

MAPULO MINING ASSOCIATION AND E.V. CHAVEZ & ASSOCIATES, REPRESENTED BY ANTONIO M. CHAVEZ, PETITIONERS, VS. HON. FERNANDO LOPEZ, IN HIS OFFICIAL CAPACITY AS THE SECRETARY OF AGRI...

G.R. No. L-30440. February 07, 1992

Ponente: DAVIDE, Jr., J.

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DAVIDE, Jr., J.:

This is a petition under Section 61 of the Mining Act (C.A. No. 137), as amended by R.A. No. 4388, for review of the 24 March 1969 decision of then Secretary of the Department of Agriculture and Natural Resources (DANR), Hon. Fernando Lopez, in DANR Case No. 3359 entitled Mapulo Mining Association and E.V. Chavez & Associates versus Projects & Ventures, Inc.,[1] affirming the 5 July 1968 Order of the Director of the Bureau of Mines, Hon. Fernando S. Busuego, Jr., which dismissed petitioners' adverse claim against private respondent's Application For Lease of Mining Claims over certain mineral lands located at Taysan, Batangas, principally on the ground that said claim was filed one (1) day after the expiration of the period within which to do so pursuant to Section 72 of the Mining Act.[2]

The records disclose the following factual and procedural antecedents of this case:

In 1940, Eliseo Chavez and his wife, Lucia B. Mercado, located a limestone mining claim (then known as the San Jose Placer Claim) over a piece of registered private land situated at Barrio Mapulo, Taysan, Batangas with an area of 12.4469 hectares. The said land, owned by Quiliano Mercado, Lucia B. Mercado's father, is covered by Original Certificate of Title (OCT) No. R0-174(0-510). On 6-12 and 18-27 March 1943, the lease survey of the placer claim was undertaken by then Assistant Mineral Land Surveyor of the Bureau of Mines, Mr. Julian Lagman; on 5 July 1943, then Director of Mines, Hon. Quirico A. Abadilla, approved the survey plan (Pla-163) prepared by the former. Under a temporary permit to extract minerals issued to them by the Director of Mines on 3 February 1943, the spouses extracted and mined limestone from the land.[3]

Subsequently, the Mineral Lands and Administrative Division of the Bureau of Mines declared as abandoned this claim of Mr. Chavez due to his failure to comply with some requirements.[4] Thereafter, the Mapulo Mining Association, petitioner herein, relocated the area through Antonio Chavez on 16-22 December 1963 and registered it as the Mapulo Placer Mining Area with the Office of the Mining Recorder (Register of Deeds) of Batangas on 22 January 1964. On 4 February 1964, the Mapulo Mining Association filed an application for a mining lease, which was docketed as PLA-V-1136.[5]

On 26-30 November 1963 and 1-4 December 1963, petitioner E.V. Chavez & Associates located mining claims known as "Chavez I" and "Chavez II" inside private agricultural lands belonging to several individuals. On 5 December 1963, the corresponding declarations of location were registered in the Office of the Mining Recorder of Batangas.[6] An application for mining lease over the claims was filed on 25 August 1967.

Upon the other hand, on 6-10 June 1966, private respondent Projects & Ventures, Inc. (PROVEN) located mining claims known as "BAT 40, 41, 60, 22, 23, 38, 37, 44, 57, 61, 62, 63, 64, 39, 42, 58, 59, 43, and 24" over an area embraced by petitioners' mining claims. Later, PROVEN filed with the Bureau of Mines Lode Lease Applications Nos. V-9176 Amd., V-9177 Amd., V-9178, V-9226 and V-9227 Amd.-A. The notice of application was published in the 7, 14, and 21 August 1967 issues of the Official Gazette; however, these issues were actually released for circulation to the public only on 5, 19 and 29 September 1967, respectively, per certification of the Bureau of Printing.[7] The notice was also published in the 15, 22 and 29 July 1967 issues of the Philippines Herald and El Debate, both published in Manila. It was not, however, published in a local newspaper in Batangas such as the People's Courier or The Batangas Reporter.[8] Although disputed by petitioners, private respondent alleges that the notice was also posted at the places required by law.[9]

On 2 August 1967, petitioners filed with the Bureau of Mines an application for an order of lease survey of the "Mapulo Placer Claim," "Chavez I" and "Chavez II" mining claims. This application was denied on the ground that said claims are in conflict with the claims of the private respondent.[10]

In view of this denial, petitioners, on 15 August 1967, requested the Director of Mines to hold in abeyance any action on private respondent's application for mining lease pending submission by the former of a formal petition. Their letter-request reads:

"With reference to the Lode Lease Applications Nos. 9176 Amd., V-9177 Amd., V-9178, V-9226, and V-9227 Amd.-A covering 'Bat Nos. 21, 40, 41, 60, 22, 23, 38, 37, 44, 57, 61, 62, 63, 64, 39, 42, 59, 58, 43, & 24' lode mining claims containing copper, gold, silver, etc., & limestone, etc., situated in the barrio of Mapolo (sic), Municipality of Taysan, Province of Batangas, applied for by the Projects & Ventures, Inc., with post office address at c/o Mr. C. Castro, Philippine Banking Corp., Port Area, Manila, it would be highly appreciated if action on the proposed grant or issuance of the lease contracts be held in abeyance pending resolution of our formal petition which we will file as soon as possible.

Trusting that this request will merit your usual and prompt consideration."[11]

On 29 August 1967, petitioners filed an Adverse Claim and/or Opposition to the Issuance of Mining Lease dated 28 August 1967.[12]

Private respondent, on 20 October 1967, filed a Motion to Dismiss petitioners' adverse claim on the ground that the same was filed one (1) day late.[13]

On 20 November 1967, petitioners opposed the motion to dismiss contending that: (1) Section 72 of the Mining Act, as amended, requiring the publication of the notice of mining lease application in the provincial newspaper, has not yet been complied with and so, therefore, there is no publication deadline to speak of; (2) the issues of the Official Gazette dated 7, 14 and 21 August 1967, where private respondent's notice of application was inserted, were actually released to the public only on 5, 19 and 29 September 1967, respectively; (3) private respondent's mining claims were located in violation of Sections 28(d) and 60 of the Mining Act as the same had already been previously located by other parties; and (4) private respondent's declarations of location are fraudulent as they are mere table locations, no actual location having been performed.[14]

On 5 July 1968, the Director of Mines dismissed petitioners' adverse claim on the ground that: (1) the publication of private respondent's notice of filing of applications for lease in a provincial newspaper is not necessary; (2) with respect to the publication in the Official Gazette, what is controlling is not the date of the actual release but rather the date appearing thereon; and (3) petitioners are guilty of laches in filing their adverse claim only on 29 August 1967.[15]

On 25 July 1968, petitioners moved for a reconsideration of the Order but the same was later denied.[16]

On 14 October 1968, petitioners appealed to the respondent Secretary of the DANR who, on 24 March 1969, affirmed the decision of the Director of Mines and gave due course to private respondent's application for mining lease.[17]

Petitioners then filed on 25 April 1969 the instant petition for review alleging therein that:

- a) due course should not have been given to private respondent's application for lease because of non-compliance with the Mining Act, the mining claims covered by said applications having been validly located by petitioners before the alleged location by private respondent or its assignors and with reference to one particular area, its location by private respondent's assignors having been made without the owner's written permission and without a similar permission accompanying the applications, in violation of Sections 28(d), 60, 27 and 67 of the Mining Act;
- b) the publication requirement of the notice of the application for lease had not been met for: (1) the date of publication with respect to the Official Gazette should not be based on the date appearing therein but on the date of release for distribution and sale to the public, and (2) there was no publication of the application in a provincial newspaper published in the municipality or province where the mining claim is located, if such exists or, in its absence, in a newspaper published in the nearest municipality or province, as this requirement is mandatory and cannot be dispensed with; and
- c) petitioners' adverse claim was filed on time and that even assuming it was filed one (1) day late, such a delay could not be considered as a valid ground to justify the refusal by the Director of Mines to give due course to the adverse claim.

In the Resolution of 30 April 1969, this Court gave due course to the petition[18] and required the respondents to file their Answer.[19]

Private respondent filed its Answer on 7 June 1969.[20]

On 18 June 1969, Fortune Cement Corporation filed a Motion for Leave to File an Answer in Intervention alleging that the mining claims involved in this case had been sold and assigned to it by private respondent Project Ventures, Inc. under a Deed of Assignment executed on 9 October 1968.[21] The Answer in Intervention[22] was filed on the same date.

On 1 July 1969, public respondents Secretary of the DANR and Director Busuego of the Bureau of Mines, through the Office of the Solicitor General, filed their Answer to the petition manifesting that they are adopting the Answer of private respondent.[23]

On 8 July 1969, this Court granted Fortune Cement Corporation's motion and noted its Answer in Intervention.[24]

The petitioners were then required to file their Brief, which they did on 28 August 1969.[25]

The Intervenor filed its Brief on 14 October 1969,[26] which private respondent adopted per its Manifestation filed on 29 October 1969,[27] and which this Court merely noted.[28]

Despite several extensions of time granted the public respondents within which to file their Brief, none was filed. On 20 July 1970, this Court considered the case submitted for decision without the said Brief.[29]

Petitioners filed a Reply Brief on 24 August 1970.[30]

Subsequently, the Intervenor filed a Request for Oral Argument,[31] which this Court denied on 18 September 1970; nevertheless, the Intervenor was allowed to file a Memorandum in lieu of oral arguments.[32] It filed the Memorandum on 10 October 1970.[33]

On 3 September 1986 and 26 March 1990, the parties were required to move in the premises;[34] both petitioners and public respondents informed the Court that they are still interested in prosecuting this case.

In their Brief, petitioners contend that public respondents erred:

"1. In not holding that the Projects & Ventures, Inc. (herein private respondent) is a mere intruder upon the land covered by petitioners' mining claims.

2. In not holding that the alleged locations on June 6 to 10, 1966 of the Projects & Ventures, Inc.'s mining claims known as BATS 21, 22, 23, 24, 37, 38, 39, 40, 41, 42, 44, 59, and 60 were done in violation of Section 28(d) of the Mining Law which prohibits prospecting 'in lands which have been located for mining leases by other prospectors under the provisions of this Act' and Section 60 which provides that 'no valid mining claim or part thereof may be located by others until the original locator or his successor in interest abandons the claim or forfeits his rights on the same under the provisions of this Act', because the above-mentioned BATS mining claims were located on land which was already previously validly located for mining lease by the petitioners.

3. In not holding that the locations of BATS 37, 38, 39, 40, 41, and 42 mining claims were likewise void on the further ground that the alleged locators thereof did not get the prior written permission of Quiliano Mercado to enter his land, as required in Section 27 of the Mining Law, to locate the aforesaid six (6) BATS claims.

4. In not holding that because the locations of BATS 21, 22, 23, 24, 37, 38, 39, 40, 41, 42, 44, 59 and 60 mining claims were null and void, the applications for lease filed by the Projects & Ventures, Inc. of its mining claims cannot be entertained under Section 72 of the Mining Law.

5. In not holding that the applications for lease of BATS 37, 38, 39, 40, 41 and 42 mining claims cannot be entertained on the 'further ground that Projects & Ventures, Inc., did not accompany (sic) the applications with the written permission of Quiliano Mercado nor (sic) with a written permission granted by a competent court in a proceeding under Section 67 of the Mining Law.

6. In holding that the requirements prescribed in Section 72 of the Mining Law, for the publication of the notice of the application for lease had been substantially complied with and that the publication of the notice of the application for lease in a newspaper published in the municipality or province in which the mining claims are situated, if there is such newspaper, otherwise, in the newspaper published in the nearest municipality or province, is not mandatory.

7. In not holding in any event that the period of publication (three weeks) fixed in Section 72 within which an adverse claim may be filed under Section 72 of the law, had not yet even commenced to run on August 29, 1967 when petitioners' adverse claim was filed, because on that date, i.e., August 29, 1967, the issues of the Official Gazette dated August 7, 1967, August 14, 1967 and August 21, 1967, where the notice of the applications for lease of the Projects & Ventures, Inc., was inserted, had not yet been released for distribution and sale to the public and probably had not yet even been printed.

8. In holding that the petitioners were guilty of laches and that the adverse claim and/or opposition filed by them on August 29, 1967, was filed out of time.

9. In not holding that the earliest possible deadline for the filing of petitioners' opposition and adverse claim was September 5, 1967, which was the three weeks (sic) (the normal period of publication) from August 15, 1967 when the petitioners requested the Director of Mines in writing to hold in abeyance action on respondent Projects & Ventures, Inc.'s application for lease.

10. In not holding that the petitioners have been in continuous possession of the area covered by the 'MAPULO', 'CHAVEZ I', and 'CHAVEZ II' mining claims and kept (sic) them valid and subsisting, and had spent substantial amounts of money in preparatory work for their development on a commercial basis.

11. In dismissing the petitioners' adverse claim and/or opposition on the basis of the motion to dismiss filed by the Projects & Ventures, Inc., and

12. In not holding that the Director of Mines, in issuing the Orders dated July 5, 1968 and October 7, 1969 sanctioned claim jumping and overlapping locations in violation of the Mining Law."

Stripped of the non-essentials which adorn the pleadings of the parties, the main issues in this case are: (a) whether or not there was valid and sufficient publication of the notice of private respondent's application for a mining lease over its claims and, (b) assuming that there was, whether or not petitioners' Adverse Claim and/or Opposition to such application was seasonably filed.

These issues must be resolved in the light of the Mining Act (C.A. No. 137, as amended) which was the governing law at the time of the filing of application and the subsequent issuance by the public respondents of the challenged Order and decision. This Act was superseded by P.D. No. 463, otherwise known as the Mineral Resources Development Decree of 1974.

Section 72 of the Mining Act provides, inter alia, that:

"Upon receipt of the application, and provided that the requirements of this Act have been substantially complied with, the Director of the Bureau of Mines shall publish a notice that such application has been made, once a week for a period of three consecutive weeks, in the Official Gazette and in two newspapers, one published in Manila either in English or Spanish, and the other published in the municipality or province in which the mining claim is located, if there is such newspaper, otherwise, in the newspaper published in the nearest municipality or province. x x x. The Director of the Bureau of Mines shall also cause to be posted on the bulletin board of the Bureau of Mines the same notice for the same period. The applicant shall post for the same period a copy of the plat of the claim or claims applied for, together with a notice of such application for lease, in a conspicuous place on the land embraced in such plat, on the bulletin board, if any, of the municipal building of the municipality, and also in the office of the mining recorder or district mining officer of the province or district in which the claim or claims are located; and shall file with the Director of the Bureau of Mines the affidavit of at least two persons stating that such notice has been duly posted in the places above specified. At the expiration of the period of publication the applicant shall file with the Director of the Bureau of Mines an affidavit showing that the plat and notice have been posted in a conspicuous place on the claim or claims concerned and in the places above specified during such period of publication, and thereupon, if no adverse claim shall have been presented to the Director of the Bureau of Mines, it shall be conclusively presumed that no such adverse claim exists and thereafter no objection from third parties of the granting of the lease shall be heard, and the lease shall within, forty-five days be granted to the applicant, or to his successors or assigns, by the Secretary of Agriculture and Natural Resources, provided that all amounts then due to the Government of the Philippines, or any of its branches or subdivisions, under the provisions of this Act, shall have been paid."

As earlier shown, it is not disputed by the parties that the notice in this case was published:

- a) in the issues of the Philippines Herald and the EI Debate dated 15, 22 and 29 July 1967, and
- b) in the issues of the Official Gazette dated 7, 14, and 21 of August 1967, which, however, were respectively released on 5, 19 and 29 September 1967.

There was no publication, however, of the notice in a newspaper published in the municipality or province in which the mining claim was located, i.e., in Batangas. It is not denied that at that time, there were two (2) weekly newspapers in Batangas, namely the People's Courier and The Batangas Reporter. All that respondent Director of Mines could say in his challenged Order of 5 July 1968 is that "We are not aware of the publication in Batangas of such newspapers." [35] This non-awareness does not mean that the newspapers do not in fact exist; besides, the

petitioners presented him with certifications issued by the Circulation Manager of the People's Courier (Exh. "5") and the Editor of The Batangas Reporter (Exh. "4")^[36] attesting to the existence of said periodicals.

And even granting for the sake of argument that these two (2) local newspapers do not exist, the fact remains that there was still no publication of the notice in a newspaper published in the nearest municipality or province.

Petitioners maintain that publication in a newspaper published in the municipality or province where the claims are located, if there be such a newspaper, or in a newspaper published in the nearest municipality or province, is mandatory. Public respondents maintain otherwise. Respondent Director of Mines believes that "considering the proximity of Batangas to Manila and the speedy means of transportation, x x x the notice in the Philippines Herald, El Debate, and the Official Gazette, as well as the posting of the notice in the places abovementioned, specially in the bulletin board of the Mining Recorder of Batangas, x x x constitute substantial compliance with the requirements of publication."^[37] Respondent Secretary believes that "[t]he publication in the Official Gazette and El Debate, respectively, was strictly in compliance with law; the publication in the Philippines Herald could have produced the same effects as if the publication was made in a newspaper published in Taysan or the nearest town or province. The Philippines Herald is one of the capital's dailies which are [sic] extensively distributed and read throughout the country. There had been therefore a (sic) substantial compliance of (sic) the law."^[38]

We agree with petitioners that the publication requirements prescribed in Section 72 of the Mining Act are mandatory and that substantial compliance therewith is not enough. Such mandatory character is obvious from the Section itself, which provides that:

"x x x the Director of the Bureau of Mines shall publish a notice that such application has been made, once a week for a period of three consecutive weeks, in the Official Gazette and in two newspapers, one published in Manila either in English or Spanish, and the other published in the municipality or province in which the mining claim is located, if there is such newspaper, otherwise, in the newspaper published in the nearest municipality or province. x x x."

It is evident that the newspaper first mentioned refers to a periodical published in Manila and circulated in the Philippines while the second refers to a local newspaper. Publication in one does not mean that the applicant can dispense with publication in the other. Otherwise, it would have been absurd, nay ridiculous, for the law to require publication in both newspapers in addition to publication in the Official Gazette. The legislature certainly abhors absurdity. Corollarily, courts should not give a statute a meaning that would lead to absurdity.^[39] Besides, Section 72 imposes upon the Director of Mines the duty, "[u]pon receipt of the application, and provided that the requirements of this Act have been complied with," to publish the notice in the Official Gazette and in the said two (2) newspapers. The language of the mandate is undeniably clear and unequivocal. It should be taken to mean exactly what it says:

"x x x It is the rule in statutory construction that if the words and phrases of a statute are not obscure or ambiguous, its meaning and the intention of the legislature must be determined from the language employed, and, where there is no ambiguity in the words, there is no room for construction (Black on Interpretation of Laws, sec. 51). The courts may not speculate as to the probable intent of the legislature apart from the words (Hondoras vs. Soto, 8 Am. St., Rep. 744). The reason for the rule is that the legislature must be presumed to know the meaning of words, to have used words advisedly and to have expressed its intent by the use of such words as are found in the statute (50 Am. Jur. p. 212)."^[40]

Another reason why the publication requirements should be strictly complied with is that any person who fails to file an adverse claim against the applicant during the period of publication is forever barred to file such a claim since the section itself provides that "if no adverse claim shall have been presented to the Director of the Bureau of Mines, it shall be conclusively presumed that no such adverse claim exists and thereafter no objection from

third parties of the granting of the lease shall be heard." [41] In view then of its adverse consequences on the rights of others, nothing short of strict compliance is demanded. Statutes in derogation of rights must be construed strictly. [42]

Thus, the contention and rationalization of public respondents that substantial compliance with the publication requirements would suffice, is wholly unacceptable for the letter and the spirit of the law do not sustain it.

Considering then that there was no publication in a newspaper published in the municipality or province where the subject claims are located -- Batangas -- despite the existence of two (2) weekly newspapers therein, it is clear that there was non-compliance with Section 72 of the Mining Act and that public respondents acted with grave abuse of discretion in holding that the publication in the Philippines Herald, El Debate and the Official Gazette was sufficient.

Respondents, however, maintain that petitioners were well aware of the publication for on 15 August 1967, the latter filed a letter with the Director of the Bureau of Mines requesting that action on the proposed grant of the lease contracts in favor of private respondent be held in abeyance pending resolution of a "formal petition" which petitioners "will file as soon as possible."

Upon the other hand, there is no showing that the filing of the request was due to petitioners' knowledge of the publication. In any case, whether or not petitioners knew of the publication is of no moment since there was in fact non-compliance with the publication requirements; furthermore, at the time they actually filed their adverse claim on 29 August 1967, the period of publication was not yet completed. Granting that petitioners had such knowledge, the same did not cure a fatal defect or complete and validate the defective publication. Neither the Director nor the private respondent should be made to profit from the latter's non-compliance with the publication requirements.

Of course, the result would be entirely different if there had in fact been full compliance with the publication requirements for indeed, the period of publication, taking into account the publication in the Official Gazette and assuming that publication in a local newspaper was made earlier, expired on 28 August 1967. The notice was published in the 7, 14 and 21 August 1967, issues. Although actually released and distributed on 5, 19 and 29 September 1967, respectively, this Court had already ruled in *Barreto vs. Republic* [43] that:

"x x x With reference to the date of the effectivity of statutes, it is provided that the Official Gazette 'is conclusively presumed to be published on the date indicated therein as the date of issue.' (Sec. 11, Revised Administrative Code.) This is obviously for the purpose of avoiding uncertainties likely to arise if the date of publication is to be determined by the date of the actual release of the Gazette. If the policy regarding so important a matter as fixing the date of the effectivity of statutes, is to accept the date of issue indicated in the Official Gazette as conclusive, there is better reason for adopting said date of issue in respect of publication of notices in naturalization cases. This is specially so, because, as we have said in *Anti-Chinese League of the Philippines vs. Felix* (44 Off. Gaz., 1480, 1483[44]), the purpose of the publication in the Official Gazette and in one newspaper of general circulation, of the posting of notices in a public and conspicuous place in the office of the clerk of court or in the building where said office is located, and of the sending of copies of the petition to the Bureau of Justice, the Department of the Interior, the Provincial Inspector of the Philippine Constabulary and the Justice of the Peace of the municipality wherein the petitioner resides, 'is to inform those officers and the public in general of the filing of such a petition in order that the public officers and private citizens supposed to be acquainted with the petitioner may furnish the Solicitor General or the provincial fiscal with such necessary information and evidence as there may be against the petitioner.' x x x."

There is no reason to depart from this rule.

This Court cannot then accept petitioner's contention that the date of release of the Official Gazette is controlling.

Petitioners further argue that it was even premature for the Director of the Bureau of Mines to cause the publication of the notice of private respondent's application since it had not complied with, among others, Sections 27, 28(d), 60 and 67 of the Mining Act; and, per Section 72, substantial compliance with the requirements of the Act is a condition precedent that must be fulfilled before publication of the notice. The first part of said section, to quote it again for emphasis, reads:

"Upon receipt of the application, and provided that the requirements of this Act have been substantially complied with, the Director of the Bureau of Mines shall publish a notice x x x."

According to petitioners, private respondent's claims, specifically BAT 37, 38, 39, 40, 41 and 42, are located in a parcel of private agricultural land and are covered by petitioners' prior mining locations; the rest of private respondent's claims are covered by petitioners' prior mining locations. Private respondent does not likewise deny the fact that application for mining lease is not accompanied by the written permission of the owner of the private agricultural land.

Consequently, petitioners argue in the alternative that either Sections 27, 28(d), 60 and 67 of the Mining Act were violated, or, in reference to Section 72, were not complied with. Hence, no notice ought to have been published. The cited sections provide as follows:

"SEC. 27. - Before entering private lands the prospector shall first apply in writing for written permission of the private owner, claimant, or holder thereof, and in case of refusal by such private owner, claimant, or holder to grant such permission, or in case of disagreement as to the amount of compensation to be paid for such privilege of prospecting therein, the amount of such compensation shall be fixed by agreement among the prospector, the Director of the Bureau of Mines and the surface owner, and in case of their failure to unanimously agree as to the amount of compensation, all questions at issue shall be determined by the Court of First Instance of the province in which said lands are situated in an action instituted for the purpose by the prospector, or his principal: Provided, however, That the prospector, or his principal, upon depositing with the court the sum considered jointly by him and the Director of the Bureau of Mines or by court (sic) to be just compensation for the damages resulting from such prospecting, shall be permitted to enter upon, and locate the said land without such written permission pending final adjudication of the amount of such compensation; and in such case the prospector, or his principal, shall have a prior right as against the world, from the date of his application. The court in its final judgment, besides determining the corresponding compensation for the damages which may be caused by the prospecting, shall make a pronouncement as to the value of the land and the reasonable rental for the occupation and utilization thereof for mining purposes in case the prospector decides to locate and exploit the minerals found therein.

SEC. 28. – No prospecting shall be allowed:

x x x

(d) In lands which have been located for mining leases by other prospectors under the provisions of this Act.

x x x

The regulations to be promulgated under this Act shall prescribe in detail the various restrictions under this section.

x x x

SEC. 60. - No valid mining claim or any part thereof, may be located by others until the original locator or his successors in interest abandons the claim or forfeits his rights on the same under the provisions of this Act.

x x x

SEC. 67. - Any person authorized to locate a mining claim under this Act, having claimed and located a piece of land for mining purposes who has complied with the terms of this Act, may file with the Director of the Bureau of Mines an application under oath for a mining lease thereon, showing such compliance. A plan and a technical description of the mining claim or claims covered by the application shall be filed therewith or as soon thereafter as the same may be obtained from the Bureau of Mines under the provisions of this Act. In the case of an application to lease a mining claim located on private lands, the same shall be accompanied by a written authority of the owner of the land: Provided, however, That in case of refusal of the owner of the land to grant such written authority, the same shall be granted by the court as soon as the applicant deposits the amount fixed as the value of the land and as compensation for any resulting damage or files a bond to be approved by the court sufficient to insure the payment of the rental of the land as determined in accordance with section twenty-seven of this Act. Should there have been no proceeding instituted by the applicant, as provided for under section twenty-seven of this Act, the Court shall determine the value of the land and the compensation for any resulting damage or its reasonable rental for the purposes above-mentioned and grant the written authority required therein."

The issue thus posed would be best determined during the hearing of the Adverse Claim. It should, however, be stressed here that it was held in *Standard Mineral Products, Inc. vs. Court of Appeals, et al.*[45] that failure to comply with Section 27 is fatal:

"We agree with the declaration of both lower Courts that SMPI is not entitled to said surface rights as it failed to comply with the requisite of prior written permission by the Landowners before entering the private land in question.

Section 27 of the Mining Act explicitly provides:

x x x

The purpose of the law is obvious, which is, to prevent trespass on private property. The importance of the written permission of the owner of private land is also apparent from the forms prescribed by the Bureau of Mines for the declaration of location of a mining claim which require the locator to state that the landowner has granted written permission for the prospecting and location of the mining claim if the latter is located on private property.

The subsequent amendments requiring only mere notification to the owner of the private land (Section 2, P.D. No. 512) are not discussed for being inapplicable during the period pertinent to this controversy.

SMPI argues, however, that Section 27 is inapplicable as it never entered the land for the purpose of 'prospecting' but already for 'locating' a mining claim inasmuch as the limestone deposits were prominently exposed and spread visibly and recognizably on the surface of the land such that "there was no need of 'entering' the land." In finding the same to be without merit, suffice it to state that 'entering' has to be preceded (sic) 'prospecting'; 'prospecting' necessarily precedes 'discovery'; and a valid 'discovery' is essential for the 'location' of a mining claim. As expounded by the Court of Appeals:

'Section 26 of the Mining Act provides that prospecting shall be carried on "in accordance with the provisions of this Act." As appellant's prospecting was done in violation of the law, it was an illegal act and the subsequent location of the mining claims was also illegal and null and void. For the Mining Act regards a valid discovery as that which gives the prospector the right to locate a mining claim (Sections 29 and 30), and the validity of a location depends upon compliance with the law.

'It is clear, of course, that the validity of a location depends upon compliance with the statutes. The law requires that the locator shall act in good faith, and it will not countenance a trespass as the basis of a mining right' (36 Am. Jur. Sec. 77)."

In view of the foregoing, it would no longer be necessary to discuss the second issue as well as the other assigned errors.

WHEREFORE, the instant petition is hereby GRANTED. The Decision of the then Secretary of Agriculture and Natural Resources of 24 March 1969 in DANR Case No. 3359 affirming the Order of the then Director of the Bureau of Mines of 5 July 1968 in Mines Administrative Case No. V-417 is hereby SET ASIDE and the Adverse Claim and/or Opposition filed by petitioners is hereby REINSTATED.

Costs against the private respondent.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Rollo, 38-42.

[2] Rollo, 68-71.

[3] Id., 81-82; 94.

[4] Id., 82.

[5] Rollo, 45-46.

[6] Id., 44.

[7] Id., 69.

[8] Rollo, 68-71.

[9] Id., 39.

[10] Id., 47.

[11] Rollo, 4-5.

[12] Id., 5; 43.

[13] Id., 5; 53.

[14] Id., 6-7; 58-67.

[15] Rollo, 7; 68-71.

[16] Id., 7; 72-74.

[17] Id., 38-42.

[18] Rollo, 101.

[19] Id., 102.

[20] Id., 112-146.

[21] Id., 258, et seq.

[22] Id., 286, et seq.

[23] Id., 321-322.

[24] Id., 324.

[25] Rollo, 340.

[26] Id., 356.

[27] Id., 367.

[28] Id., 373.

[29] Id., 396.

[30] Id., 405.

[31] Id., 407.

[32] Id., 411.

[33] Id., 419.

[34] Rollo, 438.

[35] Rollo, 70.

[36] Id.

[37] Rollo, 70.

[38] Id., 41.

[39] Automotive Parts & Equipment Co. vs. Lingad, et al., 30 SCRA 248; Director of Lands vs. Abaja, et al. 63 Phil. 559.

[40] Aparri vs. Court of Appeals, et al., 127 SCRA 231; see also Insular Bank of Asia and America Employees Union vs. Inciong, 132 SCRA 663 and Baranda vs. Gustilo, 165 SCRA 757.

[41] Underscoring supplied.

[42] Realty Investments, Inc. vs. Villanueva, 84 Phil. 842; Philippine National Bank vs. Jacinto, 88 Phil. 376.

[43] 87 Phil. 731.

[44] Citing 77 Phil., p. 1012.

[45] 184 SCRA 571.

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