

FROILAN C. GERVASIO, CARLITA C. GERVASIO AND INO MINING CORPORATION, PETITIONERS, VS. ROLANDO V. CUAÑO, REGIONAL TECHNICAL DIRECTOR, MINES & GEO-SCIENCES, AND WILFRIDO S. POLLIS...

G.R. No. 88802. March 17, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for mandamus to compel the public respondents to accept the petitioners' payment of the docket fee for their Petition for Cancellation of the lode lease contracts and mining lease contracts granted to Consolidated Mines, Inc., and to assign a docket number thereto.

The pleadings disclose the following material operative facts:

The Consolidated Mines, Inc. (CMI for brevity) was awarded several lode lease contracts and mining lease contracts covering different areas in Mogpog, Marinduque.

In view of alleged reports that mining claims of other claimants were overlapping its own claims, CMI sent an urgent letter, dated 6 July 1988, to the Director of the Bureau of Mines and Geo-Sciences requesting for information as to the parties responsible therefor. On 12 July 1988, respondent Rolando V. Cuaño, the Regional Technical Director for Mines-Region IV, (RTD for Mines-IV) of the Department of Environment and Natural Resources (DENR), furnished CMI with a list of its mining claims and the claims of other parties; included therein were statements on the status of their respective surveys.[1]

On 15 July 1988, petitioners, through their counsel Atty. Manuel S. Laurel, filed a letter-protest[2] with the Director of Mines and Geo-Sciences alleging that the lease contracts granted to CMI had been abandoned pursuant to the provisions of Section 41 of the Consolidated Mines Administrative Order (CMAO) of 17 May 1975,[3] erroneously cited as Section 41 of P.D. No. 463. The pertinent portion of the said section reads:

“SEC. 41. Terms and Conditions of the Lease. --

x x x

(7) Failure to pay the required annual rentals or royalties, taxes and fees for a period of thirty (30) days after demand, or for two (2) consecutive years without such demand, shall cause the lease to lapse and the mining claim or claims, with respect to which such failure to pay was made, shall thereupon be open to relocation and lease by other persons qualified to locate and lease mining claims under the provisions of the Decree, in the same manner as if no location and lease of the same had ever been made ...”

On 18 July 1988, CMI filed with the RTD for Mines-IV a complaint against the petitioners for overlapping the former's claims; CMI likewise formalized its objection to the claims of the other claimants and requested the said office to disapprove applications for the lease survey of such claims over areas covered by its contracts and to

refuse to issue any lease contracts to them.[4]

Anent the petitioners' letter-protest of 15 July 1988, the RTD for Mines-IV scheduled a conference for 22 September 1988; said conference was, however, postponed to 25 October 1988 and then further reset to 17 November 1988 on which occasion the parties agreed to enter into an amicable settlement. Earlier, however, or on 8 November 1988, CMI filed a formal reply to this letter-protest.[5]

The amicable settlement did not materialize. In view thereof, CMI informed the RTD for Mines-IV on 29 November 1988 that it had no other recourse but to proceed with the case and have the controversy decided on the merits; hearings were then set on various dates.[6]

On 7 February 1989, petitioners filed a Petition for Cancellation wherein they prayed that the mining lease contracts of CMI be nullified and that their own mining claims be given due course.[7] They alleged that CMI did not perform its annual work obligations on its mining lease as mandatorily required by Section 46 of the CMAO; consequently, by virtue of Section 51 of the CMAO, CMI's mining lease contracts automatically lapsed.

On 7 March 1989, petitioners, through their counsel, wrote the RTD for Mines-IV to request that a docket number be assigned to their petition and that they be informed of the amount to be paid as docket fee. Thereupon, CMI filed an Opposition to the Petition for Cancellation on 13 March 1989.[8]

A conference on the petition was set for 25 April 1989; upon the request of the petitioners, this was reset to 16 May 1989. The petitioners, however, did not appear on that date; hence, on 19 May 1989, the DENR-IV Regional Executive Director, respondent Wilfrido S. Pollisco, informed them in a letter that the hearing on 16 May 1989 had proceeded and that the parties should submit their respective memoranda on or before 31 May 1989, after which the case shall be deemed submitted for resolution.[9]

CMI filed its Memorandum on 29 May 1989 while the petitioners filed theirs on 31 May 1989.[10]

Also, on 29 May 1989, petitioners sent another letter to the RTD for Mines-IV with two (2) postal money orders attached thereto in the amount of P150.00 as payment for the docket fee of their Petition for Cancellation.[11]

In his answer of 1 June 1989,[12] respondent Pollisco informed the petitioners that inter alia, to "charge a docketing fee for a complaint will be totally repugnant to the policy of this government to give due course to all complaints." [13]

In their letter of 5 June 1989,[14] petitioners insisted that they be informed of the docket number of their petition which they claimed was necessary for identification purposes. This was followed by the 19 June 1989 and 28 June 1989 letter of their lawyer to respondent Pollisco reiterating their previous requests that the payment of the docket fee be acknowledged and that a docket number be assigned to the Petition for Cancellation.

On 16 June 1989, respondent Cuaño returned to the petitioners the amount they had earlier sent for the payment of the docket fee inasmuch as his office, "as a matter of policy, does not charge docketing fees for petitions or complaints." [15]

On 7 July 1989, the petitioner's filed the instant petition; they contend that the public respondents' refusal to accept the docket fee and to assign a docket number to their Petition for Cancellation of the mining contracts of CMI constitutes a direct violation of Section 121, Chapter XV of the CMAO which provides:

"SEC. 121. Filing of Adverse Claims, Protests, and Oppositions. -- No adverse claim, protest, or any other kind of opposition involving mining claims, rights, leases or permits shall be accepted for filing unless verified and accompanied by the prescribed docket fee and proof of service, either personally or by registered mail, upon the respondent."

As a consequence thereof, the petitioners aver that they were thus unlawfully excluded from the enjoyment of their rights.

Petitioners likewise allege that the private respondents “have illegally, persistently and unjustly refused to comply” with the aforesaid Section 121, Chapter XV of the CMAO, “have unlawfully neglected and/or refused to perform an act which the law specifically enjoins as a duty resulting from their office, trust, or station” and “have unlawfully excluded petitioners Gervasio (sic) from the use and enjoyment of a right granted to them by law, to which they are entitled.” They stress that they “have no other plain, speedy and adequate remedy in the ordinary course of law.”[16]

After the filing of the Comment by the respondents and the Reply thereto by the petitioners, this Court gave due course to the petition and required the parties to file their respective memoranda, which they subsequently complied with.

After a careful consideration and scrutiny of the issues raised and the arguments adduced by the parties, this Court finds the instant petition to be bereft of any merit.

Petitioners invoke the two (2) grounds which justify a petition for mandamus under Section 3, Rule 65 of the Revised Rules of Court, to wit: (a) that the respondents unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from an office or station viz., accepting the docket fee and assigning a docket number to the Petition for Cancellation pursuant to Section 121 of the CMAO and (b) that the respondents unlawfully excluded the petitioners from the use and enjoyment of a right to which they are entitled. It is clear that both do not exist in this case. Petitioners filed two (2) pleadings before the public respondents, namely: (a) the letter-protest of 15 July 1988 and (b) the Petition for Cancellation of the CMI’s lode lease contracts and mining lease contracts. In the Petition for Cancellation, petitioners submit that the latter’s contracts must be considered abandoned for non-compliance with Section 41 (7) of the CMAO while in the letter-protest, they erroneously rely on Section 41 of P.D. No. 463; at any rate, such contracts should be, as prayed for in the Petition for Cancellation, “cancelled, and the mining claims of the petitioners Gervasio (sic) be allowed due course by the Bureau of Mines.”[17]

The letter-protest and Petition for Cancellation do not qualify as an adverse claim, protest or any other kind of opposition described under Section 121 of the Consolidated Mines Administrative Order. Said section implements and complements Section 48 of P.D. No. 463 which provides:

“SEC. 48. Protests and Adverse Claims. -- Any protest or adverse claim of any nature whatsoever involving the right to possession, lease, exploration or exploitation of any mining claim in any part of the Philippines shall be filed with the Bureau of Mines for investigation and decision pursuant to the provisions of Presidential Decree No. 309 and Letter of Instructions No. 119, as amended by Letter of Instructions No. 135. The protest or adverse claim shall be under oath and shall state in detail the nature thereof and shall be accompanied by all plans, documents, and other data upon which the protest or adverse claim is based.

In the case of an adverse claim against a lease application, filed under Section 34 hereof, such adverse claim shall be filed within fifteen (15) days after the first date of publication of the notice of lease application if such claim was not previously investigated and decided under Presidential Decree No. 309. When an adverse claim is filed under this paragraph, all proceedings, except the publication of the notice of application for lease, the submittal of the affidavit in connection therewith and the processing of applications for temporary permit, shall be stayed until the controversy is settled or decided by the Director: Provided, That the operations and production under a mines temporary permit issued prior to the adverse claim shall be allowed to continue subject to the provisions of Section 33 concerning the posting of bonds.”

Obviously, the protest, adverse claim or any other kind of opposition which requires the payment of a docket fee

refers to that which is filed during the pendency of an application for a lode lease or mining lease contract.

Since the petitioners did not need to pay a docket fee when they filed the Petition for Cancellation of CMI's mining contracts, respondents did not have the duty of demanding payment for and collecting a docket fee. Nor was there the necessity of assigning a docket number; no law enjoins the collection of said fee or the assignment of a number. Thus, respondents cannot be held liable for neglect in the performance of a duty. We find the petitioners' dogged persistence in insisting to pay the docket fee rather strange. Moreover, the reason they gave in support of their request for the assignment of a docket number -- that the same is necessary for purposes of identification -- is untenable for, being merely a subsequent incident to earlier applications for mining lease contracts by CMI, identification is not difficult. The problem of identification exists only in the minds of the petitioners.

As to the second ground, We fail to see how the petitioners were excluded from the enjoyment of a right by the non-acceptance of the docket fee and the refusal by the respondents to assign a docket number to their Petition for Cancellation. In the first place, as already shown, they did not have the right to demand the acceptance of their "payment" of the docket fee or to have a docket number assigned to their petition. The rule is well-settled that for mandamus to issue, petitioners must establish a clear legal right to the relief sought, and a mandatory duty of the respondent in relation thereto.[18]

In the second place, petitioners' letter-protest and Petition for Cancellation were, in fact, duly accepted by the public respondents; hearings thereon were conducted; petitioners even submitted their Memorandum in support of their protest and petition. In short, even on the assumption that payment of a docket fee was prescribed, the respondents even disregarded such a requirement to accommodate the petitioners. More accurately, if indeed the petitioners had any right, the respondents allowed them to exercise the same unhampered by such procedural technicality. Thus, no one could truthfully say that the petitioners were unlawfully excluded by the respondents from the enjoyment of a right.

WHEREFORE, for want of merit, the instant petition is DISMISSED with costs against the petitioners.
SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Romero, and Melo, JJ., concur.

[*] Associate Justice Hugo E. Gutierrez, Jr., Chairman, is on terminal leave

[1] Rollo, 57-58.

[2] Id., 89.

[3] Implementing P.D. No. 463, otherwise known as the "Mineral Resources Development Decree of 1974," as amended.

[4] Rollo, 59.

[5] Id., 60-61.

[6] Id., 61.

[7] Annex "A" of Petition; Rollo, 17-30.

[8] Id., 62.

[9] Id., 63.

[10] Id.

[11] Annex “D” of Petition; Rollo, 34.

[12] Annex “E”, Id.; Id., 36.

[13] Id.

[14] Annex “F”, Id; Id., 37.

[15] Annex “I”, Id.; Id., 41.

[16] Rollo, 12-13.

[17] Rollo, 29.

[18] Morada vs. Caluag, 5 SCRA 1128 [1962]; Yuvienco vs. Canonoy, 39 SCRA 597 [1971].

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