

FERTILE MINES, INCORPORATED, PETITIONER, VS. FEVA MINING CORPORATION AND THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, RESPONDENTS.

G.R. No. L-35872. February 28, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a petition for the review of the decision of the Secretary of Agriculture and Natural Resources in DANR Case No. 3744 and the Order denying the Motion for Reconsideration, in effect affirming the Order of the Director of Mines dismissing the adverse claim of the petitioner (FERTILE MINES) in Mines Administrative Case No. V-538 and giving due course to respondent's (FEVA MINING) application PLA-V-2629 for the lease of several mining claims located in Sanchez Mira, Cagayan.

The facts antecedent to this case are as follows:

On June 14, 1968, the Articles of Incorporation of FERTILE MINES were filed with the Securities and Exchange Commission, and on the same date the incorporators of FERTILE MINES executed a special power of attorney in favor of Jorge Gonzalez to locate and declare mining locations for and in behalf of FERTILE MINES.

On June 25, 1968, the Securities and Exchange Commission issued to FERTILE MINES its registration certificate.

The Declaration of Location for FERTILE MINES' mining claim and the special power of attorney were registered in the office of the Mining Recorder of Tuguegarao, Cagayan, on July 15, 1968.

On March 11, 1969, the Board of Directors of FERTILE MINES ratified the special power of attorney executed by the incorporators in favor of Jorge Gonzalez.

On December 9, 1970, FERTILE MINES filed with the Bureau of Mines an adverse claim to the application of FEVA MINING for the lease of several mining claims, claiming that six (6) of FEVA MINING claims overlap thirteen (13) of its mining claims. FEVA MINING filed an answer to the adverse claim, and before the case could be heard on the merits, submitted a Manifestation and Motion seeking the dismissal of the adverse claim on the ground that the special power of attorney issued to Jorge Gonzalez on June 14, 1968 to locate mining claims in behalf of FERTILE MINES was null and void, because FERTILE MINES had no juridical personality, since its certificate of registration was issued by the Securities and Exchange Commission only on June 25, 1968. After hearing the said motion, the Director of Mines, on January 19, 1972, dismissed FERTILE MINES' adverse claim.

The order of the Director of Mines was appealed to the Secretary of Agriculture and Natural Resources by FERTILE MINES. The parties submitted their memoranda and, on August 1, 1972, a decision affirming the said order was rendered by the Secretary of Agriculture and Natural Resources. A motion for reconsideration was denied on November 13, 1972, copy of which was received by FERTILE MINES on November 24, 1972.

After a motion for extension of time to file petition was granted by this Court to FERTILE MINES, the Petition for Review was filed on December 15, 1972.

The petition was given due course, with the parties filing their respective Briefs.

On September 27, 1976, FEVA MINING moved for the dismissal of the petition on the ground that the issue of validity of the prospector's special power of attorney has become moot as the mining claim of FERTILE MINES can no longer be recognized as it is considered lapsed for failure to comply with the requirements of Presidential Decree No. 463 (Mineral Resources Development Decree of 1974), which took effect on May 17, 1974, specifically:

"SEC. 100. Old Valid Mining Rights May Come Under This Decree.— Holders of valid and subsisting mining locations and other rights under laws, irrespective of the areas covered, may avail of the rights and privileges granted under this Decree by making the necessary application therefor and approval thereof by the Director within a period of two (2) years from the date of approval of this Decree.

SEC. 101. Recognition and Survey of Old Subsisting Mining Claims.— All mining grants, patents, locations, leases and permits subsisting at the time of the approval of this Decree shall be recognized if registered pursuant to Section 100 hereof: Provided, That Spanish Royal Grants and unpatented mining claims located and registered under the Act of the United States Congress of July 1, 1902, as amended, otherwise known as the 'Philippine Bill', shall be surveyed within one (1) year from the approval of this Decree: Provided, further, That no such mining rights shall be recognized if there is failure to comply with the fundamental requirements of the respective grants: And provided, finally, That such grants, patents, locations, leases or permits as may be recognized by the Director after proper investigation shall comply with the applicable provisions of this Decree, more particularly with the annual work obligations, submittal of reports, fiscal provisions and other obligations."

and the Consolidated Mines Administrative Order of May 17, 1975 implementing the Decree, particularly:

"SEC. 176. Rights and Privileges Under the Decree.— Holders of valid and subsisting locations and other rights under other laws, irrespective of the areas covered, may avail of the rights and privileges granted under the Decree: Provided, That they file on or before May 17, 1976, an application therefor with the Bureau of Mines, Manila, on BM Form Nos. MRD-26 and 27 hereto attached as Appendices 'V' and 'W', and made part of these Regulations.

SEC. 180.— Failure to File Application to Avail of Rights and Privileges Under the Decree.— Mining grants, patents, locations, leases, permits and other mining rights subsisting at the time of the approval of the Decree for which no corresponding application under Sections 100 and 101 of the Decree has been filed within the period provided in Section 176 hereof shall be considered to have lapsed, and the area covered thereby shall be open to relocation, as if no grant, patent, location, lease, permit and other mining rights have been made or granted thereon."

FERTILE MINES failed to file the application referred to in the provisions above-cited, as shown by certifications from the Bureau of Mines, Manila, dated July 8, 1976, and of the Baguio Mines Regional Office, dated July 23, 1976 (pp. 428 & 429, Rollo).

Commenting on the FEVA MINING Motion for dismissal, FERTILE MINES opposed the same contending that 1) it cannot be required to file an application pursuant to Sec. 100, P.D. 463, since under Sec. 73, Commonwealth Act 137 (old Mining Law) all proceedings are stayed upon the filing of an adverse claim until the controversy is settled, or decided, or waived; 2) Sec. 99, P.D. 463, provides for the non-impairment of vested or acquired substantive rights, and since the mining claims of petitioner were validly made under previous mining laws, they continue to be valid; and 3) Sec. 100, P.D. 463 is clearly directory.

The Solicitor General, in representation of respondent Secretary of Agriculture and Natural Resources, also prayed, in his Comment/Manifestation, for dismissal on the ground that the appeal has become moot and academic.

We find that the appeal has, in fact, been rendered moot and academic inasmuch as FERTILE MINES had opted not to avail itself of the procedure in P.D. 463 and its implementing Order. As a result, its mining claims have to be considered lapsed and the area covered has now become open to relocation as if no such mining claim has been made. FERTILE MINES can have a case against FEVA MINING only if the former's thirteen (13) mining claims are valid and existent.

FERTILE MINES' opposition to the dismissal of the appeal is not well-grounded. Firstly, P.D. 463 repeals all laws, decrees, rules and regulations or parts thereof in conflict or inconsistent with it (Sec. 105). The provisions of the old Mining Act (Commonwealth Act No. 137, as amended) are affected to that extent, *mutatis mutandis*. Secondly, the non-impairment of vested rights clause in Sec. 99 of P.D. 463 does not automatically abrogate old valid and subsisting mining locations and other rights. The law merely requires a positive act to be done so that a mining claim existing under the old law could be recognized. FERTILE MINES did not avail of such positive act so that its claims are now considered lapsed and unrecognized. Thirdly, the use of the word "may", in Sec. 100, P.D. 463, gives the claimant the option to avail or not of the rights and privileges granted in the decree by registering his claim within two (2) years from May 17, 1974. FERTILE MINES did not avail of the option so that pursuant to Sec. 101, P.D. 463, and Sec. 180, Consolidated Mines Administrative Order (May 17, 1975) its mining rights are deemed unrecognized and as having lapsed.

With the foregoing conclusion arrived at, the basic issues, namely, the authority of the Director of Mines to rule on the validity of the power of attorney, the validity of the power of attorney, and the validity of the mining claim acquired by the attorney-in-fact, need no longer be passed upon.

ACCORDINGLY, the petition is hereby dismissed for having become moot and academic.

No costs.

SO ORDERED.

Teehankee (Chairman), Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

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