis of the declaration of location recorded on October 20, 1966 and not of that as originally registered on March 11, 1966. The basic declaration, or the one recorded on October 20, 1966, was a valid declaration; but this fact has no relevance whatsoever to the declaration filed prior thereto, or to the validity or invalidity of the claims covered thereby.

"The contract covering 'Ester 1' and 'Ester 2' was based on the declarations of locations filed on March 9, 1966, in the name of Ester A. Luna, who assigned those claims in favor of appellant Basiana in a deed of assignment executed on October 1, 1967. As earlier stated, all the claims covered by the original declarations of locations were null and void. The issuance of the lease contract over 'Ester 1' and 'Ester 2' which are null and void mining claims, are necessarily null and void also. Legally, there has never been such mining claims as 'Ester 1' and 'Ester 2' so the lease contract covers nothing.

"It also appears that appellants rely on the evaluation report and the antecedents to its submission. This report, it should be borne in mind, was merely for the purpose of ascertaining the probable mineral contents of the area, but does not in any way establish with certainty the metes and bounds of the area. These claims were not reached by the mining engineers of the Bureau of Mines, who were to take the evaluation survey, by conducting a relocation survey of the tie line leading from the cliff which was the tie point to the location post No. 1 of 'Romeo 1', and thence to the other claims. Engineer Jazareno, one of those who conducted the evaluation survey, stated in the hearings that he did not know the relative positions of the mining claims.

"In view of the foregoing, we find that the 1st, 2nd, 4th, 6th, and 9th alleged errors are without merit; and the 3rd, well taken but only insofar as 'Romeo 1' as relocated, is concerned.

"As to the 5th alleged error, we believe that the same is academic. However, for clarification, it is the position of this Office that a mining claim which is null and void, could not be a subject of an amendment, because a null and void claim is no claim. In the instant case, we are holding the opinion that the 183 claims as covered by their respective original declarations, are null and void for lack of authorized tie points, except 'Romeo 1' the original declaration of which is null and void pursuant to Section 34 of the Mining Act. The validity or the invalidity of a claim must be determined as of its inception, and it cannot be affected by subsequent acts unrelated directly to their status. The subsequent and valid relocation of 'Romeo 1', or the grant of lease contracts over the said claim, 'Ester 1' and 'Ester 2' mining claims, did not in any way create the existence or validity of the rest of the claims. In the light of this thinking, we concur with the Director of Mines in his belief that the proper remedy would be relocation in order to give existence to the null and void claims.

"With respect to the 7th alleged error, the pertinent provision of law is stated as follows:

'Prospectors may prospect for themselves, or for other persons, associations, corporations, or other entities qualified to locate mining claims and to acquire leases of mineral lands under the provisions of this Act. A proper power of attorney in writing shall, in each case, be given by the employer to his prospector which power of attorney shall be duly acknowledged and shall be recorded in the office of the mining recorder concerned on or before the recording this declaration of location. A power of attorney not registered on or before the recording this declaration of location shall make the mining claim or claims null and void . . ." (Section 24, C.A. No. 137, as amended. Italics supplied).

"It is an admitted fact that appellant Antonio Basiana, Sr., prospected not only for himself, but also for the members of his family and for the appellees and other members of the latter's family. Certainly, in prospecting for claims which were to be recorded in somebody else's name, he was acting as an agent of the registered locators other than himself. The relationship as co-locators alleged by appellants to be existing between Basiana and the appellees is negated by the fact that out of the 183 claims prospected and discovered by him, only 75 of them were registered in his own name, while 18 were in the name of the members of his family, and the remaining were in the name of Cipriano Luna and some of the members of his family. Each one, therefore, appears to be the sole and exclusive locator of his individual claims. Under these circumstances, a written power of attorney duly recorded with the office of the mining recorder concerned during the prescribed period, was necessary for the validity of the claims appearing to be located by the persons other than himself. Inasmuch as there was no such power of attorney, these claims (registered as located by others) are null and void, under the provision of the law above-quoted.

"It is argued, however, that the authority to prospect for appellee is made somehow with the execution of the agreements by and between appellant Antonio Basiana, Sr., and Cipriano Luna but then these agreements were not in the nature of a written power of attorney; and even granting for the sake of argument that they are, the fact that those were not registered with the Office of the Mining Recorder concerned on or before the registration of the declarations, made the claims null and void, also under the provisions of the above-quoted law.

"Furthermore, not one of the 183 original claims was in the name of Asiga Copper Mines; and less than 60% of the said 183 claims were recorded in the name of Cipriano Luna and of the members of his family, while more than 49% thereof were recorded in the name of Antonio Basiana, Sr., and of the members of his family, all in utter disregard of the terms and conditions set forth in the agreement which appellant Basiana alleged to be his source of authority to prospect for the appellees. We are at a loss as to how this agreement, which the parties have chosen to completely disregard could be a source of anything - much less, of an authority to prospect for mining claims. To our mind, the parties thereto, by their subsequent acts, considered the agreement a mere scrap of paper; it would not make sense at all, therefore, for us to give more consideration to this agreement than what the parties themselves had given it.

"We find, therefore, that the 7th alleged error is without merit.

"With respect to the 8th assigned error - that the Bureau of Mines erred in deciding MAC-V-477 without allowing appellants the chance to present their evidence in support of the same considering that a reservation to that effect was made - we find the same to be also without merit.

"MAC-V-477, it is to be recalled, relates to the locations by appellants Antonio Basiana, Sr., and his wife, Rosa Basiana, of the area registered in the name of the appellees and the other members of] the latter's family, out of the 183 claims prospected by appellant Basiana. It could be the belief of the appellees that the 183 original claim in the name of appellants and the members of his family, and appellees and the members of his family, were null and void, so much so that appellee Cipriano Luna wanted to amend the declarations of locations; but having failed to achieve this for reason of appellants' objection, he and appellee Felix Luna located and recorded the mining claims in their respective names under the 'Cicafe' and 'Mirador' groups of claims. Subsequently, appellants located the same area under their 'ABA' group of claims.

"On the basis of the protest filed by appellants in MAC-V-477, it appears that their alleged preferential right to the area is based on their contention that the original claims (as prospected by Basiana in 1966) were valid; but by appellees' failure to pay the corresponding occupation fees therefor, as required by the National Internal Revenue Code, and also by their failure to file the corresponding applications for lease and/or survey within the prescribed period, these claims are deemed abandoned and junior location can be legally made on the area by qualified parties other than the original locators, their heirs or assigns directly or indirectly, pursuant to Section 68 of the Mining Act. Under this contention of appellants, the 'Cicafe' and 'Mirador' claims are null and void, being in violation of not only Section 68, but also Section 60 of the Mining Act.

"It is therefore apparent that the main basis of the protest in MAC-V-477 and the main basis of the protest in MAC-V-457 are the same and identical - the alleged validity of the 183 claims propagated by Basiana for himself, the members of his family, the appellees and the members of the latter's family - premised on the same and identical act of facts. Further proceedings as that contemplated by appellants, would certainly be an exercise in futility for want of basis, as it was found and held that the original 183 claims are null and void.

"As the said claims are null and void, the registered locators thereof are not and cannot be required to pay the occupation fees, or to file the corresponding applications for lease and/or survey. As we have earlier stated, a null and void claim is no claim at all, so the provisions of Section 68 of the Mining Act, as amended, and Section 241 of the National Internal Revenue Code, do not apply. There could be no abandonment where there is nothing to abandon.

"Also, as the said claims were null and void, they were open to inspection by any party who were qualified. Section 68 of the Mining Act, which declares as null and void the junior locations by the original locators, their heirs or assigns, of the abandoned claims, does not also apply here, because there was no abandonment such as that contemplated by the law. Section 60 of the Mining Act, which prohibits locations by others on existing claims when the first locators have not yet forfeited their rights thereto, does not also apply, for no valid claim existed on the area.

"In the light of the foregoing, we also find the 8th alleged error without merit."[3]

The petitioners-appellants have appealed to this Court by filing a petition for review.[4]

On May 17, 1974, almost two years after the briefs of the parties had been filed, the President of the Philippines promulgated Presidential Decree No. 463, otherwise known as the Mineral Resources Development Decree of 1974. The private respondents-appellees then filed a Manifestation and Motion dated November 24, 1976 alleging that under Sections 100 and 101 of said Decree and Sections 176 and 180 of the Implementing Regulations thereof, it is mandatory that holders of valid and subsisting mining locations and other rights under other mining laws should file of make the necessary application therefor praying approval thereof by the Director of Mines within a period of two (2) years from the date of approval of said Decree, or on or before May 17, 1976; that in case of failure to file the application to avail of the rights and privileges under said Decree, said mining grants, patents, locations, etc. would be considered to have lapsed, and the area covered thereby would be open to relocation; that private respondents-appellees have duly complied with the requirements provided in Section 100 of the said Decree and Section 176 of the Implementing Regulations thereof; that, as disclosed by the records of the Bureau of Mines, the petitioner-appellants have failed to file with the said Bureau the required application on or before May 17, 1976; and that granting without admitting that the petitioners-appellants have any rights on the mining claims under controversy, the same were considered to have lapsed.[5]

In their Comment dated January 18, 1977; the petitioners-appellants contend that Section 180 of the Implementing Regulations of P.D. No. 463 is null and void insofar as it purports to destroy vested or acquired substantive rights under mining laws previously in force; and that, assuming arguendo, that Section 180 of said Implementing Regulations is a valid implementation of P.D. No. 463, the same does not apply to mining claims subject matter of a pending litigation.[6]

Subsequently, however, P.D. No. 1214 was promulgated effective on October 14, 1977. The petitioners-appellants thus filed a Supplemental Manifestation dated December 21, 1977 wherein they contend that P.D. No. 1214 clearly and unmistakably indicates that the application under Section 100 of P.D. No. 463 to avail of the rights and privileges granted under P.D. No. 463 is optional and not mandatory; hence, even after the lapse of the 2-year period on May 17, 1976 under Section 100 of P.D. No. 463 without any application having been filed thereunder, the claims are still valid and not forfeited.[7]

In behalf of the public respondents-appellees, the Solicitor General submitted a comment stating, among others:

"x x x for purposes of the resolution of these appealed cases, that the questions as to whether the filing of application under Section 100 of P.D. No. 463 in relation to P.D. No. 1214 is mandatory or not is not important, nor is it imperative that said issue be resolved by this Honorable Court in these appealed cases, for the following reasons:

"(a) The mining claims in these cases have not yet ripened into ownership rights, in view of the pendency of the appealed cases before this Honorable Court. Therefore, either parties cannot consider themselves legal holders of valid and subsisting mining locations and other rights whether considered as mining patents under the Act of U.S. Congress of July 1, 1902 or as leasehold mining claims under Commonwealth Act No. 137. Consequently, insofar as the mining claims, subject of the appealed cases, are concerned, they cannot be considered old valid mining rights which are required to be the subject of application therefor and approval thereof by the Director of Mines within a period of two (2) years which expired on May 17, 1976.

"(b) Since the decision of the respondent Secretary of Natural Resources over the said mining claims controversy has not become final, which is now the subject of the appealed cases, this Honorable Court may either affirm, modify or reverse the said decision. Accordingly, either parties cannot claim any vested rights over said mining claims which cannot be impaired by the requirement of application under Section 100 of P.D. No. 463; and

"(c) Considering that the mining claims under controversy were initially decided under the old mining laws, which decision is now subject of these appealed cases, and still pending resolution by this Honorable Court, then, being the subject of a pending litigation or appeal, only the prevailing party may take advantage of Section 100 of P.D. No. 463 after the decision awarding him the mining claims in question shall have become final. Until these appealed cases shall have been decided finally by this Honorable Court, any application by either parties over the mining claims under litigation or appeal with the Bureau of Mines pursuant to Section 100 of P.D. No. 463 may serve only as notices, but may have no legal effect.

"WHEREFORE, premises considered, it is respectfully submitted that there is no immediate and important reason for this Honorable Court to pass upon the issues raised by either parties in connection with the application of P.D. No. 463 and P.D. No. 1214 to the mining claims, subject of these appealed cases, and that these cases be resolved by this Honorable Court on the merits."[8]

The foregoing comment of the Solicitor General appears to be well founded.

The cases subject to the instant petition having arisen under Commonwealth Act No. 137, otherwise known as the Mining Act, as amended, the same have to be decided in accordance therewith. Under that law, findings of fact in the decision or order of the Director of Mines, when affirmed by the Secretary of Agriculture and Natural Resources, were final and conclusive, the party appealing therefrom being allowed to raise only questions of law in a petition for review filed with the Supreme Court. (C.A. No. 137, Sec. 61, as amended by R.A. No. 4388, approved June 19, 1965). As what has been set forth above will show, the decision of the Secretary of Agriculture and Natural Resources in the cases subject of the present petition affirmed all the factual findings contained in the order of the Director of Mines, except that with respect to mining claim 'Romeo 1' it reached a different legal conclusion, namely, that it and the lease agreement covering it are valid.

This Court is bound by such factual findings. The findings of fact made in the decision of the Secretary of Agriculture and Natural Resources appealed from will not be reviewed by this Court unless there has been a grave abuse of discretion in making said findings by reason of the total absence of competent evidence in support thereof.[9] The findings of fact in the decision appealed from are supported by substantial evidence.

The petitioners-respondents assign the following errors:

"1. THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES ERRED IN HOLDING THAT THE MINING CLAIMS OF PETITIONER-APPELLANTS ARE WITHOUT TIE POINTS AS REQUIRED BY THE MINING LAW AS AMENDED.

"2. THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES ERRED IN HOLDING THAT THE FILING OF THE 'AFFIDAVIT OF CANCELLATION OF APPELLEE CIPRIANO LUNA IN THE MINING RECORDER OF AGUSAN DEL NORTE AFFECT AND/OR CANCEL THE MINING CLAIMS

OF PETITIONER-APPELLANTS.

"3. THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES ERRED IN NOT DETERMINING THE VALIDITY OF THE INDIVIDUAL DECLARATIONS OF LOCATION OF THE MINING CLAIMS INVOLVED AS THEY EXIST IN THE LIGHT OF THE LAW GOVERNING DISCOVERY, STAKING AND LOCATION.

"4. THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES ERRED IN HOLDING THAT THE LEASE CONTRACT (V-739) COVERING ESTER 1 AND ESTER 2 MINING CLAIMS IS NULL AND VOID.

"5. THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES ERRED IN HOLDING THAT THE RELATION BY PETITIONER-APPELLANT, ANTONIO BASANIA, SR. AND RESPONDENT-APPELLEE CIPRIANO LUNA IS ONE OF AGENCY AND NOT ONE OF PARTNERSHIP.

"6. THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES ERRED IN AFFIRMING THE ORDER OF THE DIRECTOR OF MINES." [10]

In connection with the first error assigned, it must be noted that both the Director of Mines and the Secretary of Agriculture and Natural Resources found that the 183 claims in question were located in rows or columns and that it was admitted by the protestants (now petitioners-appellants) that the mother claim of these claims is "Romeo 1" tied to a cliff with the remaining 182 claims tied to the location post No. 1 of the adjoining or adjacent claim in the rows or columns. Petitioners-appellants contend that the initial post No. 1 of such adjoining or adjacent claim is a permanent and prominent object which constitutes a valid tie point under Section 47 of the Mining Act, as amended, which provides:

"The record of a lode or placer claim shall consist of a declaration of location which shall contain, among others, the name of the claim, the name of each locator, the date of location, the names of the sitio, barrio, municipality, province and island, in which the claim is situated, the words written on the number one and number two posts in the case of lode claims, and a true copy of the notice posted on the placer claim and shall recite all the facts necessary to the identification of the lode or placer claim, as well as a description of the claim as staked and monumented, showing the length and approximate compass bearing, as near as may be, of each side or course thereof, and stating in what manner the respective corners are marked, whether by standing tree, rock in place, post, or stone, and giving in detail the distinguishing marks that are written or cut on each, and also stating as accurately as possible the bearing and distance of corner post number one to the tie point, which shall be a permanent and prominent object: Provided, That in the location of contiguous claims by the same locator, the tying of corner post number one of any of the said claims will constitute substantial compliance with this provision. The declaration of location that has no bearing and distance to a tie point as herein described shall be null and void.

"For the purpose of this section, a permanent and prominent object used as a tie point may be an intersection of

known roads; a junction of known rivers or creeks, a known public or private structure; a corner of approved public, private or mineral land survey; a kilometer post of public road; or location monument or triangulation station established by the Bureau of Lands, Bureau of Mines, Army Corps of Engineers, Bureau of Coast and Geodetic Survey, or other government agencies."

Relying on the fact that the second paragraph of this section uses the word "may" in enumerating what may be used as a tie point, they argue that such enumeration is not exclusive and admits of other objects as tie points provided these are permanent and prominent objects. They then proceed to argue that Sections 40 and 43 of the Mining Act make the initial post No. 1 of a staked claim permanent because the former requires "Initial Post" to be written thereon and the latter makes it "unlawful to move number one post of a lode mineral claim", while Section 42 makes it prominent because it provides that:

"When a post is used, it must be at least fifteen centimeters in diameter or twelve centimeters on each side by one hundred forty centimeters in length, where practicable, set forty centimeters in the ground and surrounded by a mound of earth or stone one hundred twenty-five centimeters in diameter by sixty-five centimeters in height x x x"

This argument is not tenable. Both the purpose and language of Section 47 as amended by Republic Act No. 4388 indicate that the enumeration of permanent and prominent objects that may be used as tie points is exclusive. According to the explanatory note of H. No. 2522 (which became R.A. No. 4388), its purpose in amending Section 47 by making it mandatory for the locator to indicate the tie point of his claim is to "eliminate claim jumpers and minimize overlapping of claims". (Cong. Rec., H.R., May 13, 1963, pp. 1345-1346). In order to achieve this purpose it was deemed necessary to specify what permanent and prominent objects may be used as tie points; hence the enumeration in the second paragraph of Section 47. It is significant that this paragraph did not originally exist; it was introduced by R.A. No. 4388. If the intention were not to make its enumeration exclusive, there would have been no necessity for adding it to Section 47. Besides, the last sentence of Section 47, as amended also by R.A. No. 4388, states that "The declaration of location that has no bearing and distance to a tie point as herein described shall be null and void." The phrase "as herein described" obviously refers to the descriptions contained in the second paragraph; therefore, if the tie point does not correspond to any of such descriptions, it would not be a valid tie point under Section 47 as amended. An initial post number 1 such as any of those pointed out by petitioners-appellants does not answer to any of such descriptions. While petitioners-appellants seem to capitalize on the term "location monument" used in the second paragraph of Section 47, that term refers to a location monument established by the Bureau of Lands, bureau of Mines, Army Corps of Engineers, Bureau of Coast and Geodetic Survey or other government agencies, not to a post placed by a mere mining claim locator. All of these considerations make it manifest that the word "may" is used in the second paragraph of Section 47, not to suggest non-exclusiveness of its enumeration, but to state that any one of the permanent and prominent objects enumerated therein may be used as a tie point.

But even granting, arguendo, that the enumeration of the second paragraph of Section 47 is not exclusive, any of the initial posts No. 1 used by the petitioners-appellants in their original declarations cannot in the nature of things be regarded as a permanent object under said section. Section 43, which makes it unlawful to move number one post of a lode mineral claim, refers to a valid claim. If the claim is invalid, such post may be removed by anyone since it marks the boundary and location of nothing; if so, it cannot be said to be invested with a permanent character.

It must be noted further that Section 47, as amended, speaks of "the bearing and distance of corner post number one to the tie point, which shall be a permanent and prominent object." The "corner post number one" is

distinguished from "the tie point" to which it must be related, and the clear import of this is that any such post cannot be used as a tie point.

Since an initial post number 1 cannot be a valid tie point and the tie point of each of the 182 directly or indirectly tied to claim "Romeo 1" is such an initial post, it follows that, as correctly found by the Director of Mines and the Secretary of Agriculture, the said 182 claims are null and void.

Even on the assumption that such an initial post may be utilized as a tie point, the ones utilized in the original claims in question are invalid because of the invalidity of "Romeo 1", the claim to whose initial post number 1 all these other 182 claims were directly or indirectly tied. As correctly held by both the Director of Mines and the Secretary of Agriculture and Natural Resources, this claim, as originally located is null and void because it was registered beyond the 30-day period prescribed by Section 34. The provision of this section as to effect of non-compliance therewith is mandatory. This is a feature that was also introduced by R.A. No. 4388. In this regard, the explanatory note of the bill which became R.A. No. 4388 states:

"And to clarify the effect of failure to comply with this requirement, mining claims shall be null and void, not merely abandoned, which is interpreted sometimes as a matter of intention, and not a penalty." (Cong. Rec., H.R., May 13, 1963, pp. 1345-1346)

The purpose and language of the law being plain and unambiguous, the petitioners-appellants' claim of substantial compliance with the law's requirements are unavailing. In addition, when Section 47 speaks of "substantial compliance with [its] provision", it refers only to the sufficiency of "tying the corner post number one of any of contiguous claims by the same locator." In this particular case, not only is there no valid tie point whatsoever; what are tied to invalid tie points are not corner posts, and the contiguous claims are registered in the name of several, not just one and the same, claim-owner. That portion of this section, therefore, does not apply.

Neither will the subsequent amendment of all the claims by changing their number and tying each of them to BLLM No. 2 of Jagupit, Cabadbaran, Agusan help petitioners-appellants. It is settled that a void location of a mining claim is not amendable. (*Cram vs. Church*, 340 P. 2d 1116). Both the Director of Mines and the Secretary of Agriculture and Natural Resources committed no error when they refused to give any effect to said amended claims and recognized as valid only the declaration of relocation of claim "Romeo 1" registered on October 20, 1966.

As the said claims were null and void despite the amendments, no duty attached to any of the registered claim-owners to pay taxes thereon and apply for lease and/or survey therefor; accordingly, they could not be charged with abandonment for having failed to do so. At the same time, by virtue of the same nullity and voidness of the claims, the areas covered by them - except that covered by "Romeo 1" of petitioners-appellants which was registered on October 20, 1966 were open to relocation by anyone, as in fact the respondents-appellees herein relocated and registered them in their names.

Having reached these conclusions, this Court deems it unnecessary to discuss the other assignments of error. At any rate, there is no error in the other findings and conclusions of the Secretary of Agriculture and Natural Resources.

WHEREFORE, the decision of the Secretary of Agriculture and Natural Resources is affirmed, without pronouncement as to costs.

SO ORDERED.

Barredo, Makasiar, Concepcion, Jr., Guerrero, Abad Santos, De Castro and Melencio-Herrera, JJ., concur.

Teehankee, J., dissents in a separate opinion.

Fernando, C.J., and Aquino, J., no part.

[1] Annex "A", p. 8, Rollo, pp. 12-19.

[2] Rollo, pp. 12-13.

[3] Rollo, pp. 13-19.

[4] Rollo, pp. 1-11.

[5] Rollo, pp. 257-261.

[6] Rollo, pp. 276-285.

[7] Rollo, pp. 320-323.

[8] Rollo, pp. 339-343.

[9] Tagumpay Minerals and Mining Association versus Masangkay, 46 SCRA 608, 614.

[10] Brief for Petitioners-Appellants, p. 11, pp. 39-40, p. 41, p. 45, p. 47 and p. 57, Rollo, p. 157.

DISSENTING OPINION**TEEHANKEE, J.:**

I dissent from the majority judgment affirming the decision of the then Secretary of Agriculture and Natural Resources which affirmed the Director of Mines dismissal of petitioners-appellants' protests although granting them the "booby prize" of modifying the same by recognizing the validity and lease of one single mining claim, namely, "Romeo 1". The record amply supports petitioners' submittal that they have substantially complied with the law's requirements on the 182 claims located by them.

The record amply shows further that the 182 other claims were properly tied to initial post No. 1 of petitioners' "Romeo 1" claim and could therefore all be properly identified on the ground as against mere "table claims", with the added merit that petitioners' said "Romeo 1" claim together with the lease agreement covering the same have been expressly recognized by respondent secretary as valid (see page 1, decision).

Yet, the majority decision (at page 18) has rejected the valid claims of petitioners on the pure technicality that "(E)ven on the assumption that such an initial post may be utilized as a tie point, the ones utilized in the original claims in question are invalid because of the invalidity of 'Romeo 1', the claim to whose initial post number 1 all these other 182 claims were directly or indirectly tied. As correctly held by both the Director of Mines and the Secretary of Agriculture and Natural Resources, this claim, as originally located is null and void because it was registered beyond the 30-day period prescribed by Section 34. The provision of this section as to effect of non-compliance therewith is mandatory."

The majority decision (at page 19) further summarily rejects petitioners' subsequent amendments of their claims

declarations with the bare statement that "It is settled that a void location of a mining claim is not amendable." This dictum is most open to question.

In *Lecar & Sons, Inc. vs. Tanco, Jr.*, 60 SCRA 508, as against my dissent making the same point that the therein questioned claims were null and void and beyond validation by amendment since they were mere "table claims" and a plotting thereof would readily show that all fifty claims involved were "not contiguous or adjoining each other but fall one on top of the other, like a deck of cards," the Court on the contrary sustained the amendments.

The Court in the above-cited case of *Lecar* invoked in support of the amendability of the therein respondents' questioned claims the provisions of Presidential Decree No. 99-A effective January 15, 1973 that

"Whenever there is any conflict between claim owners over any mining claim, whether mineral or non-mineral, the locator of the claim who first registered his claim with the proper mining registrar, notwithstanding any defect in form or technicality, shall have the exclusive right to possess, exploit, explore, develop and operate such mining claim. (italics supplied)."

This P.D. is wholly applicable to petitioners' cause. Petitioners as the locators of the claims who first registered their claims with the proper mining registrar, are expressly granted thereby the "exclusive right to possess, exploit, explore, develop and operate such mining claim(s)" - "notwithstanding any defect in form or technicality."

Specially should this be so when the adverse parties were partners and associates of petitioners under written agreements (which respondents officials refused to honor on the technicality that they "were not registered with the Office of the Mining Recorder concerned on or before the registration of the declarations;" see page 10, decision) and in the light of the existing provisions of section 68 of the Mining Act declaring null and void the subsequent junior locations of the very same claims (originally located jointly by them with petitioners) made by private respondents this time on their own behalf to the exclusion of their erstwhile partners/associates and against the prohibition of Section 60 of the Mining Act of locations by others on existing claims when the first locators (petitioners) had not yet forfeited their rights thereto. As may be seen from the majority decision (at page 12), however, respondents officials simply swept aside and set at naught these mandatory prohibitory provisions of the Mining Act by pronouncing that "Section 68 of the Mining Act, which declares as null and void the junior locations by the original locators, their heirs or assigns, of the abandoned claims, does not also apply here, because there was no abandonment such as that contemplated by the law" and "Section 60 of the Mining Act, which prohibits locations by others on existing claims when the first locators have not yet forfeited their rights thereto, does not also apply, for no valid claim existed on the area."

Substantial justice rather than mere technicalities demands that petitioners' appeal be granted and that the appealed decision be set aside and I so vote accordingly. It should also be made clear that petitioners' right of recourse before the regular civil courts for specific performance or damages, as the case may be, for breach of the original agreements between them regarding the location and exploitation of the claims and the profits therefrom is not foreclosed by the majority decision, since this matter is totally beyond the administrative jurisdiction and authority of respondents public officials but properly represents a judicial controversy within the exclusive power of the courts to resolve and adjudicate (*Pio vs. Marcos*, 56 SCRA 726 [1974] and cases cited).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.