

SALACOT MINING COMPANY, PETITIONER, VS. EULOGIO RODRIGUEZ, SECRETARY OF AGRICULTURE AND COMMERCE, QUIRICO ABADILLA, DIRECTOR OF MINES, AND THE MINING RECORDER OF THE PROVINCE OF...

G.R. No. 45860. March 20, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The petitioner, a domestic corporation organized under existing laws, seeks to compel the respondents Eulogio Rodriguez, as Secretary of Agriculture and Commerce, Quirico Abadilla, as Director of the Bureau of Mines, and the Mining Recorder of the Province of Bulacan, respectively, to approve petitioner's application for a patent for a certain mining claim, to prepare the necessary papers in connection therewith, and to forward and submit said papers for the signature of the President of the Philippines.

The petitioner alleges that it owns the Jacinta mineral claim, situated in barrio Matictic, municipality of Norzagaray, Province of Bulacan, having validly located said mineral claim on public land on the 11th and 12th days of February, 1935, and recorded the declaration of location thereof on February 26, 1935, in the office of the respondent mining recorder of the Province of Bulacan, in accordance with the provisions of the Act of Congress of July 1, 1902, as amended by the Act of Congress of February 6, 1905, and of Act No. 624 of the Philippine Commission relative to the location of mining claims; that from and after the location of said Jacinta mineral claim, the petitioner has been, and is, the owner and in exclusive and undisturbed possession of the same; that the ground included in said claim was, at the time of the location, unreserved, unappropriated and unoccupied, and that mineral was actually found in place therein prior to its location; that from and after the date of the recording of said claim, and prior to November 15, 1935, labor worth more than P1,000 was performed upon the said claim by and at the expense of the herein petitioner, for the purpose of securing a patent therefor; that prior to November 15, 1935, the petitioner filed in the office of the Director of the Bureau of Science an application for an order of patent survey of said claim, which survey was duly authorized by the Director of the Bureau of Science and performed by an assistant mineral land surveyor of the former division of mines, Bureau of Science, at the expense of the petitioner; and that the return of the surveyor, the plat and field notes of the claim and certificate that labor worth more than P1,000 had been performed on said claim, were approved by the Secretary of Agriculture and Commerce; that subsequent to November 15, 1935, the petitioner filed with the respondent mining recorder of the Province of Bulacan an application for patent to the Jacinta mineral claim under oath, together with a certificate showing that labor worth more than P1,000 had been performed by the petitioner upon the claim, and with the plat and field notes mentioned in the preceding paragraph; having previously posted a copy of such plat, together with notice of said application for patent, in a conspicuous place upon said claim; and filed a copy of such plat and of such notice in the office of said mining recorder, as well as an affidavit of two persons that such notice had been duly posted; that the petitioner has requested the respondent mining recorder of the Province of Bulacan to publish the notice of said petitioner's application for patent, once a week for a period

of sixty days, in a newspaper to be designated by the said respondent as nearest to the claim subject of the application, and in two newspapers published at Manila, one in the English language and one in the Spanish language, to be designated by the respondent Director of the Bureau of Mines, pursuant to the provisions of section 37 of the Act of Congress of July 1, 1902, as amended; that the petitioner has requested the respondent Director of the Bureau of Mines to designate the two newspapers published at Manila, one in the English language and one in the Spanish language, in which the notice of said petitioner's application for patent should be published, as stated in the preceding paragraph; and that the petitioner has likewise requested the respondent Secretary of Agriculture and Commerce to order the respondent Director of the Bureau of Mines to make such designation of the newspapers for the publication of petitioner's application for patent, and to order the mining recorder of the Province of Bulacan to make such publication, with a view to the subsequent approval of the application by the said respondent Secretary of Agriculture and Commerce, the preparation by him of the necessary papers relative to the issuance of the patent applied for, and the submission of such papers for the signature of the President of the Philippines; that the respondents have failed and refused, and still fail and refuse, to comply with the request of the petitioner as set forth in the two paragraphs next preceding; that the petitioner is entitled, as a matter of right, to the patent applied for, having complied with all the requisites of the law, giving rise to such right, including the discovery of mineral on the claim, the making of a valid location, the recording of the declaration of location and accompanying affidavit, performance of the necessary assessment work and payment of all costs of survey; and that it is a ministerial duty, clearly and peremptorily enjoined by law upon the respondents, by virtue of their office, to order the publication of the notice of petitioner's application for patent, and prepare thereafter the necessary papers in relation thereto, and submit the same to the President of the Philippines for his signature; that the action of the respondents, in refusing to perform their duty as above-stated, unlawfully excludes the petitioner from the use and enjoyment of its rights pertaining to its ownership of the mining claim hereinbefore mentioned and of such other rights as are incident to the acquisition of a patent, in accordance with the laws in force prior to the adoption of the Constitution on November 15, 1935, and to the enactment of Act No. 137, known as the Mining Act, on November 7, 1936; and that there is no plain, speedy, and adequate remedy in the ordinary course of law other than the present action of mandamus.

Respondents, in their answer, admit some allegations of the petition and deny others and, by way of special defense, allege "that the petitioner herein had no vested right to a patent to the 'Jacinta' claim when the Constitution of the Philippines became effective on November 15, 1935, and when Commonwealth Act No. 137 was approved on November 7, 1936, inasmuch as the petitioner had not complied, prior to the aforesaid dates, with the requisites essential to the accrual of the right to a patent; that no vested right to a mineral patent can be acquired subsequent to the date of effectivity of the Constitution of the Philippines and the passage of Commonwealth Act No. 137, inasmuch as the provisions of the old mining law, in so far as they authorize the alienation of public mineral lands, are inconsistent with, and have, therefore, been repealed by, said Constitution and Act of the Commonwealth of the Philippines."

The constitutional question involved in this cause is identical to that raised in G. R. No. 45859, entitled *Gold Creek Mining Corporation vs. Rodriguez and Abadilla* (37 Off. Gaz., 1662), and we are of the opinion that the doctrine laid down in the latter case applies with equal force to the case at bar. In the *Gold Creek* case we decided the issues therein involved in the following language:

"This is one of several cases now pending in this court which call for an interpretation, a determination of the meaning and scope, of section 1 of Article XII of the Constitution, with reference to mining claims. The cases have been instituted as test cases, with a view to determining the states, under the Constitution and the Mining Act (Commonwealth Act No. 137), of the holders of unpatented mining claims which were located under the provisions of the Act of Congress of July 1, 1902, as amended.

"In view of the importance of the matter, we deem it conducive to the public interest to meet squarely the fundamental question presented, disregarding for that purpose certain discrepancies found in the pleadings filed in this case. This is in accord with the view expressed by the Solicitor-General in his memorandum where he says that the statements of facts in both briefs of the petitioners may be accepted for the purpose of the legal issues raised. We deny some of the allegations in the petitions and allege new ones in our answers, but these discrepancies are not of such a nature or importance as should necessitate introduction of evidence before the cases are submitted for decision. From our view of the cases, these may be submitted on the facts averred in the complaints, leaving out the difference between the allegations in the pleadings to be adjusted or ironed out by the parties later, which, we are confident, can be accomplished without much difficulty.'

"Section 1 of Article XII of the Constitution reads as follows:

"Section 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.'

"The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. The intention to which force is to be given is that which is embodied and expressed in the constitutional provisions themselves. It is clear that the foregoing constitutional provision prohibits the alienation of natural resources, with the exception of public agricultural land. It seems likewise clear that the term 'natural resources,' as used therein, includes mineral lands of the public domain, but not mineral lands which at the time the provision took effect no longer formed part of the public domain. The reason for this conclusion is found in the terms of the provision itself. It first declares that all agricultural, timber, and mineral lands of the public domain, etc., and other natural resources of the Philippines, belong to the State. It then provides that their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations, at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution.' Next comes the prohibition against the alienation of natural resources. This prohibition is directed against the alienation of such natural resources as were declared to be the property of the State. And as only "agricultural, timber, and mineral lands of the public domain were declared property of the State, it is fair to conclude that mineral lands which at the time the constitutional provision took effect no longer formed part of the public domain, do not come within the prohibition.

"This brings us to the inquiry of whether the mining claim involved in the present proceeding formed part of the public domain on November 15, 1935, when the provisions of Article XII of the Constitution became effective in accordance with section 6 of Article XV thereof. In deciding this point, it should be borne in mind that a constitutional provision must be presumed to have been framed and adopted in the light and understanding of prior and existing laws and with reference to them. 'Courts are bound to presume that the people adopting a constitution are familiar with the previous and existing laws upon the subjects to which its provisions relate, and upon which they express their judgment and opinion in its adoption.' (Barry vs. Truax, 13 N. D., 131; 99 N. W., 769; 65 L. R. A., 762.)

"It is not disputed that the location of the mining claim under consideration was perfected prior to November 15, 1935, when the Government of the Commonwealth was inaugurated; and according to the laws existing at that time, as construed and applied by this court in *McDaniel vs. Apacible and Cuisia* (42 Phil., 749), a valid

location of a mining claim segregated the area from the public domain. Said the court in that case: 'The moment the locator discovered a valuable mineral deposit on the lands located, and perfected his location in accordance with law, the power of the United States Government to deprive him of the exclusive right to the possession and enjoyment of the located claim was gone, the lands had become mineral lands and they were exempted from lands that could be granted to any other person. The reservations of public lands cannot be made so as to include prior mineral perfected locations; and, of course, if a valid mining location is made upon public lands afterward included in a reservation, such inclusion or reservation does not affect the validity of the former location. By such location and perfection, the land located is segregated from the public domain even as against the Government. (Union Oil Co. vs. Smith, 249 U. S., 337; Van Ness vs. Rooney, 180 Cal., 131; 27 Cyc, 546.)'

"The legal effect of a valid location of a mining claim is not only to segregate the area from the public domain, but to grant to the locator the beneficial ownership of the claim and the right to a patent therefor upon compliance with the terms and conditions prescribed by law. 'Where there is a valid location of a mining claim, the area becomes segregated from the public domain and the property of the locator.' (St. Louis Mining & Milling Co. vs. Montana Mining Co., 171 U. S., 650, 655; 43 Law. ed., 320, 322.) 'When a location of mining claim is perfected it has the effect of a grant by the United States of the right of present and exclusive possession, with the right to the exclusive enjoyment of all the surface ground as well as of all the minerals within the lines of the claim, except as limited by the extralateral rights of adjoining locator; and this is the locator's right before as well as after the issuance of the patent. While a lode locator acquires a vested property right by virtue of his location made in compliance with the mining laws, the fee remains in the government until patent issues.' (18 R. C. L., 1152.) In Noyes vs. Mantle (127 U. S., 348, 351; 32 Law. ed., 168, 170), the court said:

" 'There is no pretense in this case that the original locators did not comply with all the requirements of the law in making the location of the Pay Streak Lode Mining claim, or that the claim was ever abandoned or forfeited. They were the discoverers of the claim. They marked its boundaries by stakes, so that they could be readily traced. They posted the required notice, which was duly recorded in compliance with the regulations of the district. They had thus done all that was necessary under the law for the acquisition of an exclusive right to the possession and enjoyment of the ground. The claim was thenceforth their property. They needed only a patent of the United States to render their title perfect, and that they could obtain at any time upon proof of what they had done in locating the claim, and of subsequent expenditures to a specified amount in developing it. Until the patent issued the government held the title in trust for the locators or their vendees. The ground itself was not afterwards open to sale.'

"In a recent case decided by the Supreme Court of the United States, it was said:

"'The rule is established by innumerable decisions of this court, and of state and lower Federal courts, that when the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term; and may be sold, transferred, mortgaged, and inherited without infringing any right or title of the United States. The right of the owner is taxable by the state; and is "real property," subject to the lien of a judgment recovered against the owner in a state or territorial court. (Belk vs. Neagher, 104 U. S. 279, 233; 26 Law. ed., 735, 737; 1 Mor. Min. Rep., 510; Manuel vs. Wolff, 152 U. S., 505, 510, 511; 38 Law. ed., 532-534; 14 Sup. Ct. Rep., 651; 18 Mor. Min. Rep., 85; Elder vs. Wood, 203 U. S., 226 [317] 232; 52 Law. ed., 464, 466; 28 Sup. Ct. Rep., 263; Bradford vs. Morrison, 212 U. S., 389; 53 Law. ed., 564; 29 Sup. Ct. Rep., 349.) The owner is not required to purchase the claim or secure patent from the United States; but so long as he complies with the provisions of the mining laws, his possessory right, for all practical purposes of ownership, is as good as though secured by patent.' (Wilbur vs. United States ex rel. Krushnic, 280 U. S., 306; 74 Law. ed., 445.)

"The Solicitor-General admits in his memorandum that the decision in the McDaniel case is determinative of the fundamental question involved in the instant case. But he maintains 'that this decision is based on a

misapprehension of the authorities on which the court relied,' and that it 'is not well-founded and should be abandoned.' We do not deem it necessary to belabor this point. Whether well-founded or not, the decision in that case was the law when section 1 of Article XII of the Constitution became effective; and even if we were disposed to overrule that decision now, our action could not affect rights already fixed under it.

"Our conclusion is that, as the mining claim under consideration no longer formed part of the public domain when the provisions of Article XII of the Constitution became effective, it does not come within the prohibition against the alienation of natural resources; and the petitioner has the right to a patent therefor upon compliance with the terms and conditions prescribed by law.

"It remains to consider whether mandamus is the proper remedy in this case. In *Wilbur vs United States ex rel. Krushnic*, supra, the Supreme Court of the United States held that 'mandamus will lie to compel the Secretary of the Interior to dispose of an application for a patent for a mining claim on its merits, where his refusal to do so is based on his misinterpretation of a statute.' In the course of its decision the court said: 'While the decisions of this court exhibit a reluctance to direct a writ of mandamus against an executive officer, they recognize the duty to do so by settled principle of law in some cases. (*Lane vs. Hoglund*, 244 U. S., 174, 181; 61 Law. ed., 1066, 1069; 37 Sup. Ct. Rep., 552, and case cited.) In *Roberts vs. United States* (176 U. S., 221, 231; 44 Law. ed., 443, 447; 20 Sup. Ct. Rep., 376), referred to and quoted in the *Hoglund* case, this court said:

" 'Every statute to some extent requires construction by the public officer whose duties may be defined therein. Such officer must read the law, and he must therefore, in a certain sense, construe it, in order to form a judgment from its language what duty he is directed by the statute to perform. But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law direct him to perform an act in regard to which no discretion is committed to him, and which, upon the facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some degree a construction of its language by the officer. Unless this be so, the value of this writ is very greatly impaired. Every executive officer whose duty is plainly devolved upon him by statute might refuse to perform it, and when his refusal is brought before the court he might successfully plead that the performance of the duty involved the construction of a statute by him, and therefore it was not ministerial, and the court would on that account be powerless to give relief. Such a limitation of the power of the court, we think, would be most unfortunate, as it would relieve from judicial supervision all executive officers in the performance of their duties, whenever they should plead that the duty required of them arose upon the construction of a statute, no matter how plain its language, nor how plainly they violated their duty, in refusing to perform the act required.'"

The respondents further contend that "the 'Jacinta' claim, which is the subject matter of this case, was located on February 11 and 12, 1935, or several days after the adoption of the Constitution (February 8, 1935). Before November 15, 1935, the locator thereof (according to the petition) had performed no other act in addition to the location of said claim, except the performance of labor worth more than P1,000, for the purpose of securing a patent (which is denied in the respondents' answer, although hypothetically admitted for the purpose of the test case, without prejudice to respondents' right to contest petitioner's pretense later on), and the filing of an application for a patent survey, which was mostly performed subsequent to November 15, 1935. The filing of the application for patent, as well as the posting of the required notice and plat of the claim, the filing of copy of such plat and of such notice with the office of the mining recorder and the submission of proof of said posting, took place two (2) years after, the inauguration of the new Government. Notice of the filing of said application has not been published as yet, and no tender of payment has ever been made." We believe, and so hold, that there is no substantial difference between the instant case and the *Gold Greek* case inasmuch as the right of location asserted by the petitioner accrued before November 15, 1935, the date on which the Constitution took effect. The prohibition contained in section 1 of Article XII of the Constitution took effect on November 15, 1935, when the Government of the Commonwealth was inaugurated, and not on February 8, 1935, when the Constitution was

adopted. As to the restriction embodied in Act No. 137 of the Commonwealth, it is to be observed that section 3 of said Act exempts from its provisions vested rights and privileges existing on the date of the inauguration of the Government established under the Constitution.

In the instant case, we are not justified, upon the state of the pleadings, to grant the relief sought by the petitioner. Considering, however, that the refusal of the respondents to act on the application for a patent on its merits was due to their misinterpretation of certain constitutional and statutory provisions, following the precedent established by the Supreme Court of the United States in *Wilbur vs. United States ex rel. Krushnic*, supra, a writ of mandamus should issue directing the respondents to dispose of the application for patent on its merits, unaffected by the prohibition against the alienation of natural resources contained in section 1 of (Article XII of the Constitution and in Commonwealth Act No. 137. So ordered.

Avancena, C. J., Villa-Real, and Diaz, JJ., concur.

Laurel, J., see concurring opinion

Concepcion, J., see dissenting opinion

CONCURRING OPINION

LAUREL, J.,

It is my recollection that along with the Gold Creek case, the present is one of the test cases submitted on the constitutional point raided, and that the Solicitor-General was agreeable to the submission of the cases "on the facts averred in the complaints, leaving out the differences between the allegations in the pleadings to be adjusted or ironed out by the parties later." Accepting the averment of fact in the complaint or petition here the mineral claim was validly located and recorded before the Constitution went into effect. I therefore adhere to my opinion in the Gold Creek case, G. R. No. 45859 (37 Off. Gaz., 1662), with the qualification there indicated.

DISSENTING OPINION

CONCEPCION, J.,

I dissent for the same reasons set forth in my dissent from the majority opinion in the case G. R. No. 45859, entitled *Gold Creek Mining Corporation vs. Rodriguez and Abadilla*, and for the further reason that "before November 15, 1935, the locator thereof (according to the petition) had performed no other act in addition to the location of said claim, except the performance of labor worth more than P1,000, for the purpose of securing a patent (which is denied in the respondents' answer, although hypothetically admitted for the purpose of the test case, without prejudice to respondents' right to contest petitioner's pretense later on), and the filing of an application for a patent survey, which was mostly performed subsequent to November 15, 1935. The filing of the application for patent, as well as the posting of the required notice and plat of the claim, the filing of copy of such plat and of such notice with the office of the mining recorder and the submission of proof of said posting, took place two (2) years after the inauguration of the new Government. Notice of the filing of said application has not been published as yet, and no tender of payment has ever been made." So that the petitioner lacked a portion of the requisites to be fulfilled and that they had not been complied with prior to November 15, 1935, the date of the inauguration of the Commonwealth, to be entitled to the patent, I am of the opinion that the remedy of mandamus applied for should be denied.

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