

ITOGON-SUYOC MINES, INC., PETITIONER, VS. THE OFFICE OF THE PRESIDENT, SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIRECTOR OF MINES AND GEOSCIENCES BUREAU...

G.R. No. 111157. March 19, 1997

Ponente: PADILLA, J.

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PADILLA, J.:

Itogon-Suyoc Mines, Inc. (ISMI) has filed this petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the decision dated 12 January 1993 and resolution dated 15 June 1993 of respondent Office of the President (OP) in O.P. Case No. 1657. In the assailed decision, the OP dismissed petitioner's appeal and affirmed the order of the Minister of Natural Resources (now Secretary of the Department of Environment and Natural Resources) dated 15 July 1986. Petitioner's motion for reconsideration was denied in the aforesaid assailed resolution of the OP.

This case arose from the separate protests lodged by petitioner ISMI with the Bureau of Mines and Geosciences (the Bureau) against private respondents James Brett, Edgar Kapawen and Lily Camara. The Bureau docketed the protests against Brett as Mines Administrative Case (MAC) Nos. V-960 and V-973; against Kapawen as MAC No. V-974, and against Camara as MAC No. V-975. Jaime Paul V. Panganiban entered as intervenor in the protests.

In its protests, ISMI alleged that its mining claims, namely, "DAGAS FR.", "NANCY FR.", "NOGAT FR.", "CALIDAD FR.", "GUSADAN FR.", "ELI FR.", "COLOCOL FR.", "TANGADAN FR.", "INDEPEDENCE FR.", "TODAYAN FR.", "GUBAC FR.", "EXCHANGE FR.", "SACUDAN FR.", "NEBRASKA FR.", "NEW JERSEY FR." and "LIFE FR." are overlapped by the mining claim of Brett known as "KEDSER I"; that its mining claims "COLORADO", "RHINDEZA", "IDAMO", "PEPE", "SACUDAN", "NORTE", "COLOCOL", "MINNESOTA", "BUTTE", "RUSSEL" and "TANGADAN" are overlapped by the mining claim of Brett called "KEDSER II"; that its mining claims "LISTO", "MONKEY", "SHARP-SHOOTER", "MILLSITE", "LAURA", "ALEJANDRA", "EXCHANGE", "JUDGE" and "PEG" are overlapped by the mining claim of Kapawen called "EDGAR II"; that its mining claims "DURAY", "NENA", "PALIDAN", "PAL", "AL", "GUANZO", "REDGE", "LEBENG", "LIMIT", "DAGAS", "NANCY" and "WASAWAS" are overlapped by the mining claim of Camara called "FBJ", and that of the intervenor Panganiban called "JAIME I" and "JAIME II". All of these apparently conflicting mining claims are located at Suyoc, Mankayan, Benguet.

Petitioner ISMI alleged in its protests with the Bureau that the mining claims of private respondents Brett and Kapawen are null and void for having overlapped petitioner's valid and existing mining claims and that intervenor Panganiban's mining claims are unregistered, hence, he has allegedly no legal rights and interests over the disputed area.

On 17 February 1984, the Bureau rendered a decision, the dispositive part of which reads as follows:

"WHEREFORE, in the light of the foregoing, protestee Brett and Kapawen and intervenor Panganiban are hereby given the exclusive and preferential right to occupy, develop, operate, exploit and lease the areas covered by their mining claims 'KEDSER I', 'KEDSER II', 'EDGAR II' and 'JAIME I', respectively, and that protestant ITOGON is hereby given the preferential right to occupy, develop, operate, exploit and lease the area covered by its mining claims 'DURAY', 'NENA', 'PALIDAN' 'PAL', 'AL', 'GUANZO', 'REDGE' and 'LEBENG'." [1]

Petitioner ISMI appealed the decision of the Bureau to the then Ministry of Natural Resources (MNR) which consolidated MAC Nos. V-960, V-973, V-974 and V-975 as MNR Case No. 5254. Initially, the MNR dismissed petitioner's appeal for its failure to seasonably submit its appeal memorandum. The MNR also stated in the order dismissing petitioner's appeal that it "found the decision appealed from to be strictly based on a correct appreciation of the facts and application of the pertinent law. In fact, it was to be (sic) so exhaustive and comprehensive as to preclude doubt that any error can be traceable in its promulgation." [2]

Petitioner ISMI moved for reconsideration of the aforesaid order of the MNR. On 13 February 1986, the MNR rendered a decision overturning its earlier order, thus:

"WHEREFORE, the Order dated 12 July 1984 of this Office should be, as hereby it is MODIFIED in that the 'KEDSER I' and 'KEDSER II', 'EDGAR', 'JAIME I', 'JAIME II' mining claims of appellees James Brett, Edgar Kapawen and Jaime Paul B. Panganiban are hereby declared null and void ab initio for having overlapped the valid and subsisting mining claims of appellant Itogon-Suyoc Mines, Inc. Appellant ISMI is hereby granted the exclusive and preferential right to occupy, develop, operate, exploit and lease the area covered by its mining claims overlapped by appellees." [3]

Private respondent Brett then moved to reconsider the MNR decision reversing its earlier order. On 15 June 1986, the MNR issued another order which states that:

"WHEREFORE, this Office resolves to reconsider and set aside its Decision dated February 13, 1986, thereby reinstating its original Order dated July 12, 1984.

So Ordered. [4]

Petitioner ISMI filed a motion for reconsideration of the latest order but the MNR denied the same in an Order dated 7 October 1986 which states, in part, that:

"x x x Itogon's appeal was dismissed because (1) it filed its appeal memorandum with this Office only after the lapse of three (3) months and seven (7) days from its receipt of the decision appealed from which is far beyond the five-day reglementary period specially prescribed by law in mining case. The law mandates speedy proceedings in mining cases, which are specially impressed with public interest. 'Perfection of appeals within the reglementary period is not only mandatory but jurisdictional x x x' (Miranda vs. Guanzon, No. L-4992, October 27, 1952) and the rule is more exacting in mining cases where the five-day reglementary period for appeal (instead of 30 days as prescribed in other cases) is statutorily prescribed and is not ordinarily extendible and (2) with respect to the merits of the case, this Office found the decision appealed from to be strictly based on correct appreciation of the facts and application of the pertinent laws involved." [5]

Petitioner received a copy of the aforesaid order of denial on 7 November 1986.

On 10 November 1986, petitioner ISMI filed its notice of appeal with public respondent OP. Thereafter, or on 24 December 1986, petitioner submitted its appeal memorandum. Private respondent Brett then filed his reply memorandum and petitioner filed its rejoinder thereto.

On 12 January 1993, the OP rendered a decision which affirmed the order of the MNR reinstating its original order dismissing petitioner's appeal. [6] In effect, the decision of the OP sustained the Bureau's decision upholding

the mining claims of Brett, Kapawen and Panganiban, namely, "KEDSER I and II", "EDGAR II" and "JAIME I", respectively, as against the mining claims of petitioner over the same location and upholding only the mining claims of petitioner known as "DURAY", "NENA", "PALIDAN", "PAL", "GUANZO", "REDGE" and "LEBENG."

In dismissing petitioner's appeal, the OP essentially relied upon the findings of the Bureau that, inter alia, the subject mining claims of petitioner are null and void since they have no valid tie points in violation of Section 28 of the Philippine Bill of 1902; petitioner failed to show any valid deed of assignment or transfer of its said mining claims from their original locators; and there was no valid reconstitution of petitioner's declarations of location.

Petitioner ISMI received a copy of the aforesaid OP decision on 24 March 1993 and filed, by registered mail, its motion for reconsideration thereof on 7 April 1993. On 15 June 1993, the OP issued its assailed resolution denying petitioner's motion for reconsideration on grounds that the arguments raised therein by petitioner have been previously considered and passed upon by the OP and that the motion was filed late.[7]

In this petition for certiorari, petitioner ISMI submits that the OP acted with grave abuse of discretion amounting to lack of jurisdiction when it ruled that:

- "1. ISMI's motion for reconsideration of the decision of the OP dated 12 January 1993 was filed out of time;
2. Under Section 28 of the Philippine Bill of 1902, tie points are necessary for the validity of mining locations;
3. The mining claims of ISMI have not been validly assigned or transferred by their original locators to ISMI;
4. ISMI's declarations of location have not been validly reconstituted; and
5. ISMI's appeal from the 17 February 1984 decision of the Bureau to the MNR was not perfected on time."[8]

At the outset, it must be stated that the applicable law governing procedures in cases involving mining claims is Presidential Decree No. 309 entitled "Establishing Rules and Procedure for the Speedy Disposition or Settlement of Conflicting Mining Claims." Section 5 thereof provides in part that — "[f]rom the decision of the Secretary an appeal may be taken within five (5) days to the President whose decision shall be final and executory."

Clearly, therefore, further appeal from or review of the decision of the OP is not available to petitioner ISMI. To succeed, petitioner must show that the OP committed grave abuse of discretion, or acted without or in excess of its jurisdiction, in rendering the decision dated 12 January 1993 and the resolution dated 15 June 1993.[9]

Petitioner ISMI imputes, however, grave abuse of discretion on the part of the OP when it denied in its resolution dated 15 June 1993 petitioner's motion for reconsideration for, among other reasons, having been filed beyond the reglementary period. Petitioner contends that it filed the same by registered mail on 7 April 1993 or fourteen (14) days from receipt of the decision on 24 March 1993, thus, allegedly well within the fifteen (15) days, the reglementary period provided by Administrative Order No. 18. Section 7 thereof provides that:

"Sec. 7. Decisions/resolutions/orders of the Office of the President shall, except as otherwise provided by special laws, become final after lapse of fifteen (15) days from receipt of a copy thereof by the parties, unless a motion for reconsideration is filed within such period."

As stated earlier, however, the applicable law in this case is P.D. No. 309 involving as it does conflicting mining claims of petitioner ISMI and Brett, et al. Section 5 thereof states in full that —

"Sec. 5. Any party not satisfied with the decision or order of the Director of Mines may, within five (5) days from receipt thereof, appeal to the Secretary of Agriculture and Natural Resources who shall render his decision within five (5) days from receipt of the appeal or submission of the report of the Department panel of

investigators, as the case may be. From the decision of the Secretary, an appeal may be taken within five (5) days to the President whose decision shall be final and executory.

The decision of the Director of Mines shall be immediately executory, notwithstanding the appeal, unless the Secretary of Agriculture and Natural Resources or the President directs otherwise."

Admittedly, P.D. No. 309 is silent as to the applicable reglementary period for filing a motion for reconsideration of the decision of the President. It must be noted, however, that Section 5 thereof has uniformly set to five (5) days the period within which to appeal from the Director of Mines to the Secretary and from the latter to the President. Hence, it is the considered view of the Court that for purposes of determining its timeliness, the motion for reconsideration must likewise be filed within five (5) days from receipt of the decision of the President in keeping with the intent of the aforesaid law. The "whereas clauses" of P.D. No. 309 expressly state that:

"WHEREAS, efforts of the government to encourage and accelerate the development of our mineral resources has been hampered by difficulties and delays in the settlement of conflicting mining claims because of obsolete laws, rules and regulations;

"WHEREAS, in order to hasten the exploitation and development of our mineral resources conflicting mining claims must be settled promptly and decisively;

"x x x;"

Since petitioner filed its motion for reconsideration more than five (5) days from receipt of the decision of the OP, the latter correctly denied the same for having been filed out of time.

In any event, the denial by the OP of petitioner's motion for reconsideration was not based solely on the ground that it was filed late. The assailed resolution of the OP dated 15 June 1993 also stated that:

"Upon restudy, We find no cogent reason to disturb, much less set aside the subject Decision, the argument relied upon by movant having been previously considered, discussed at length, and found unmeritorious by this Office in the Decision sought to be reconsidered. Consequently, the present motion for reconsideration being pro forma (*Dacanay vs. Avenida*, 30 SCRA 31 [1969]), and movant having failed to adduce new or additional grounds that would warrant a reversal of said Decision, this Office is left with no other recourse than to deny the subject motion.

x x x "[10]

Indeed, the issues raised by petitioner ISMI in its motion for reconsideration filed with the OP, had already been passed upon by said office in its decision of 12 January 1993. We discuss below these issues as well as the findings and conclusions of the OP in relation thereto.

In holding that the mining claims of petitioner are null and void, the OP relied upon the findings of the Bureau that said mining claims are "floating" since their corner Posts No. 1 are respectively tied to their Initial Posts No. 1 without any reference to fixed natural objects or permanent monuments.[11] According to the Bureau, these are not valid tie points as they are not in accordance with the requirements of Section 28 of the Philippine Bill of 1902 which provides:

"Sec. 28. That no mineral claim of the full size shall be recorded without the application being accompanied by an affidavit made by an applicant or some person on his behalf cognizant of the facts — that the legal notices and posts have been put up; that mineral has been found in place on the claim proposed to be recorded; that the ground applied for is unoccupied by any person. In the said declaration shall be set out the names of the applicant and the date of the location of the claim. The words written on the number one and number two posts shall be set out in full, and as accurate a description as possible of the position of the claim given with

reference to some natural object or permanent monuments." (Emphasis supplied)

It is the contention of petitioner that the last sentence of the above-quoted section is merely directory and noncompliance therewith does not allegedly render its mining claims null and void. This contention is untenable. In fact, Act No. 624[12] which prescribed regulations governing, inter alia, the manner of recording mining claims under the provisions of the Philippine Bill of 1902 required that the declaration of location shall be as follows:

DECLARATION OF LOCATION.

The undersigned hereby declares and gives notice that, having complied with the provisions of the Act of Congress, approved July 1, 1902, relative to the location of mining claims, he has located _____ linear feet on a lode of mineral-bearing rock, situated in the barrio of _____ within the jurisdictional limits of the municipality of _____, Province of _____, district of _____ Island of _____, P.I.

That the name of the above location is the _____ mineral claim, and that the same was located by him on the _____ day of _____, A.D. 19____

That there is written on post No. 1 (here insert an exact copy of what is inscribed on post No. 1); and upon post No. 2 (here insert an exact copy of what is inscribed on post No. 2).

That the said claim is situated (here state as accurately as possible, preferably by course and distance, the position of the claim with reference to some natural object or permanent monument).

Locator

Witness: _____

Witness: _____

From the above-quoted provision of law it is clear that the requirement that the position of the mining claim must be described with reference to a natural object or permanent monument is mandatory as it is an integral part of a valid declaration of location. Moreover, since Section 28 of the Philippine Bill of 1902 followed the principles and provisions of the Federal and State mining laws of the United States with respect to mining locations and the acts necessary to render the same valid, we regard as having persuasive effect the following cases:

Drummond v. Long.[13]

"x x x requires the certificate of location of mining claims to contain a description of the claim by reference to some natural object or permanent monument as will identify it. Stone monuments, blazed trees, the conference of streams, the point of intersection of well-known gulches, permanent hills, mining shafts, etc. are enumerated as satisfying the requirements of law. The permanent monuments of a mining claim are also regarded as sufficient. The intention of the provision is to give one seeking the location of a recorded claim something in the nature of an inner point from which to start, and following the course of distance given, to define with reasonable certainty the claim located. A description of a claim as being so many feet north of a certain lode is insufficient."

Cloninger v. Finlaison.[14]

"Location certificate describing claim as 'No. 1 on Bear Creek.' with little or no further description held void."

Miehlich v. Tintic Standard M. Co.[15]

"A certificate which fails to describe the land is void as to a later valid location."

Equally persuasive is the fact that under the Mining Act, Commonwealth Act No. 137, as amended, the law which superseded the provisions in the Philippine Bill of 1902 relating to the exploitation of mineral resources, it is expressly provided that:

"SEC. 47. The record of a lode or placer^[16] claim shall consist of a declaration of location which shall contain, among others, the name of the claim, the name of each locator, the date of location, the names of the sitio, barrio, municipality, province and island, in which the claim is situated, the words written on the number one and number two posts in the case of lode claims, and a true copy of the notice posted on the placer claim and shall recite all the facts necessary to the identification of the lode or placer claim, as well as a description of the claim as staked and monumented, showing the length and approximate compass bearing, as near as may be, of each side or course thereof, and stating in what manner the respective corners are marked, whether by standing tree, rock in place, post, or stone, and giving in detail the distinguishing marks that are written or cut on each, and also stating as accurately as possible the bearing and distance of corner post number one to the point, which shall be a permanent and prominent object: Provided, That in the location of contiguous claims by the same locator, the tying of corner post number one of any of the said claims will constitute substantial compliance with this provision. The declaration of location that has no bearing and distance to a tie point as herein described shall be null and void.

For the purpose of this section, a permanent and prominent object used as a tie point may be an intersection of known roads; a junction of known rivers or creeks, a known public or private structure; a corner of approved public, private or mineral land survey; a kilometer post of public road; or location monument or triangulation station established by the Bureau of Lands, Bureau of Mines, Army Corps of Engineers, Bureau of Coast and Geodetic Survey, or other government agencies."

The purpose of requiring a description of the mining claim with reference to a permanent object is precisely to prevent "floating" claims. This is apparent from the language of either Section 28 of the Philippine Bill of 1902 and Section 47 of the Mining Act. Hence, contrary to the claim of petitioner ISMI, the requirement that a mining claim must have valid tie points, i.e., must be described with reference to a permanent object, cannot be dispensed with and non-compliance therewith renders the mining claims null and void.

Consequently, we find no grave abuse of discretion on the part of the OP when it subscribed to the findings of the Bureau that the mining claims of petitioner ISMI are null and void for having been located in violation of Section 28 of the Philippine Bill of 1902.

With respect to the other issues raised by petitioner ISMI, i.e. whether or not its subject mining claims have been validly assigned by their original locators to petitioner and whether or not the declarations of location of these mining claims have been validly reconstituted, the Court deems it appropriate to quote extensively the findings of the Bureau on these issues:

"As shown in the alleged Affidavit for Reconstitution of Declaration of Location of Mineral Lode Claims (Exh. "D" of protestant), no mining claim was originally located by Itogon. The allegation of Itogon that the subject mining claims were legally transferred to it is highly doubtful and questionable because the alleged deed of conveyance and/or transfer does not exist, that the said affidavits were executed by third parties; and that the affidavits of confirmation of such transfers or conveyance executed by some original locators were presented after almost thirty (30) years from the date of the alleged transfer. This conclusion finds support from the Decision of the Minister of Natural Resources in MNR Case No. 5096 dated October 8, 1982 in resolving the appeal in MAC No. V-942, pertinent portion of which is quoted herein below for ready reference:

"x x x The affidavit presented to the transfer of subject claims, namely "COLORADO FR.", "IDAHO FR.", "SACDUAN FR.", "PEPE FR.", "LIMIT FR." and "RHINDEZA" attest said claims have been ceded or conveyed

one way or another to the alleged predecessor-in-interest of appellant Itogon. From the phraseology of said affidavit, the affiant R.W. Crosby could not definitely state in what form the conveyance was made or whether it was made gratuitously or for valuable consideration. The affiant did not also state whether the instrument of conveyance was lost or destroyed, or whether it was ever reduced to writing. Neither did appellant Itogon allege in any of its pleadings that the deed of conveyance was lost or destroyed. Hence, there was no basis for the use of the affidavit adverted to as secondary evidence to prove the conveyance of the "COLORADO FR." and "IDAHO FR." claims. The same thing can be said of the other claims "LIMIT FR." which was purportedly conveyed as per affidavit of R.W. Crosby (Exh. "14-b"-Itogon Suyoc), "RHINDEZA" purportedly conveyed as per affidavit of Pedro Tawas (Exh. "13-b" — Itogon Suyoc) and the claims "SACDUAN" and "PEPE" which were purportedly conveyed as per affidavit of Mary T. Douglas.

Under the foregoing circumstances, the conveyance of the above-mentioned claims to appellant Itogon cannot be deemed to have been sufficiently established. The unrecorded affidavits of third persons which were utilized by appellant Itogon to show that the claims had been conveyed to it were couched in general and equivocal terms. Obviously they cannot serve as secondary evidence or as legal substitute to the supposed conveyance considering that the loss or destruction of the original copies thereof was not alleged nor proved. Said affidavits, by themselves, could not have transferred the claims to appellant Itogon as they are not the public instruments contemplated by law to effect the transfer of mineral claims. For all legal intendments, therefore, the claims "PEPE FR.", "LIMIT FR.", "RHINDEZA", "SACDUAN FR.", "COLORADO FR." and "IDAHO FR." are considered not conveyed at all to appellant Itogon by their original locators. Consequently, all acts undertaken by Itogon as transferee for the protection of the claims, making use of the affidavits as proof of conveyance produce no legal effect. In view thereof, the claims should be considered abandoned. Indeed, an examination of the declarations of location of the claims disclose that they are still in the name of the original locators. "COLORADO FR." is in the name of G.A. de Venecia, "RHINDEZA" in the name of John Albright, "LIMIT FR." in the name of A.M. Pettit and "SACDUAN FR." in the name of Jeff Douglas. While the said claims are still in the name of their respective locators, appellant Itogon is merely denominated as holder of the claims in their declarations of location. In other words, the original locators are still listed as the claimowners while Itogon is denominated as the holder of the claims. If ever appellant Itogon has in its possession any valid and legal instrument to convey the claims to it, or if such instrument really exist, it is rather strange that after all these years it has allowed the claims to remain in the names of their supposed transferors or locators." (Emphasis supplied)

This Office finds no sufficient and justifiable reason to disturb the aforequoted conclusion of the Minister of Natural Resources inasmuch as the affidavits executed by R.W. Crosby, Pedro Tawas and Mary T. Douglas presented as Exhibits under said MNR Case No. 5096 'by ITOGON are the same exhibits presented by ITOGON in MAC No. V-960. While it is true that ITOGON presented additional affidavits executed by the original locators confirming the transfers of the claims, namely: 'NOGAT', 'MARY', 'GUBAC FR.', 'TANGADAN FR.', 'TODAYAN FR.' and 'NEBRASKA FR.' (Exh. Nos. 'AA', 'BB', 'CC', 'DD', 'EE', and 'HH' respectively) yet these affidavits were executed and presented by ITOGON only after almost thirty years from the date the said claims were allegedly transferred. This Office firmly holds the view that such kind of affidavits cannot serve as valid and legal substitute to the deed of transfer or assignment or proof of existence thereof, indispensably required by law, a fortiori when said affidavits, allegedly having been lost or burned during the last war, were not reconstituted under Republic Act No. 739 or Mines Administrative Order No. V-5, pertinent portion of which is quoted as follows:

REGULATION GOVERNING THE RECONSTITUTION OR RECONSTRUCTION OF LOST OR DESTROYED MINING RECORDS.

'Pursuant to the provision of Republic Act No. 739, entitled 'An Act to Require the Reconstitution or

Reconstruction, in the Bureau of Mines, of Lost or Destroyed Mining Records, and for Other Purposes' the following regulations are hereby promulgated for the information and guidance of all concerned.'

1. x x x

2. Reconstitution or reconstruction of records salvaged by miners. Any locator, lease applicant, permittee, lessee, concessionaire, assignee, owner or holder of mining claims or concessions who has in his possession any document, instrument or record pertaining to his mining claim or concessions shall give a written notice to the Director of Mines within two years after June 18, 1952, of the existence of such a document, instrument or record he possesses, indicating in said notice the nature of the document, instrument or record, and/or filing thereof, the name of parties, locator, grantee, permittee, lessee, and/or applicant in said document, instrument or record, and other particulars, or preferably attaching to said notice at least a simple copy of the said document, instrument or record in his possession. If the original or duplicate copy of any such document, instrument or record is found not existing in the records of the Bureau of Mines or of the mining recorder concerned, the Director of Mines permittee, lessee, concessionaire, assignee, owner, or holder, who shall, within thirty days from receipt of such information, file with the Director of Mines a petition under oath for the reconstitution or reconstruction of said mining document, instrument or record in the said offices submitting therewith such original or duplicate copy thereof for verification. Failure to inform the Director of Mines of the existence of such mining document, instrument or record as herein prescribed and file the petition in due form when required within the period fixed in these regulations and to prosecute the same with due diligence, shall open the area covered by such mining document, instrument or record to relocation or application by third parties in the same manner as if no location, application, permit, lease, patent or concession had been made or granted covering the same area.' (Emphasis supplied)

The records of this Office do not show any petition for reconstitution or reconstruction of lost or destroyed mining records or those salvaged by interested parties filed by protestant ITOGON in connection with the subject declarations of location of the mining claims, and/or the deed of conveyances and/or transfer of the said mining claims. Neither is there any record of administrative proceedings conducted by this Bureau for the reconstitution and reconstruction of the subject mining instruments nor any Order of approval issued by the Director of Mines in connection therewith, within two (2) years from June 18, 1952, the date of approval of Republic Act No. 739 and the effectivity date of Mines Administrative Order V-5. Emphasis is being made on the last portion of the aforequoted provisions of law that failure on the part of the locator, lease applicant, permittee, lessee, concessionaire, assignee, owner or holder to inform the Director of Mines of the existence of mining document, instrument or record for reconstitution or reconstruction as prescribed in the regulation and file the petition in due form within the reglementary period shall open the area covered by such mining document, instrument or record to relocation.

It appears that the Affidavit of Reconstitution of Declaration of Location of Mineral Lode Claims presented by ITOGON (Exh. 'D') was not filed and processed in accordance with the provisions of Mines Administrative Order No. V-5, therefore, has no legal force and effect and does not serve the purpose for which R.A. 739 was promulgated. And even if such declaration of locations were in fact and in law reconstituted, the non-reconstitution of the supposed documents of transfer in favor of ITOGON nevertheless opened the areas of such claims to the subsequent locations.

To bolster ITOGON's position that its declarations of location were properly reconstituted, it submitted a letter indorsement signed by the then Director of Mines Demetrio Andres dated May 26, 1952, which reads as follows:

'Respectfully referred to the District Mining Officer, Mineral District No. 1, Baguio City, with the advise that, in the matter of reconstituting lost or destroyed pre-war declarations of location, there is no need of executing or

accomplishing Bureau of Mines Form No. 62, Affidavit to Reconstitute Declaration of Location, if there are available salvaged certified true copies of the original declarations of location. Certified true copies of such salvaged certified true copies of the original declarations of location will serve the purpose. Bureau of Mines Form No. 62, aforementioned, is required only in case where no salvaged original or duplicate or certified copy of the declarations of location is available, and the reconstitution of the declaration of location is accomplished on the basis of the memory of best recollection of the locator or holder of the mining claim.

In view thereof, the certified true copies of the original declaration presented by the Suyoc Consolidated Mining Company for the reconstitution of its mining claims situated in Suyoc, Mankayan, Mountain Province, may be accepted.'

In the first place, the above-quoted opinion/conclusion of the Director of Mines was the system or procedure allowed for reconstituting declaration of location being followed at that point of time, but the same was deemed superceded by the provisions of Republic Act (R.A.) No. 739 which was approved on June 18, 1952. Since the affidavits for reconstitution covering the mining claims involved in these cases were filed on August 20, 1952, as shown in Exh. 'D' (MAC-V-960), it should have been filed, processed and approved in accordance with the provisions of R.A. and its implementing rules and regulations.

In the second place, this Office noticed in MAC No. V-974 that the basis of ITOGON for its reconstitution are the supposed true copies of the declarations of location certified by an Acting Provincial Treasurer in 1942. The production and source of these supposed certified true copies are obviously improper and irregular. Mankayan is in Benguet and Benguet has its own mining recorder since 1932, hence the proper certifying officer should be the Mining Recorder (the Register of Deeds) of Benguet who was then holding office in the City of Baguio — not the Acting Provincial Treasurer who was not the custodian of mining instruments. Moreover, the supposed true copies emanated from the original copies which were filed in Bontoc, Mountain Province — the fact of filing in Bontoc becomes unbelievable not only because the locators were residents of the City of Baguio and that there was then, in 1932, a Mining Recorder in the City of Baguio, but more importantly, because the data appearing in the records of this office, particularly Book IV of the Lode Mining Claims for Benguet, conclusively prove that during that period of time, claims located in the Municipality of Mankayan were registered with the Mining Recorder for Benguet. The records for Bontoc do not reflect any which were registered in Bontoc for mining claims located in Mankayan. The foregoing discrepancies prompted this Office to conclusively assume that the supposed true copies certified in 1942 were either prepared from imaginary declarations of location, or were obtained irregularly.

In either case, the reliability, evidentiary and probative values of said instrument are completely destroyed."^[17]

The OP generally relied upon the above-quoted analysis of the facts by the Bureau and its evaluation of the evidence presented, in affirming the order of the MNR dismissing petitioner's appeal. We cannot characterize this as grave abuse of discretion or an act without or in excess of jurisdiction on the part of the OP. On the contrary, we find that the findings of the Bureau were correctly accorded respect by the OP for the Bureau is, after all, the government agency tasked by law to implement our mining laws and, as such, is presumed to have special knowledge and expertise on the matter.^[18] Moreover, well-settled is the rule that in reviewing administrative decisions of the Executive Branch of the government, the findings of fact made therein must be respected, as long as they are supported by substantial evidence, if not overwhelming or preponderant. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of the evidence. The administrative decision in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud or error of law.^[19]

We conclude that petitioner ISMI has failed to show that the OP committed grave abuse of discretion or acted without or in excess of jurisdiction in rendering the assailed decision of 12 January 1993 and the resolution of 15 June 1993.

WHEREFORE, the petition for certiorari must be, as it is hereby DISMISSED for lack of merit and the decision and resolution of the Office of the President, aforementioned, are AFFIRMED in all respects.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] Decision of the Bureau of Mines and Geosciences, penned by Director Juanito C. Fernandez, p. 27; Rollo, p. 251.

[2] MNR Order dated 12 July 1984, p. 5.

[3] Decision of the Ministry of Natural Resources, p. 19; Rollo, p. 70.

[4] MNR Order, p. 11; Rollo, p. 84.

[5] MNR Order, pp. 2-3; Rollo, pp. 88-89.

[6] Decision of the Office of the President, p. 12; Rollo, p. 48.

[7] Resolution of the Office of the President, p. 2; Rollo, p. 50.

[8] Rollo, pp. 11-28.

[9] Medrana vs. Office of the President, 188 SCRA 818 (1990).

[10] Resolution of the Office of the President, pp. 1-2; Rollo, pp. 49-50.

[11] Decision of the Office of the President, pp. 5-6; Rollo, pp. 41-42.

[12] Enacted by the Philippine Commission and approved on 7 February 1903.

[13] 13 P. 543, 545; 9 Colo. 538.

[14] 230 F. 98; 144 C.C.A. 396.

[15] 60 Utah 569; 211 P. 686.

[16] Under Section 31 of the Mining Act, a mineral claim is either a lode mineral claim or a placer claim. A lode mineral claim is "a parcel of the mineral land containing a vein, lode, ledge, lens or mass or ore in place which has been located in accordance with law." Upon the other hand, "a placer claim is that which does not come under the definition of lode mineral claim."

[17] Decision of the Bureau of Mines and Geosciences, pp. 6-12; Rollo, pp. 228-236.

[18] see Twin Peaks Mining Association vs. Navarro, 94 SCRA 768 (1979).

[19] Apex Mining Co., Inc. vs. Garcia, 199 SCRA 278 (1991); Assistant Executive Secretary for Legal Affairs of the Office of the President vs. Court of Appeals, 169 SCRA 27 (1989).

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