

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, PETITIONER, VS. THE HON. JOSE M. MENDOZA, ETC. ET AL., RESPONDENTS.

G.R. No. 15809, August 30, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an original petition for a writ of prohibition to enjoin Hon. Jose M. Mendoza, as Judge of the Court of First Instance of Cebu, from proceeding with the trial of Civil Case No. R-6048 of said court, entitled "Constancia D. Vega, plaintiff, vs. Atlas Consolidated Mining and Development Corporation, defendant".

It appears that on April 27, 1957, petitioner, Atlas Consolidated Mining and Development Corporation—hereinafter referred to as the Corporation—filed with the Director of Mines, Lode Lease Application No. V-2272 covering the following mineral claims:

"IKE

LIM

JACK

JOE

NONG

PAT

NEMY

NIMFA

SOL FR.

ART FR.

ROM FR.

BAR FR.

Sometime before March 12, 1959, Constancia Vega wrote to said officer a communication stating that she had an adverse claim to the aforementioned mineral claims, the same being allegedly covered by her mineral claims:

"UNIVERSE

PLUTO

COMET

MERCURY

JUPITER

METEOR

COBRA

MARS

SUN

MARS

MOON

VENUS"

In reply to said communication, the Director of Mines advised Constancia Vega, that the filing of her adverse claim was "not in order" inasmuch as notice of the filing of the aforesaid application of the Corporation had not as yet been published as provided in section 72 of the Mining Act, although she could, under section 61 thereof as amended, file her verified protest to said application. Instead of heeding this advice, Constancia Vega instituted Civil Case No. R-6048 of the Court of First Instance of Cebu against said Corporation.

In her complaint therein, Constancia Vega alleged that she is the locator and registered owner of mineral lode claims Universe, Jupiter, Comet and Mercury and of portions of mineral claims Moon and Meteor, situated in the sitio of Lantay, barrios of Lupitan and Tipolo, municipality of Toledo, province of Cebu, Philippines; that she is, likewise, the owner by purchase from Telesforo Timkang of mineral lode claims Cobra, Earth, Sun and Mars, and of portions of mineral lode claims Pluto and Venus, likewise, situated in the aforementioned sitio, barrios, municipality and province, Philippines; that she had been in peaceful possession and occupation of, and had caused further prospecting or exploration works on, said mining claims until it was discovered that some of the posts and placards marking such claims were pulled out and completely gone and until the Corporation, through threats of force and intimidation, lawfully barred her from entering into the area covered by the aforementioned claims; that the Corporation had purchased from specified persons mineral lode claims, Ike, Lim, Jack, Joe, Nong, Pat, Nemy, Nimfa, Sol Fraction, Art Fraction, Rom Fraction and Bar Fraction, all of which are invalid and non-existing for the reasons stated in said complaint, apart from overlapping, or being located within the area covered by, her aforementioned mining claims; that, despite her protests, the Corporation had unlawfully surveyed and illegally conducted and is still conducting mining operations in said invalid and non-existing mining claims, and has refused to vacate the premises thereof and to stop its illegal operations thereon, to the damage and prejudice of said Constancia Vega; that in accordance with the procedure set forth in section 73 of the Mining Act she had filed an adverse claim against the lode lease application filed by the Corporation for the lease of its supposed mining claims; and that, unless the Corporation be enjoined to stop its mining activities and operations within the contested area, she would continue to suffer great irreparable damage and injury, as well as a great injustice, and such judgment as may be rendered in her favor would be practically rendered ineffectual. She prayed, therefore, that said mining claims of the Corporation be declared null, non-existing and void ab initio; that her aforementioned mining claims be declared lawful and valid claims, as well as free and clear from any conflict whatsoever; that she be declared the rightful and lawful locator and owner of the area covered by her aforementioned claims; and that the Corporation be ordered to immediately vacate the areas in question and to stop its mining operation in the disputed premises, as well as enjoined from reentering the same, and sentenced to pay damages.

In due course, the Corporation filed a motion to dismiss said complaint, upon the ground that the same issue between the parties is pending before the Bureau of Mines which has original and exclusive jurisdiction to hear all cases and disputes arising out of conflicts over mining claims; that the filing of said complaint is premature, improper and without legal basis, for the lode lease application in question had not, as yet, been given due course by the Bureau of Mines; and that Constancia Vega had "not yet fully exhausted all available administrative remedies".

Upon the denial of this motion, the Corporation filed its answer to said complaint, alleging, among other defenses, that the lower court has no jurisdiction to hear the case, owing to the non-exhaustion of the administrative remedy provided for in section 61 of the Mining Act. Inasmuch as, despite this defense, respondent, Hon. Jose M. Mendoza, as Judge of the Court of First Instance of Cebu, had set the case for trial on August 20, 1959, petitioner instituted the present action of prohibition for the purpose of enjoining said respondent from proceeding with the hearing of said Case No. R-6048.

The Corporation maintains that the lower court is without jurisdiction to entertain the aforementioned case, because disputes over mining claims are allegedly within the original and exclusive jurisdiction of the Director of Mines, and because Constancia Vega had not exhausted the administrative remedies provided in section 61 of the Mining Act, pursuant to which conflicts and disputes arising out of mining locations shall be submitted to the Director of Mines for decision, which may be appealed to the Secretary of Agriculture and Natural Resources, and if any of the parties concerned should disagree from the decision of the Director of Mines, or of said Department head, "the matter may be taken to the court of competent jurisdiction within thirty (30) days from the receipt of such decision or order, which, otherwise, shall be final and binding upon the parties".

Upon the other hand, section 72 of the Mining Act provides that, upon receipt of a lode lease application, like that filed by petitioner Corporation, and provided that the requirements of said Act have been substantially complied with, the Director of Mines shall publish and post a notice that such application has been made. Copy of the plan of the claim or claims applied for together with a notice of application for lease, shall, also, be posted by the applicant in the manner and in the place enumerated in said section. Upon expiration of the statutory period for said publication, the applicant shall file an affidavit showing that the requisite plat and notice have been posted as above stated, and, "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 to the granting of the lease shall be heard."

Besides, section 73 of said Act states that, at any time during the period of said publication, "any adverse claim may be filed under oath with the Director of Mines". Thereupon, "all proceedings except the publication of notice of application for lease and the making and filing of the affidavit in connection therewith * * * shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived", it being the "duty of the adverse claimant, within thirty (30) days after filing his claim, to commence proceedings in a court of competent jurisdiction to determine the controversy and to prosecute the same with reasonable diligence to final judgment".

Thus, our Mining Act prescribes two (2) proceedings for the settlement of the conflicting mining claims. One refers to the manner of disposing of the same, before publication of the notice required in section 72. This is the subject matter of section 61. The other is that provided for the determination of issues raised by adverse claims filed during the period of said publication. This is governed by sections 72 and 73. In the first case, to which the one at bar belongs, the procedure is for the Director of Mines to hear the conflicting claimants and settle the issue between them, without prejudice to either party appealing from the decision of said officer to the Secretary of Agriculture and Natural Resources or to the proper court, to which the parties may, also, appeal from the decision

of said Department head.

We agree with the petitioner herein that respondent Vega is bound by law to follow this procedure. However, her failure to do so, at best, deprived her of a cause of action. It did not affect the jurisdiction of the lower court to hear the case. As we have repeatedly held, failure of a party to exhaust the procedure or administrative remedies provided by law therefor affects his cause of action, not the jurisdiction of the court over the subject matter of the case (*Miguel, et al. vs. Vda. de Reyes, et al.*, 93 Phil., 542; *Lubugan, et al. vs. Castrillo, et al.*, L-10521, May 29, 1957; *Heirs of Lachica vs. Ducusin*, 102 Phil., 551; *Geukeko vs. Araneta*, 102 Phil., 706; 54 Off. Gaz., [15] 4494; *Vda. de Villanueva, et al., vs. Ortiz, et al.*, 103 Phil., 875; 56 Off. Gaz., 276; *Municipality of Ninabañgan, et al. vs. Municipality of Wright, et al.*, 107 Phil., 394; *Balmonte vs. Marcelo*, 61 Off. Gaz., [10] 1349). Hence, petitioner Corporation is not entitled to the writ of prohibition prayed for.

Wherefore, the petition is hereby dismissed, with costs against petitioner, Atlas Consolidated and Development Corporation. It is so ordered.

Bengzon, C. J., Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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