

**GOLD STAR MINING CO., INC., PETITIONER and APPELLANT, VS.
SECRETARY OF AGRICULTURE AND NATURAL RESOURCES AND
DIRECTOR OF MINES, RESPONDENTS AND APPELLEES, ANIFELINA S.
GALANG, B...**

G.R. No. L-21230. August 29, 1966

Ponente: DIZON, J.

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DIZON, J.:

Appeal from an order of the Court of First Instance of Marinduque dated February 21, 1963 dismissing appellant's petition to set aside the decision of the Secretary of Agriculture and Natural Resources of June 7, 1961, upon the ground that appellant had failed to file an appeal bond and on the further ground of lack of jurisdiction.

It appears that appellant Gold Star Mining Co., Inc., a duly organized domestic corporation engaged in the exploration, exploitation and utilization of natural resources, filed with the Bureau of Mines Lode Lease Application No. R-56 covering mining claims denominated as "Isao Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21" all located at Sitio Isao, Barrio Batangsapa, Municipality of Mogpog, Province of Marinduque. On September 9, 1960 the Director of the Bureau of Mines denied said application because of appellant's failure to comply with the basic requirements of the Mining Act, as amended, and pertinent mining rules and regulations. Its motion for reconsideration having been denied on December 19, 1960 by the Director of Mines, appellant took the case to the Secretary of Agriculture and Natural Resources.

Before the appeal could be disposed of, Anifelina S. Galang, Belen S. Galang, Arsenio Galang, Jr., and Ruperto S. Galang, upon their motion, were allowed to intervene on account of their interest over seven of the twenty-one mining claims in question.

On June 7, 1961 the Secretary of Agriculture and Natural Resources dismissed the appeal on the ground that appellant had failed: (a) to comply with the requirements of the Mining Law; (b) to make deposits to defray survey expenses; and (c) to pay occupation fees despite several letters of demand. Notice of this decision was received by appellant on July 20, 1961. A motion for reconsideration filed by it was also denied on September 17, 1961. Hence, on October 12, 1961 appellant filed with the Court of First Instance of Marinduque the petition later dismissed by the latter.

In its verified petition filed with the lower court under date of October 13, 1961, appellant alleged that the respondents-appellees acted with grave abuse of discretion in denying its application No. R-56, thus causing it irreparable damages, and asked the Court to reverse their order.

In due time respondents-appellees filed their joint answer denying having abused their discretion in denying petitioner's application and, as special defenses, alleged that the petition was fatally defective in that it did not allege jurisdictional matters; that said petition did not state a sufficient cause of action, and that their findings of fact being final and conclusive were not reviewable by the courts.

The motion for leave to intervene filed by Anifelina S. Galang, Belen S. Galang, Arsenio Galang, Jr., and Ruperto S. Galang was granted on February 6, 1963. Thereafter, respondents-appellees and intervenors jointly moved to dismiss the case on the ground that petitioner failed to file its appeal bond within the reglementary period and that the allegation in its petition that "respondents acted with grave abuse of discretion in rejecting petitioner's application" made the case one for certiorari as a special civil action and, consequently, beyond the jurisdiction of the Court of First Instance of Marinduque considering that respondents had their offices in Manila and Quezon City, respectively.

Opposing the joint motion to dismiss appellant claims that neither the Mining Act nor the Rules of Court require the filing of appeal bond in cases of appeal from the decision of the Secretary of Agriculture and Natural Resources and further contends that if Rule 40 of the Rules of Court which requires an appeal bond is applicable to its case, then it had complied with the requirement by reason of its deposit of P32.00 as filing fee.

On February 21, 1963 the lower court dismissed appellant's petition on the ground that no appeal bond was filed, and held further that even assuming that the case was for certiorari as a special civil action, it could not take cognizance thereof because respondents were beyond its territorial jurisdiction. Hence, the instant appeal.

Upon the facts stated heretofore, it seems clear that what appellant commenced in the lower court - notwithstanding allegations made in its petition concerning "grave abuse of discretion" - is not a civil action for certiorari but an appeal from the order of the Secretary of Agriculture and Natural Resources. Pursuant to the provisions of Section 4, Republic Act No. 739, a party who desires to appeal from the decision of said official may take the matter to a court of competent jurisdiction - generally recognized to be a Court of First Instance (Secretary of Agriculture etc. vs. Court of First Instance of Manila et al., G. R. No. L-7752, May 27, 1955). It is clear, therefore, that the action instituted by appellant in the lower court is not an original action but one in the nature of an appeal. Whether such appeal should be governed by the provisions of Rule 41 of the Revised Rules of Court or by those of Rule 40 of the same body of rules, the appellant is required to file an appeal bond, which herein appellant admits it did not file. Such being the case, the lower court was justified in dismissing the appeal upon that ground.

WHEREFORE, the order of dismissal appealed from is affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Barrera, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Regala, J., on leave.

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