

BIAK-NA-BATO MINING COMPANY, PETITIONER, VS. HON. ARTURO R. TANCO, JR., IN HIS CAPACITY AS THE SEC-RETARY OF AGRICULTURE AND NATURAL RESOURCES AND BALATOC-LUBUAGAN MINES, INC., ...

G.R. Nos. L-34267-68. January 25, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari which seeks to annul and set aside the September 17, 1971 decision of the Honorable Secretary of Agriculture and Natural Resources[*] in DANR Case Nos. 3613-3613-A entitled "Biak-Na-Bato Mining Company vs. Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc." affirming the decision of the Director of Mines[**] dated December 17, 1970 in Mines Administrative Cases Nos. V--494 and V-495, finding the respondents to have a better right to the 170 mining claims of about 1,520 hectares located at the Cordillera Mountains, in Pasil, Municipality of Balatoc, Province of Kalinga-Apayao.

As gathered from the records, the facts of the case are as follows:

During the mining boom in 1933, a group of hopeful and enthusiastic individuals from the North, among them Jose Moldero, Saturnino Moldero, Miguel Moldero and Manuel Dirige, appeared to have located from November, 1933 to February, 1934 one hundred seventy (170) mining claims in hinterlands of the Cordillera Mountains in Sitios of Pasil and Balatoc, Municipality of Lubuagan, Mountain Province (now known as Municipality of Balatoc, Province of Kalinga-Apayao). The land covered by said 170 mining claims is adjacent and surrounds the mining properties of Batong Buhay Gold Mines, Inc. The said 170 mining claims were divided into four (4) groups, viz: NAGASAT Group consisting of 42 claims; MUGAO Group consisting of 40 claims; LUCKY STRIKE Group consisting of 40 claims; and BUMABAG Group consisting of 48 claim (Rollo, Vol. III, Appellant's Brief, p. 1122 [pp. 25-26]).

On September 3, 1936, Balatoc-Lubuagan Mines Association entered into an Operating Agreement with Jose Moldero as Attorney-in-fact of the claimowners of the Nagasat and Mugao Groups of claims (Rollo, Vol. I, Annex "M-1", pp. 449-451-A).

On September 19, 1936, Saturnino Moldero sold to Balatoc-Lubuagan Mines Association twenty (20) claims of the Nagasat group (Rollo, Vol. I, Annex "M-2", pp. 452-453) while Miguel Moldero sold seven (7) claims (Rollo, Vol. I, Annex "M-5", pp. 459-460). Subsequently, Balatoc-Lubuagan Mines, Inc. then already organized as a mining corporation acquired fifty two (52) claims, of the Nagasat and Mugao Groups and acquired the operating right on thirty (30) claims also of the Nagasat and Mugao groups belonging to Miguel Moldero, Emilia L. Villanueva, A.D. Salvador, Esteban Flores, Nicasio Balinag, Rufino Custaran, Felipe Tuazon, Rita A. de Pardo and Hilario T. Agatep which was later on conveyed to respondent Balatoc-Lubuagan Mines, Inc. (Rollo, Vol. III, Appellees' Brief, p. 1144 [p. 20]).

On the same date September 3, 1936, Mountain Mines, Association entered into an agreement with Jose Moldero over forty (40) mining claims known as Lucky Strike Group and on September 22, 1936, Mountain Mines, Inc. already a corporation entered into an agreement with Jose Moldero over forty eight (48) mining claims known as Bumabag Group (Rollo, Vol. I, Annexes "M", "M-4", pp. 446-448; 456-458).

On September 19, 1936, Mountain Mines, Inc. purchased from Saturnino Moldero ten (10) claims of the Lucky Strike Group and two (2) more claims of the Lucky Strike Group on October 6, 1936 purchased from Miguel Moldero (Rollo, Vol. I, Annexes "M-3", "M-6", pp. 254-255; 461-462).

That in September 1936, Mountain Mines, Inc. acquired the entire eighty-eight (88) claims under a deed of sale executed in its favor by Feliciano Arceo, the attorney-in-fact of Jose Moldero, Saturnino Moldero and Miguel Moldero as claimowners and attorney-in-fact of the other claimowners (Rollo, Vol. I, Annexes "C", "F", pp. 287-289; 296-297). That all these mining claims were located under the Act of Congress of July 1, 1902 (Rollo, Vol. III, Appellees' Brief, p. 1144 [p. 21]).

In 1936-37 said mining corporations (Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc.) engaged the services of Mining Engineers, Thomas F. Breslin, Bernardo Cuesta and Fulgencio Consolacion to explore and develop the mining area; for its pre-war exploration and development, Mountain Mines, Inc. spent the sum of P142,219.00 and increased its authorized capital in 1937 from P200,000.00 to P1,000,000.00 to meet the cost of exploration (Rollo, Vol. III, Solicitor's Brief, p. 1156 [p. 7]).

After the war, in 1949-50, private respondents (Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc.) reconstituted their corporate records before the Securities and Exchange Commission. In 1953, pursuant to the provisions of Republic Act No. 739, they filed reconstitution proceedings before the Bureau of Mines to reconstitute the records of the 170 lode claims. The reconstitution proceedings filed by Balatoc-Lubuagan Mines, Inc. over 42 lode claims known as Nagasat Group and 40 lode claims known as Mugao Mining Group were docketed before the Bureau of Mines as MAC Case No. V-79 (Rollo, Vol. III, Solicitor's Brief, p. 1156 [p. 8]).

The reconstitution proceedings of Mountain Mines, Inc. over the 48 lode claims known as Bumabag Mining Group and 40 lode claims known as Lucky Strike Mining Group was docketed as MAC Case No. V-80 (Rollo, Ibid.).

The Bureau of Mines published the requisite notice of hearing of the reconstitution proceedings in the newspapers of general circulation in Manila, and posted the notice of hearing in the Bulletin Board in Manila and served copies thereof to the District Mining Office in Baguio, Mining Recorder in Bontoc, and in Lubuagan, Sub-province of Kalinga-Apayao, where the mineral claims are situated (Rollo, Ibid.).

The Bureau of Mines in accordance with the provision of R.A. 739 conducted hearings and heard the testimonies of Apolonio Navarro, Anacleto Navarro, Atty. Macario Gacanes. Also presented was Atty. Isidro Berruyo, and the affidavits of Miguel Moldero, one of the original locators and attorneys-in-fact of the claimowners, who confirmed the sale to Mountain Mines, Inc. of the 88 lode claims and to Balatoc-Lubuagan Mines, Inc. of the 82 lode claims (Rollo, Ibid.).

On May 23, 1956, the Bureau of Mines after due hearing and notice issued the corresponding orders of reconstitution and eighty-eight (88) mining-claims of Mountain Mines, Inc. and eighty-two (82) mining claims of Balatoc-Lubuagan Mines, Inc. claim maps, lists of mining claims, option agreement, deeds of sale, power of attorney and other documents were reconstituted (Rollo, Vol. II, pp. 679-681; 682-684).

After the finality of the Order of Reconstitution, on July 26, 1956, the Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc. entered into an Operating Agreement on Royalty basis with Benguet Consolidated, Inc.

over the 170 lode claims as reconstituted. Benguet Consolidated, Inc. recorded the Royalty Agreement as well as the 170 lode claims in the Office of the Mining Recorder of Bontoc. Benguet Consolidated, Inc. explored the respondents' mining area for a period of one (1) year and thereafter, operating rights over the mining property were granted to Messrs. Spellmeyer and Stewart, A. Soriano & Company, Lepanto Consolidated Mining Corporation in 1958; Mitsubishi Shij Kaisha, Ltd. in 1959; Jacinto Steel, Inc. in 1961; Messrs. Thomas J. Weck and Robert N. Jones and Alfonso M. Villaaba Company in 1963; Philmetals Mining Corporation in 1968 and Industrial and Commercial Earthmovers, Inc. (now Inco Mining Corporation) in 1969 (Rollo, Vol. III, Appellees' Brief, p. 1156 [pp. 10-11]).

In 1960, a geological survey of the entire area of Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc.'s properties was conducted by Engr. Tranquilino Medina who rendered a favorable report thereon; that up to 1970, said mining companies have assigned men working in the area guarding the properties under field superintendent Miguel Moldero who had employed some natives for the reopening and driving of tunnels, blazing trails in the mining area; that some of these men are Felix Gumisa, Francisco Aguac, Dacuyag Balinggao and these men have continuously performed the required assessment works on the area; that affidavits of annual assessment works for the years 1965, 1966 and 1967 were duly filed with the Mining Recorder of Bontoc, Mt. Province; and that they have paid the real estate tax for the one hundred seventy (170) claims for the years 1956 to 1970 (Rollo, Vol. III, Appellees' Brief, p. 1144 [p. 22]).

In March, 1968, Mountain Mines, Inc. filed an application for lease over 9 lode claims identified as Mold, Roque, Ifugao, President, Nicodemus, Isabel, Inting, Iscariote and Judas, as well as the application for order of survey (Rollo, Vol. III, pp. 1091-1093).

On the other hand, Balatoc-Lubuagan Mines, Inc. filed a lease application over 11 lode claims identified as Z-13, Z-14, Z-15, Z-19, Z-20, Z-21, Z-25, Z-26, Z-27, Z-31, Z-32 and Z-33 and an application for order of survey (Rollo, Vol. III, pp. 1095-1097).

The Bureau of Mines issued the order of survey in November 1968 and actual survey of 21 lode claims was conducted in December 1969 (Rollo, Vol. III, Solicitor's Brief, p. 1156 [pp. 12-13]).

Meanwhile, on different dates in 1967, Bernardo Ardiente, Emilio Peralta, Mario Villarica, Anastasio Canao and Salvador Ellone located several claims covering a wide area of vacant, unoccupied and unclaimed land of the public mineral lands situated in Sitios Pasil and Balatoc, Municipality of Lubuagan, Kalinga-Apayao. The land covering the mining claims is adjacent to the patentable mining properties of the Batong Buhay Gold Mines, Inc. (Rollo, Vol. I, Petition, pp. 40-41).

On February 8, 1969, the petitioner Biak-Na-Bato Mining Co. was created as a partnership in accordance with law. And on November 19, 1969, the above-named locators, namely: Bernardo Ardiente, Emilio Peralta, Mario Villarica, Anastacio Cano and Salvador Ellone, each executed a Deed of Transfer of Mining Rights assigning, transferring and conveying to the petitioner the mining claims covered by the aforesaid declarations of location (Rollo, Ibid., pp. 41-42).

On December 4, 1969, Biak-Na-Bato Mining Co. filed with the Bureau of Mines the application for lease and a petition for an order of lease survey of the aforementioned mining claims (Rollo, Ibid., p. 42). However, it received a notice of the letter of the Director of Mines refusing to issue the order of lease survey because the areas covered by the mining claims were allegedly in conflict with the four (4) groups of mining claims purportedly owned by the Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc. (Rollo, Ibid., pp. 45-46).

On January 12, 1970, Biak-Na-Bato Mining Company filed its separate protest with the Bureau of Mines against

Balatoc-Lubuagan Mines, Inc. docketed as MAC No. 494 and the other against Mountain Mines, Inc. docketed as MAC No. 495. In said protest, Biak-Na-Bato Mining Company contests and disputes the right of Balatoc-Lubuagan Mines, Inc. to eleven (11) mining claims and the right of Mountain Mines, Inc. to another nine (9) mining claims (Rollo, Vol. I, Petition, p. 12).

Actually, Biak-Na-Bato Mining Company raised in its protest only the issue of abandonment while Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc. questioned the validity of the former's location as "table location". Biak-Na-Bato Mining Company without amending its pleadings questioned the reconstitution proceedings in MAC Cases Nos. V-79 and V-80 by claiming that the two (2) deeds of sale over the 88 lode claims in favor of Mountain Mines, Inc. and the other two (2) deeds of sale over 52 lode claims of Balatoc-Lubuagan Mines, Inc. were fake, fictitious or manufactured. However, Biak-Na-Bato Mining Company did not contest the validity of the reconstitution of the declarations of location of the 170 lode claims (Rollo, Vol. III, Solicitor's Brief, p. 1156 [p. 13]). In March 1970, while its protest was being heard, it filed with the Bureau of Mines a motion claiming that Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc.'s men had entered the area in controversy by force and have been molesting, harassing and threatening petitioner's supposed workers in the area. The Bureau of Mines issued a restraining order directing both parties to desist from performing any further mining activities in the area in controversy. On April 7, 1970, Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc. filed a motion for reconsideration for the immediate lifting of said restraining order. They denied under oath that they entered the area by force or that there was violence or even threat to peace in the area, contrary to the pretensions of Biak-Na-Bato Mining Company who had never been in the area (Rollo, Ibid., p. 5).

To determine the truth of the Biak-Na-Bato Mining Company's claim in its motion as well as to ascertain the assessment work done in the area claimed by both parties, the Director of Mines ordered an ocular inspection of the mining area in May 1970 (Rollo, Ibid.).

On June 8, 1970, after the ocular inspection was conducted and having determined the falsity of the allegations of petitioner's motion, the Director of Mines lifted the restraining order (Rollo, Ibid.).

After the ocular inspection conducted by the Bureau of Mines inspection team, a report was submitted with topographic map and pictures of the improvements. According to the report, the ground works improvements and other form of assessment works in the mining properties of said respondents were significant and extensive, all evaluated and assessed at P582,996.60 (Rollo, Vol. II, pp. 621-690).

On December 17, 1970, the Director of Mines promulgated its decision in both cases, MAC Cases Nos. V-494 and V-495, holding that as against Biak-Na-Bato Mining Company, the Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc., have a better right to the 170 mining claims of about 1,520 hectares located at the Cordillera Mountains, in Pasil, Municipality of Balatoc, Province of Kalinga-Apayao (Rollo, Annex "B", pp. 134-145).

From the said decision of the Director of Mines, petitioner appealed to the Secretary of Agriculture and Natural Resources, docketed as DANR Case No. 3613 entitled "Biak-Na-Bato Mining Company vs. Balatoc-Lubuagan Mines, Inc." and DANR Case No. 3613-A entitled "Biak-Na-Bato Mining Company vs. Mountain Mines, Inc." (Rollo, Petition, p. 9).

In its appeal, the Biak-Na-Bato Mining Company questioned the first ocular inspection report. The Secretary in the exercise of his appellate power and in justice to the petitioner ordered a second ocular inspection, after which the second inspection team submitted a report confirming the findings of the first ocular inspection team, and also reported that Biak-Na-Bato Mining Company despite opportunity afforded was not able to show its location in the area (Rollo, Vol. II, pp. 693-701).

On September 17, 1971, the Secretary rendered his decision on the appeal, affirming the findings of facts of the Director of Mines and declaring Balatoc-Lubuagan Mines, Inc. and Baguio Mines, Inc.'s mining area not open for relocation in 1967-1968 and therefore Biak-Na-Bato Mining Company's locations null and void. The Secretary also declared that its mining claims are table located, and therefore, null and void, and that it had no legal personality to file the protest in the Bureau of Mines. The dispositive portion of the decision reads:

IN VIEW OF ALL THE FOREGOING, the appeal should be, as hereby it is, DISMISSED, the decision of the Director of Mines, dated December 17, 1970, AFFIRMED." (Rollo, Vol. I, Annex "A", pp. 121-133).

Biak-Na-Bato Mining Company questions the findings of fact of the Secretary of Agriculture and Natural Resources that: (a) its mining claims are mere table locations; (b) that Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc. did not abandon their claims; and (c) that the documents presented by the latter for reconstitution are not fraudulent.

The petition is devoid of merit.

The Secretary of Agriculture and Natural Resources made the following findings and conclusions: (a) that the locations made by Biak-Na-Bato Mining Company's assignors were mere table locations not actually made on the ground as required by Sections 39, 40, 41 and 47 of the Mining Law and, therefore, the declarations made thereunder are null and void. As such, no rights could accrue in favor of the so-called locators, and having no rights the latter could not assign any rights in favor of Biak-Na-Bato Mining Company. Neither the latter nor its assignors have the personality to file any protest before the Bureau of Mines; (b) that the presumption of abandonment was overturned by the showing that Balatoc-Lubuagan Mines, Inc. and Mountain Mines, Inc. have filed their affidavits of annual assessment work for the years 1965, 1966 and 1967 in question and have paid the real estate taxes for 170 claims for the years 1956 to 1970; and (c) that the only irregularity pointed out by Biak-Na-Bato Mining Company is the fact that the original locators were not notified, which was settled by the Order of Reconstitution which was preceded by publications and hearings and which have become final. Even the fact that the questioned documents did not appear in the notarial register, did not make said documents spurious, fake and non-existent because the notarial register is not always the memorial of all the daily transactions of a notary public. The notary being only human, lapses by way of omission may happen.

As a general rule, under the principles of administrative law in force in this jurisdiction, decisions of administrative officers shall not be disturbed by the courts, except when the former have acted without or in excess of their jurisdiction, or with grave abuse of discretion. Findings of administrative officials and agencies who have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence (*San Luis v. Court of Appeals*, 174 SCRA 261 [1989]; *Liang Bay Logging Co., Inc. v. Lopez Enage*, 152 SCRA 80 [1987]) and are controlling on the reviewing authorities (*Doruelo v. Ministry of National Defense*, 169 SCRA 448 [1989]) because of their acknowledged expertise in the fields of specialization to which they are assigned. Even the courts of justice, including this Court, are bound by such findings in the absence of a clear showing of a grave abuse of discretion, which is not present in this case at bar (*Gordon v. Verdiano II*, 167 SCRA 53 [1988]).

There is no question that the decision of the Director of Mines as affirmed by the Secretary of Agriculture and Natural Resources is substantially supported by evidence. Substantial evidence has been defined or construed to mean not necessarily preponderant proof as required in ordinary civil cases but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion (*Castro v. CA*, 169 SCRA 383 [1989]; *Baguio v. CA*, 141 SCRA 226 [1980]; *Lustre v. CAR*, 10 SCRA 659 [1964]).

PREMISES CONSIDERED, the petition is hereby DISMISSED, and the assailed decision of the Secretary of

Agriculture and Natural Resources is hereby **AFFIRMED**.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Hon. Sec. of Agriculture and Natural Resources Arturo R. Tanco, Jr.

[**] Penned by Director of Mines Fernando S. Busuego, Jr.

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