

CONSTANCIA D. VEGA, PETITIONER, VS. HONORABLE FERNANDO LOPEZ, IN HIS CAPACITY AS THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, AND ATLAS CONSOLIDATED MINING AND DEVELOPMEN...*G.R. No. L-30504. August 29, 1974*

Ponente: ESGUERRA, J.

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Petition for certiorari under Section 61 of the Mining Law, as amended by R.A. 4388, to review the decision of the Secretary of Agriculture and Natural Resources affirming that of the Director of Mines, giving preferential right to respondent Atlas Consolidated Mining and Development Corporation (protestant in that Mines Administrative Case No. V-262) "to lease the area covered by its twelve (12) mining claims" and, accordingly, giving due course to its Lode Lease Application No. V-2272 covering the said mining claims.

On February 13, 1962, the office of the Bureau of Mines rendered a decision in Mines Administrative Case No. V-262, entitled "Atlas Consolidated Mining & Development Corporation, protestant, versus Constancia D. Vega, respondent," giving preferential right to lease the area in question (12 mining claims) to the protestant, Atlas Consolidated Mining and Development Corporation (Atlas Corporation for short), based solely on the evidence presented by the latter, as respondent therein, now petitioner Constancia D. Vega, refused to recognize and submit to the jurisdiction of the Bureau of Mines over the dispute. On appeal by respondent Vega said decision was set aside by the Secretary of Agriculture and Natural Resources on June 3, 1963, and the Director of Mines was directed to continue the proceedings by allowing respondent Vega to present her evidence and to render a decision in accordance with the evidence of both parties. If respondent Vega fails or refuses to submit proof of the dismissal of Civil Case No. R-6048 (entitled "Constancia D. Vega vs. Atlas Consolidated Mining and Development Corporation, which was allegedly dismissed at the instance of plaintiff Vega, when this Court, in G.R. No. L-15809, August 30, 1961, ruled that plaintiff Vega is bound by law to follow the procedure provided in Sections 72 and 73 of the Mining Act and her failure to do so deprived her of a cause of action) and to present evidence when required by the Director of Mines, then the decision appealed from shall ipso facto be revived and considered affirmed.

In obedience to the aforesaid decision of the Secretary of Agriculture and Natural Resources, hearings in Mines Administrative Case No. V-262 were conducted in Cebu City on February 1 and 2, 1966, at which hearings respondent Vega presented evidence and protestant Atlas Consolidated Mining and Development Corporation presented no additional evidence.

The uncontroverted facts as stated by the Director of Mines and confirmed by the Secretary of Agriculture and Natural Resources consist of the following.

"To begin with, this case, as admitted by both parties in their respective pleadings, involved overlappings of protestant's twelve (12) lode mineral claims, namely: "Nemy", "Nimfa", "Rom", "Pat", "Bar", "Art", "Nong",

"Sol", "Jack", "Ike", "Joe" and "Lim", and the same number of mining claims of respondent, namely; "Moon", "Meteor", "Comet", "Jupiter", "Venus", "Mercury", "Mars", "Pluto", "Sun", "Earth", "Universe" and "Cobra", which are all situated in the sitio of Lantoy, barrios of Lutopan and Tipolo, municipality of Toledo (now Toledo City), province of Cebu.

"The evidence both oral and documentary adduced by protestant shows that Zenon Panimdim located "Nemy" mining claim from April 21 to 25, 1953, and registered the same in the Office of the Mining Recorder of Cebu on May 11, 1953 (Exh. "A"); "Nimfa" mining claim from April 26 to 30, 1953, and registered on May 11, 1953 (Exh. "A-1"); "Rom" mining claim from July 1 to 5, 1953, and registered on July 13, 1953 (Exh. "A-2"); "Pat" mining claim from April 16 to 20, 1953, and registered on May 11, 1953 (Exh. "A-3"); "Bar" mining claim from June 21 to 25, 1953, and registered on July 11, 1953 (Exh. "A-4"); "Art" mining claim from June 1 to 5, 1953, and registered on July 11, 1953 (Exh. "A-5"); "Nong" mining claim from June 6 to 10, 1953, and registered on July 11, 1953 (Exh. "A-6"); "Sol" mining claim from June 11 to 15, 1953, and registered on August 5, 1953 (Exh. "A-7"); that Simon C. Dumaguig located "Jack", "Ike", "Joe" and "Lim" mining claims from July 1, 1953 to July 15, 1953, and declarations of location therefor registered in the Office of the Mining Recorder of Cebu on July 27, 1953 (Exhs. "A-8", "A-9", "A-10" and "A-11"); that subsequently, Zenon Panimdim and Simon C. Dumaguig under separate duly registered Deeds of Absolute Sale dated October 17, 1955 and August 12, 1954, respectively (Exhs. "C" and "B"), transferred and conveyed all their rights and interest over their mining claims to the Atlas Consolidated Mining & Development Corporation, protestant herein; that on April 27, 1957, the protestant filed its lease application covering the mining claims in question and which application is designated as Lode Lease Application No. V--2272 (Exh. "H"); and that said mining claims were surveyed and the survey plans thereof then pending approval by this Office.

"On the other hand, the evidence presented by respondent discloses that under a Special Power of Attorney executed by respondent, Constancia D. Vega, in favor of Gregorio Ravago on August 1, 1957, and duly registered in the Office of the Mining Recorder of Cebu on August 12, 1957 (Exh. "I"), he (Ravago), in the company of Telesforo Tinkiang and two helpers, located from August 2 to 4, 1957, the following mining claims, namely: "Mars", "Earth", "Sun", "Pluto", "Venus" and "Cobra", and had the corresponding declarations of location therefor registered in the Office of the Mining Recorder of Cebu on different dates on August 5, 6 to 7, 1957 (Exhs. "16", "17", "18", "19", "20" and "21"); that from August 7 to 13, 1957, Ravago located in behalf of respondent Vega, "Jupiter", "Mercury", "Moon", "Comet" and "Universe" mining claims and registered the same on different dates on August 12 and 14, 1957 (Exhs. "6", "7", "8", "9", "10" and "11"); that in a duly registered Deed of Absolute Sale dated August 27, 1957, Telesforo Tinkiang sold his aforementioned mining claims to respondent Vega (Exh. "3"); that two separate applications for lease of the said mining claims were filed by respondent with the Bureau of Mines which were designated as Lode Lease Applications No. V-4964 and V-5714 (Exhs. "49" and "50"); that an Order of lease survey of "Jupiter", "Sun", "Pluto", "Cobra", "Earth" and "Mars" mining claims was issued by the Director of Mines to Deputy Mineral Land Surveyor Unisimo R. Solisa (Exh. "46") who surveyed the same and had the corresponding survey returns thereof submitted for approval; that in a letter dated January 8, 1958, to the General Manager of Atlas in Lutopan, Toledo City, Ravago protested against alleged acts of harassment committed by guards of said protestant corporation in barring him from the area covered by Vega's claims (Exh. "17"); and that Vega's lawyer, Atty. Tiburcio C. Donaire, also protested to Atlas under two separate letters dated December 22, 1958 and March 19, 1958 (Exhs. "13" and "14").

"As admitted by both parties in their respective pleadings and as shown in the sketch plans presented by them in evidence (Exhs. "D" and "23"), the existence of conflicting location had been established. The only principal issue to be resolved, therefore, is who has the preferential right to lease the disputed area."

Although we are aware of the provisions of Section 61 of the Mining Law, as Amended by R.A. 4388, to the effect that "Findings of facts in the decision or order of the Director of Mines when affirmed by the Secretary of Agriculture and Natural Resources shall be final and conclusive, and the aggrieved party or parties desiring to

appeal from such decision or order shall file in the Supreme Court a petition for review wherein only question of law may be raised", all the issues raised by the petitioner shall be taken into consideration and decided in accordance with the individual merit of each.

Petitioner claims that mining claims "Jack", "Ike", "Joe", and "Lim" of private respondent Atlas Corporation were not located in accordance with law and their respective position on the ground had not been tied to some permanent natural objects or permanent monument, and that respondent Atlas did not present any competent evidence to prove that acts of location were actually performed on the ground in locating those mining claims, with the corollary contention that respondent Atlas Corporation's failure to present Simon C. Dumaguing, the alleged locator of those four mining claims, constituted willful suppression of evidence.

There is no question that private respondent Atlas Corporation acquired its rights to mining claims "Jack", "Ike", "Joe" and "Lim" from Mr. Simon C. Dumaguing by absolute sale on August 12, 1954 (Exh. E), the latter having located the same from July 1, 1953, to July 15, 1953, and having the declarations of location for the same registered in the Office of the Mining Recorder of Cebu on July 27, 1953 (Exh. "A-8", "A-9", "A-10" and "A-11"), and that the private respondent filed its lease application (Lode Lease Application No. V-2272, Exh. H) on the basis of the presumed regularity of the registered declarations of location (Exhs. "A-8" to "A-11") of the mining claims purchased from Mr. Simon C. Dumaguing. When these registered declarations of location (Exhs. "A-8" to "A-11") were presented before the Bureau of Mines to support respondent Atlas Corporation's lease application, there is no question that the presumption of regularity and lawfulness of the acts done in preparing those declarations of location attached to said exhibits which in turn convinced the respondents Director of Mines and the Secretary of Agriculture and Natural Resources to correctly conclude that respondent Atlas Corporation had established by prima facie evidence an existing rights over valid mining claims. Those Exhs. "A-8" to "A-11", as supported by Annexes "3" to "6" to private respondent Atlas' answer, consisting of certified xerox copies issued by the Bureau of Mines of those declarations of location, can certainly be considered prima facie evidence of the fact that those mining locations were actually made in accordance with law because they were sworn declarations of location signed by the locator and registered with the Bureau of Mines. As public instruments they certainly must be given weight as evidence. Every instrument affecting real property acknowledged or proved and certified as provided by law may be used in evidence without further proof (Sec. 31 of Rule 132, Rules of Court).

In other words, private respondent Atlas in submitting Exhs. "A-8" to "A-11" to support its lease application for the aforementioned mining claims presented competent evidence to prove that acts of location were actually performed on the ground in locating those mining claims as appearing in the sworn declarations of location registered with the Bureau of Mines by its predecessor in interest, Mr. Simon C. Dumaguing. If petitioner as respondent in that case heard by the Bureau of Mines failed to object to the evidence presented by Atlas Corporation, such failure was due to her own fault since at that time when the Atlas Corporation presented evidence ex-parte, petitioner Vega refused to submit and to recognize the jurisdiction of the Bureau of Mines over the dispute. When private respondent Atlas Corporation presented evidence before the Bureau of Mines, the petitioner Vega had lost her standing as a party to the case and could not have objected to the evidence being presented to support the stand of the private respondent, Atlas Corporation.

We are convinced that what appears in paragraphs 5 and 7 of private respondent Atlas Corporation's Exhs. "A-8" to "A-11" embody clerical errors innocently committed by the certifying officer of the Mining Recorder of Toledo City, then recently organized, as contended by private respondent, due to the fact that Annexes "3", "4", "5", and "6" of Atlas Corporation's answer which are certified xerox copies of the declarations of location of "Jack", "Joe", "Ike" and "Lim" mining claims on file with the Bureau of Mines, tally exactly with petitioner Vega's own exhibits "38", "39", "37" and "40" (certified copies issued by the Bureau of Mines of the documents on file in said office).

Petitioner's exhibits and respondents' annexes to its answer are the most eloquent arguments in favor of what really appears in the originals of those declarations of location filed with the Bureau of Mines.

With Exhibits "38", "39", "37" and "40" of petitioners and Annexes "3", "4", "5", and "6" of Atlas Corporation's answer as basis of what really appears in paragraphs 5 and 7 of the four declarations of location of the aforementioned mining claims, we conclude that said mining claims as described in the declarations of location had been located in accordance with the Mining Act because they (declarations of location) show their accurate and authenticated reference points, and the exact situs of those four mining claims on the ground can be traced by subsequent locators on the basis of the data appearing on the declarations of location. The respondent Secretary of Agriculture and Natural Resources did not err when he ruled that "those four mining claims are each respectively tied to a permanent concrete monument, thereby fixing their positions by bearing and distance."

Regarding petitioner's contention that private respondent Atlas Corporation's failure to present Simon C. Dumaguing as locator of those four mining claims amounted to willful suppression of evidence, suffice it to state that petitioner as respondent in Mining Administrative Case No. V-262, did not submit to the Bureau of Mines' jurisdiction over the dispute at the time when private respondent Atlas Corporation presented evidence ex-parte to support its Lode Lease Application No. V-2272. Therefore, when private respondent Atlas Corporation presented as evidence the four sworn declarations of location executed by Simon C. Dumaguing it did so without any objection on the petitioner's part (petitioner was not in a position to object due to her own fault) and apparently upon the belief that there was no need to present Simon C. Dumaguing to identify the documents since they are public and anyway there was no adverse party to cross examine him. Under those circumstances it is hard to conclude that there was willful suppression of evidence when private respondent Atlas Corporation failed to present Mr. Simon C. Dumaguing as witness and that the evidence could be presumed adverse if produced. Furthermore, petitioner could have presented Mr. Dumaguing as her own witness when she decided to submit to the jurisdiction of the Bureau of Mines in 1966, and she could have even presented him as a hostile witness subject to leading questions on direct examination. If petitioner failed to do so, following her reasoning, she could also be suspected of willful suppression of evidence which if produced could be presumed adverse to her. We sustain respondent Secretary's ruling "that since Simon C. Dumaguing did not refuse to testify during the hearing nor was he required to do so, it cannot be said that there was a willful suppression of evidence, specially considering that the declarations of location in question which were presented in evidence constitute prima facie evidence of the facts recited therein."

There being a strong prima facie case sustaining the validity of the location of the mining claims "Joe", "Jack", "Ike" and "Lim" as appearing in the sworn declarations of location registered by Simon C. Dumaguing who later sold his rights to private respondent Atlas Corporation, it follows that the respondent Secretary of Agriculture and Natural Resources ruled correctly when he stated that "it behooved on the part of appellant (petitioner Vega) to overcome that prima facie presumption by presenting contrary evidence."

On the alleged disqualification of Simon C. Dumaguing to locate mining claims at the time he did so, for being allegedly an official of the Bureau of Mines at the time, pursuant to Section 25 of the Mining Act (Commonwealth Act No. 137, as amended), both the Director of Lands and the respondent Secretary of Agriculture and Natural Resources stated that surveyor Simon C. Dumaguing was not an employee of the Bureau of Mines and that as deputy mineral land surveyor, he was in the private practice of his profession and therefore, not disqualified to locate mining claims. A mineral land surveyor of the Bureau of Mines who is also deputized to undertake survey of mineral lands is the one disqualified to locate mining claims, but not a mineral land surveyor practicing his profession outside the government. It is the officers and employees of the executive branch of the government whose duties are related to the administration or disposition of mineral resources who are disqualified

under Section 25 of the Mining Act to locate mining claims and not private mining surveyors who are licensed to practice their profession. It is rather strange that petitioner seeks desperately to disqualify Mr. Dumaguing and in the same breath argues that Mr. Dumaguing did not strictly follow the law in locating the four mining claims in question.

Petitioner also contends that even if "Jack", "Ike", "Joe" and "Lim" mining claims were properly tied to a permanent reference point, the surveyor who performed the survey of these four mining claims did not follow the bearings and distances by which they were supposedly tied to their respective reference point, and that the surveyor covered areas different from those originally staked and monumented as described in the declarations of location. Petitioner's contention is predicated on the assumption that the basis of the survey of the four mining claims emanated from the contents of Exhibits "A-8", "A-9", "A-10" and "A-11". These are the Atlas Corporation's exhibits which were previously considered as containing clerical errors in paragraphs 5 and 7. Said errors should be disregarded and what is considered correct is that which appears in petitioner's exhibits "38", "37", "39", "40" and Annexes to respondent Atlas Corporation's answer as "3", "4", "5", and "6".

If, We, however, take as basis for the survey of the four mining claims the contents of the Annexes to respondent Atlas Corporation's answer, "3", "4", "5", "6", which tally with the contents of petitioner's exhibits "38", "37", "39", and "40", as We decide to do now, We will realize that the areas which private respondent Atlas Corporation caused to be surveyed as "Jack", "Joe", "Ike", and "Lim" mining claims are exactly the same areas of the said claims that were originally staked, monumented and located on the ground as per the aforementioned declarations of location.

"Jack" mining claim is bounded on three sides by claims ("Nick" on the left, "Frank" at the bottom, and "John" on the right) leased to private respondent Atlas Corporation. This is shown by Annex 8 of the Memorandum of Atlas filed with the office of the Secretary of Agriculture and Natural Resources dated July 17, 1968, which indicates that said claims "Nick", "Frank", and "John" are covered by Lode Lease Contract No. V-407; Annex "I" to Atlas Corporation's opposition dated February 20, 1969, to Vega's motion for reconsideration filed with respondent Secretary. There is no question that the location of "Jack" is fixed on the ground by its relation to the three leased claims, "Nick", "Frank" and "John". It is also clear that "Jack" is tied to a leased claim, "Marie", as shown by paragraphs 5 and 7 of "Jack" declaration of location; Annex 3 to Atlas Corporation's answer which is petitioner's exhibit 38.

We are convinced, as We already stated before, that the true and correct location of the Dumaguing claims ("Jack", "Joe", "Ike" and "Lim") are those which are based on the entries appearing in declarations of location Annexes "3", "4", "5", "6" to Atlas Corporation's answer, which are the same as petitioner's exhibits "38", "39", "37" and "40", which show the true and correct tie point corners, and location post of the four mining claim along with their respective bearings and distances.

The relative positions of mining claims "Jack", "Joe", "Ike", and "Lim" in relation to mining claims "Anong", "Marie", "Tisay" and "Deep" are clearly shown in Sketch No. 7, page 46, of respondent's Brief. We agree with respondent Atlas Corporation's argument that the best evidence of the actual location of the four questioned mining claims would be the survey plans (Annexes 1 to 7 of Atlas' Memorandum dated July 17, 1968) prepared as a result of a survey by Bureau of Mines' surveyors for the purpose of mining lease applications. What appears in the declarations of location of mining claims "Jack", "Joe", "Ike", and "Lim" if checked with the sketch plan is that the locations of said claims as originally staked and monumented are the same areas which were caused to be surveyed as shown by their respective survey plans.

There is no showing that illegal movement or transfer of the corner posts or location posts has been done in the

course of survey by the Bureau of Mines surveyors as the latter are presumed to have done their duties in accordance with law. Certainly, it could be presumed that the survey and acts of location of the Dumaguing claims made by the Bureau of Mines surveyors were done in conformity with the requirements of the Mining Act, and considering Section 13 thereof which declares as unlawful "to move No. 1 post of a lode mineral claim" although "No. 2 post may be moved by the mineral land surveyor when the distance between posts Nos. 1 and 2 exceeds 300 meters x x x."

There is no merit to petitioner's claim that the surveyor who surveyed the four mining claims in question did not follow the bearings and distances by which they were supposedly tied to their respective reference posts, and that the survey covered grounds different from the ones originally staked and monumented as described in the declarations of location. On the contrary, the evidence shows that private respondent Atlas Corporation caused to be surveyed as "Jack", "Ike", "Joe", and "Lim" mining claims which are exactly the same areas that were originally staked and monumented on the ground and as described in the declarations of location registered by Dumaguing with the Bureau of Mines appearing in Annexes to respondent's answer, "3", "4", "5", "6", which are the same as petitioner's exhibits "38", "37", "39" and "40".

Regarding mining claims "Nimfa", "Nemy", "Rom", "Pat", "Bar", "Art", "Nong", and "Sol", petitioner again contends that said mining claims were not located in accordance with the requirements of the law, and assuming arguendo that they were validly located, the areas of said mining claims caused to be surveyed by private respondent Atlas Corporation were totally different from the area originally staked and monumented on the ground.

There is no question that the aforementioned eight mining claims were located by Mr. Zenon Panimdim as: "Nemy", from April 21 to 25, 1953, registered May 11, 1953; "Nimpa", from April 26 to 30, 1953, registered May 11, 1953; "Rom", July 1 to 5, 1953, registered July 13, 1953; "Pat", from April 16 to 20, 1953, registered May 11, 1953; "Bar", June 21 to 25, 1953, registered July 11, 1953; "Art", from June 1 to 5, 1953, registered July 11, 1953; "Nong", from June 6 to 10, 1953, registered July 11, 1953; "Sol", from June 11 to 15, 1953, registered August 5, 1953 (Exhibits "A", "A-1" to "A-7", Mines Administrative Case No. V-262), and that Zenon Panimdim subsequently sold his rights to the 8 mining claims to private respondent Atlas Corporation by a duly registered deed of absolute sale dated October 17, 1955.

Petitioner contends that the declarations of location (Exhibits "A", "A-1" to "A-7", Mines Administrative Case No. V-262 of Panimdim's 8 mining claims) do not mention any fixed prominent natural object or permanent monument to which the said mining claims or any part thereof had been tied or which would identify them on the ground so as to give notice to prospectors looking for mineral locations of what has already been appropriated so that they may be guided accordingly. In other words, petitioner contends that the failure of Zenon Panimdim to tie the mining claims to a reference or tie point rendered said claims floating or swinging claims, and, therefore, said locations were void ab initio (Sec. 47 of Mining Act). It is argued that if said locations of Panimdim in the 8 mining claims were void then he could not have subsequently transferred valid rights thereto in favor of private respondent Atlas.

Petitioner further contends that even if the 8 mining claims could be considered validly tied to "Jack" mining claim, still the survey caused by Atlas Corporation of the said mining claims was void since the area surveyed was not the same as that which was originally tied to "Jack" mining claim.

An examination of petitioner's Exh. "23", which is a sketch plan showing the relative position of mining claims submitted by Constancia D. Vega, which is substantially the same as respondent Atlas Corporation's Exh. "D", a sketch plan showing the relative positions of mining claims located by Constancia D. Vega, convincingly shows

that the 8 mining claims in question are fixed or tied to each other and that their situs are fixed on the ground by means of reference points. The relative positions of the 8 Panimdim mining claims as originally located in relation to each other and in relation to the leased or surveyed claims of private respondent Atlas Corporation can be clearly seen in Sketch No. 9 on page 52 of respondent Atlas Corporation's Brief. There is no reason to alter the finding of the respondent Secretary of Agriculture and Natural Resources that the situs of mining claim "Jack" can be established on that basis, and that the situs of the rest of Atlas Corporation's mining claims involved in the case can be determined with ease by just following the sketches of the claims in the declarations of location. It appears that the 8 mining claims known as Panimdim claims have fixed locations on the ground; that they are not floating and swinging as claimed by petitioner and that the findings conclusion of the respondent Secretary of Agriculture and Natural Resources, as supported by substantial evidence that said claims (Panimdim's claims) "are tied to each other and whose situs are fixed on the ground by means of reference points which are concrete monuments of the other surveyed claims of Atlas Corporation whose positions were fixed on the ground by means of fixed points of reference", must necessarily be affirmed. The very substantial evidence supporting the respondent Secretary of Agriculture and Natural Resources finding and conclusion includes petitioner's Exhibits 27, 28, 34, 52, 53, 29, 51 and 54 which are the declarations of location of those eight mining claims.

In petitioner's Exh. 23 (same as respondent Atlas Corporation's Exhibit "D") it can be readily seen that mining claim "Jack" is adjoined by three leased claims, namely "Nick" (Lla-3889), covered by Lode Lease Contract No. V-407, "Frank" (Lla-3896) covered by Lode Lease Contract No. V-407; and "John" (Lla-3892), covered by Lode Lease Contract No. V-407, all approved in favor of respondent Atlas. There is no ground to disturb the findings of the Director of Mines to the effect that "we have examined the declarations of location thereof, (Exhs. "A", "A-1", to "A-7") and found out that the positions of said claims are fixed and well identified on the ground in view of its relation with other surveyed claims of protestant (Atlas)."

As to petitioner's contention that the areas which Atlas Corporation caused to be surveyed on the 8 mining claims were totally different from the areas of the said mining claims as originally staked and monumented on the ground, We observed that the locator Zenon Panimdim testified on the performance of proper acts of location and registration of those claims, and the sketches shown in the declarations of location (Exhs. "A", "A-1" to "A-7"), including the amendments thereto, establish that they coincide with the locations as shown in the survey plans marked Annexes "1", "2", "3", "4", and "5" to Atlas Corporation's memorandum dated July 17, 1968.

From the foregoing, We see no reversible error committed by respondent Secretary of Agriculture and Natural Resources in his appealed decision. All the findings on questions of facts were amply supported by evidence, at times even by the very evidence submitted by the petitioner herself. No error was committed when respondent Secretary of Agriculture and Natural Resources concluded:

"Accordingly, it having been admitted by the appellant (Vega, petitioner in this case) on the basis of the declarations of location that the mining claims of appellee (Atlas) were located and registered ahead of her mining claims, it follows as an imperative consequence that appellee's (Atlas) mining claims must prevail pursuant to Sec. 60 of the Mining Act, as amended."

We hasten to add that We are not convinced of the good faith of the petitioner in pursuing her claims to those mining rights in the light of her admission that the mining claims of respondent Atlas Corporation were located and registered ahead of her claims and in the background of the Director of Mines' following findings:

"Moreover, the evidence show that the respondent (Vega) knew of the mineralized area in question after researching the records of the Mining Recorder of Cebu, where the declaration of location of petitioner's (Atlas) claim were found to be defective in form; that respondent's (Vega) own principal witness, Gregorio Rabago, admitted that when he located the claims of his principal (respondent Vega) he provided himself with

a sketch plan and list of mining claims of the protestant (Atlas); and that respondent (Vega) knew at the time of his prospecting that the protestant (Atlas) was in operation of its claims in Lutopan, which is adjacent to the area in question; and that the protestant (Atlas) has been in possession and occupation of the area in question since the time the claims were acquired from the original locators."

As to the effect on this case of the first paragraph of Section 1 of Presidential Decree No. 99-A, which reads as follows:

"Section 1. 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, develop and operate such mining claim."

We are of the belief that even if We do not apply said provision as there seems to be no need to do so, private respondent Atlas still has a clear priority right to those mining claims as rightfully adjudged by the respondent Secretary of Agriculture and Natural Resources.

WHEREFORE, the decision in DANR Case No. 2464 (MAC No. V-262) is affirmed with costs against petitioner.

Makalintal, C.J., Ruiz Castro, Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

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