

**POE MINING ASSOCIATION AND PHILEX MINING CORPORATION,  
PETITIONERS, VS. CANCIO C. GARCIA, ASST. EXECUTIVE  
SECRETARY FOR LEGAL AFFAIRS, MACAWIWILI GOLD MINING  
&#038; DEVELOPMENT, CO., ...**

*G.R. No. 89093. October 02, 1991*

Ponente: MEDIALDEA, J.

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**MEDIALDEA, J.:**

This is a petition for certiorari to set aside as null and void the decision, dated December 12, 1988 of the Office of the President, upholding private respondents' mining claims over Lode Lease Contract (LLC) Nos. V-748 and V-749, and the Order, dated April 19, 1989, denying the motion for reconsideration.

The facts of the case are as follows:

In 1931, 1933 and 1935, Macawiwili Gold Mining separately located and registered 122 mining claims in Itogon, Benguet, under the Act of U.S. Congress of 1902 (or Philippine Bill of 1902).

On July 14, 1970, Macawiwili lodged a protest with the Bureau of Mines docketed as MAR Case No. V-596, claiming that Poe Mining and Philex Mining Corp. (as operator) had overlapped its patentable mining claims, specifically LLC Nos. V-748 and V-749. On December 14, 1970, Macawiwili amended its protest to include Poe's mining claims covered by LCC No. V-596.

On May 24, 1971, the Bureau of Mines issued an Order dismissing the protest against LCC V-596, but ordering the protest to proceed as against LCC Nos. V-748 and 749. The omnibus motion for reconsideration was denied.

Macawiwili and Omico (the operator of the mining claim) appealed the dismissal of the protest against LLC No. V-596 to the then Secretary of Agriculture and Natural Resources (MNR Case No. 3700). The dismissal was, however, affirmed on January 3, 1972. Macawiwili did not appeal the dismissal (see Decision, Office of the President, p. 34, Rollo).

As regards the protest against LLC Nos. V-748 and 749, the Director of Mines rendered a decision on November 19, 1974, adjudging Poe Mining and Philex Mining entitled to preferential rights over said mining claims. Upon appeal by Macawiwili, however, the then Minister of Natural Resources, E. Maceda, on June 25, 1986, reversed and set aside the decision of the BM Director, holding Macawiwili and Omico entitled to exclusive and preferential rights over its 122 patentable mining claims, pointing out that Poe Mining's later applications for LLC Nos V-748 and 749 did not comply with the publication requirements of the lease application in the Official Gazette, as provided in CA 137, as amended (Mining Act), aside from the fact that the claims overlap the patentable mining claims of Macawiwili which had been previously located under the Act of U.S. Congress of 1902 (Philippine Bill). Both parties filed separate motions for reconsideration, which were denied in the Order of DENR Secretary Fulgencio S. Factoran, Jr., dated June 9, 1988.

Only Poe Mining appealed to the Office of the President, which affirmed on October 12, 1988, the DENR decision and the order denying the motion for reconsideration. It also dismissed the appeal for lack of merit. Poe Mining's motion for reconsideration was denied for being pro forma on April 19, 1988.

An earlier petition for certiorari (G.R. No. 88002) to this Court was not pursued by Poe Mining, allowing a 30-day extension granted by this Court to lapse. We dismissed and "considered as closed and terminated" said case, in Our Resolution of August 9, 1989, upon Poe Mining's Manifestation, dated July 26, 1989, that "(t)hey have filed a petition for certiorari within a reasonable period and the case docketed under the above docket (G.R. 88002) therefore, should be deemed withdrawn."

On the same date, Poe Mining filed the instant petition, questioning the validity of Macawiwili's mining claims, premised on alleged violations of CA 137, as amended (Mining Act), namely, 1) Section 34 (registration of mining claims with the Mining Act Recorder within 30 days), and 2) Section 24 (absence of a Power of Attorney of the surveyor who made the amended locations of Macawiwili's mining claims).

Poe Mining also claimed violations by Macawiwili of Sec. 28 of the Philippine Bill of 1902, regarding tie points, and PD No. 1214 on the filing of lease applications within one year from October 14, 1977.

The resolution of this case hinges on whether or not Macawiwili's mining claims may be upheld and/or preferred as a vested right as against that of Poe Mining's claims, i.e., V-748 and V-749 (the decision of the Bureau of Mines on V-596, having become final and executory due to non-appeal of Macawiwili).

We uphold the mining claims of Macawiwili and Omico (as operator).

Correctly, the Office of the President affirmed the DENR's ruling that:

"x x x, the patentable mining claims of protestants-appellants are prior valid and subsisting claims which should take precedence or preference over the later claims of respondents-appellees. The location and registration of the claims of respondents-appellees, as earlier stated, were tainted with irregularity and, therefore, are null and void for having been made on an area closed to mining location (Sec. 28, C.A. No. 131, as amended). So that the issuance of LLC Nos. V-748 and V-749 is also inoperative and void.

"The same is true with the other claims of respondents-appellees which are not covered by lease contracts, namely, 'E-9 Fr.', 'E-13 FR.', 'E-14', 'E-15', 'E-18 Fr.', 'E-19', 'E-20', 'E-24', 'E-39', 'E-40', 'E--46', 'E-47', 'Poe-6', 'Poe-11', and 'Poe-20'. These claims had also overlapped the prior, valid and subsisting claims of protestants--appellants. This is to correct the error of the appealed decision when it decreed that the claims of protestants-appellants overlapped by aforesaid claims had no valid tie point. As earlier ruled by this Office, the tie point was not required by the Act of the US Congress of 1902 with respect to the claims of protestants-appellants, thus, the claims of respondents-appellees must yield to the superior character of the claims of the protestants-appellants.

"x x x." (pp. 119-120, Rollo)

While it is true, as held in the case of Santa Rosa Mining Co., Inc. v. Hon. Minister Jose J. Leido, et al., G.R. No. L-49109, December 1, 1987, 156 SCRA 1 that the right of a locator of a mining right is merely a possessory right, (in effect, debunking the ruling in Gold Creek Mining Corp. v. Rodriguez, et al., 66 Phil. 259, and Mc Daniel v. Apacible, et al., 42 Phil. 749 that "a perfected and valid location and registration of the mining claims of Macawiwili under the US Congress of 1902 is a property right) and that it is, therefore, imperative for the claimant to file a mining lease application under PD No. 1214, otherwise claimant's right is forfeited, We believe that Poe Mining's attack against Macawiwili's rights as having been forfeited for its failure to file an application for a mining lease pursuant to PD 1214 is misplaced.

We agree with the Solicitor General in his Comment (at p. 294, Rollo) that PD 1214 does not apply to mining claims under controversy since only the prevailing party may take advantage thereof after the decision has been rendered awarding him the mining claims. Noteworthy is his citation of the observation of the then Solicitor General in the case of *Basiana, Sr. v. Luna*, G.R. Nos. L-34135-36, February 24, 1981; 103 SCRA 49, at pp. 63-65) which had merited this Court's approval:

"Subsequently, however, P.D. No. 1214 was promulgated effective on October 14, 1977. The petitioners-appellants thus filed a Supplemental Manifestation dated December 21, 1977 wherein they contend that P.D. No. 1214 clearly and unmistakably indicates that the application under Section 100 of P.D. No. 463 to avail of the rights and privileges granted under P.D. No. 463 is optional and not mandatory; hence, even after the lapse of the 2-year period on May 17, 1976 under Section 100 of P.D. 463 without any application having been filed thereunder, the claims are still valid and not forfeited.

"In behalf of the public respondents-appellees, the Solicitor General submitted a comment stating, among others:

'x x x for purposes of the resolution of these appealed cases, that the questions as to whether the filing of application under Section 100 of P.D. No. 463 in relation to P.D. No. 1214 is mandatory or not is not important, nor is it imperative that said issue be resolved by this Honorable Court in these appealed cases, for the following reasons:

'(a) The mining claims in these cases have not yet ripened into ownership rights, in view of the pendency of the appealed cases before this Honorable Court. Therefore, either parties cannot consider themselves legal holders of valid and subsisting mining locations and other rights whether considered as mining patents under the Act of U.S. Congress of July 1, 1902 or as leasehold mining claims under Commonwealth Act No. 137. Consequently, insofar as the mining claims, subject of the appealed cases are concerned, they cannot be considered old valid mining rights which are required to be the subject of application therefor and approval thereof by the Director of Mines within a period of two (2) years which expired on May 17, 1976.

'(b) Since the decision of the respondent Secretary of Natural Resources over the said mining claims controversy has not become final, which is now the subject of the appealed cases, this Honorable Court may either affirm, modify or reverse the said decision. Accordingly, either parties cannot claim any vested rights over said mining claims which cannot be impaired by the requirement of application under Section 100 of P.D. No. 463; and

'(c) Considering that the mining claims under controversy were initially decided under the old mining laws, which decision is now subject of these appealed cases, and still pending resolution by this Honorable Court, then, being the subject of a pending litigation or appeal, only the prevailing party may take advantage of Section 100 of P.D. No. 463 after the decision awarding him the mining claims in question shall have become final. Until these appealed cases shall have been decided finally by this Honorable Courts, any application by either parties over the mining claims under litigation or appeal with the Bureau of Mines pursuant to Section 100 of P.D. No. 463 may serve only as notices, but may have no legal effect.

'WHEREFORE, premises considered, it is respectfully submitted that there is no immediate and important reason for this Honorable Court to pass upon the issues raised by either parties in connection with the application of P.D. No. 463 and P.D. No. 1214 to the mining claims, subject of these appealed cases, and that these cases be resolved by this Honorable Court on the merits.'

"The foregoing comment of the Solicitor General appears to be well founded." (pp. 294-295, Rollo)

Having upheld Macawiwili's mining rights as duly perfected and validly located, the other issues raised by Poe Mining are no longer relevant, considering the DENR's ruling that Sections 34 and 24 of CA. No. 137, as amended which took effect later, or on November 7, 1936, do not apply to Macawiwili's mining claims.

ACCORDINGLY, the petition for certiorari is DISMISSED, and the decision of the Office of the President is AFFIRMED, with the modification herein pointed out, based on the ruling in the Santa Rosa Mining, Inc. case, that Macawiwili, who has merely a possessory right, may now comply with the directive in P.D. No. 1214, and file the corresponding mining lease application in pursuit of a lease contract in its favor. No costs.

**SO ORDERED.**

Narvasa, (Chairman), and Grino-Aquino, JJ., concur.

Cruz, J., no part.

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