

DAP MINING ASSOCIATION, PETITIONER, VS. HON. COURT OF APPEALS, CHICO MINES, INC. OFFICE OF THE PRESIDENT, MIDEX (PHIL.), INC., JUANITO C. FERNANDEZ, ERNESTO MACEDA, FULGENCIO FA...

G.R. No. 92328. June 06, 2001

Ponente: VITUG, J.

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VITUG, J.:

The instant petition was re-raffled to herein ponente pursuant to A.M. No. 00-9-03-SC (Re: Creation of Special Committee on Case Backlog).

The case is an appeal from the decision of the Court of Appeals, promulgated on 20 November 1989 in C.A. G.R. SP No. 12856, dismissing the petition for certiorari filed by petitioner DAP Mining Association and affirming the order, dated 05 March 1987, of then Executive Secretary Catalino Macaraeg, Jr.

On 04 July 1971, petitioner entered into a contract with respondent Chico Mines, Inc., for the occupation, possession, control, operation and exploitation of seventy-one (71) mineral lode claims, situated within the City of Baguio and the Municipality of Itogon, Province of Benguet. Petitioner asserted that it had actually located, staked, occupied and then registered the mining claims with the Mining Recorder of the Bureau of Mines and Geodetic Sciences ("BMGS"). Pursuant to the agreement, the mining claims were transferred to and registered in the name of respondent Chico Mines in the Mining Recorder's Office of District I, Baguio City.

On 21 October 1971, the parties executed a trust agreement superseding the contract of 04 July 1971 and granting to Chico Mines the absolute power to explore, develop, and exploit the lode claims with the obligation to pay petitioner a straight royalty of three and a half (3-1/2%) percent of the monthly smelter returns from all ores extracted from the mineral claims.

On 11 November 1980, petitioner filed with the BMGS a petition for cancellation of the contract of 21 October 1971 grounded on the non-fulfillment of the terms of the agreement and breach of trust on the part of respondent mining company. In its complaint, petitioner alleged that respondent company had failed to operate the mining claims in accordance with the stipulations of the parties.

Respondent company, in its answer, denied the material asseverations of the petition and stated that it was not a party to the agreement and did not authorize anyone to sign for and in its behalf, adding, moreover, that petitioner was disqualified from filing any declaration of location of mineral claims.

On 07 May 1981, the BMGS rendered its decision declaring the contract of 21 October 1971 null and void. The BMGS ratiocinated that the subject mining claims were deemed abandoned by petitioner before the execution of the contract between the parties and that, on 06 August 1971, the mining claims were registered in the name of respondent company.

Petitioner received a copy of the decision of the BMGS on 12 May 1981. No appeal was taken therefrom within the reglementary period of five (5) days provided under Presidential Decree No. 463. On 01 June 1981, petitioner filed its "Multiple Alternative Motions" which sought reconsideration of the decision of 07 May 1981 of the BMGS. On 30 July 1981, the BMGS denied the motions for having been filed by petitioner beyond the five-day period prescribed by Section 131 of the Consolidated Mines Administrative Order, as amended, implementing Presidential Decree No. 463, as amended. A copy of the order denying the multiple alternative motions was received by petitioner on 13 August 1981.

On 25 August 1981, petitioner filed with the Ministry of Natural Resources a petition, docketed MNR Case No. 4855, for relief from judgment. On 07 July 1982, the Ministry of Natural Resources dismissed the petition for having been filed out of time as the same was interposed beyond sixty (60) days after petitioner had learned of the order sought to be set aside. On 28 July 1982, petitioner filed a motion seeking reconsideration of the order. On 22 July 1985, or after the lapse of more than three years, then Deputy Minister of Natural Resources Arnold Caoili issued an order setting aside the MNR order of 07 July 1982, reversing the decision of the Director of Mines of 07 May 1981 and relieving petitioner of the effects of said decision, canceling the operating contract between petitioner and respondent, and ordering the Mining Recorder of Baguio City to cancel the mining claims denominated "ROSE" claims registered in the name of respondent and to transfer and register the claims in the name of petitioner upon payment of the registration cost and other obligations due on the mining claims.

Respondent company filed a motion to declare the order of 22 July 1985 null and void. In a decision, dated 23 August 1986, then Minister of Natural Resources Ernesto Maceda annulled the order of former Deputy Minister Arnold Caoili on the thesis that when Deputy Minister Caoili acted on petitioner's motion for reconsideration, the decision of the BMGS of 07 May 1981 had already become final and executory. The order, dated 23 August 1986, in effect revived the decision of 07 July 1982 of the Ministry of Natural Resources which had denied the petition for relief.

Petitioner received a copy of the decision of Minister Ernesto Maceda on 04 September 1986, and it interposed an appeal to the Office of the President. Upon review of the assailed decision, the Office of the President ordered the dismissal of the appeal. Petitioner's motion for reconsideration from the dismissal of the appeal was likewise denied.

Undaunted, petitioner filed a petition for certiorari before this Court which the latter forthwith referred to the Court of Appeals for proper disposition. On 20 November 1989, the appellate court rendered its decision dismissing the petition, with costs against petitioner, in this wise:

"Unfortunately, a reading of the petition does not indicate to Us what jurisdictional errors might have been committed by the respondent officials. As pointed out by the Solicitor General the dismissal of the motion for reconsideration and appeal interposed by petitioner were all in accordance with law and the evidence. In asserting that the 1981 decision of the Bureau of Mines can no longer be disturbed for being final and executory, the Solicitor General made the following observations to which We fully agree:

"In the case of *Agricultural & Industrial Marketing, Inc. vs. Court of Appeals*, 118 SCRA 49, the Supreme Court held that a strict observance of the reglementary period within which to exercise the statutory right of appeal has been considered as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. And perfection of appeal within the period prescribed by law is jurisdictional (*Santos vs. CA*, 125 SCRA 22). Further, the remedy of certiorari does no lie where appeal has been lost. Certiorari cannot take the place of appeal." [1]

Petitioner would insist, in the instant petition, that the Court of Appeals erred in ruling that the petition for relief filed was filed out of time.

The petition lacks merit.

The records would show that the decision, dated 07 May 1981, of the Director of Mines was received by petitioner, through its counsel, on 12 May 1981. Petitioner failed to file an appeal within the 5-day reglementary period prescribed by Section 50 of Presidential Decree No. 463 -

"Sec. 50 Appeals. - Any party not satisfied with the decision or order of the Director may, within five (5) days from receipt thereof, appeal to the Secretary. Decisions of the Secretary are likewise appealable within five (5) days from receipt thereof by the affected party to the President of the Philippines whose decision shall be final and executory" -

Instead, on 01 June 1981 or after the lapse of twenty (20) days from the receipt by petitioner's counsel of a copy of the decision, it filed "Multiple Alternative Motions" praying, in effect, for the reconsideration of the 07th May 1981 decision of the BMGS but, by then, the decision sought to be reconsidered had already become final and executory.

Realizing the fatal consequence of its failure to seasonably appeal the 07[th] May 1981 decision of the BMGS, petitioner next resorted to the filing of a petition for relief from judgment on 25 August 1981 or after the lapse of one hundred five (105) days from the time of its receipt of a copy of the 07[th] May 1981 decision. Clearly, the petition for relief was itself filed beyond the period prescribed by Section 3, Rule 38, of the Rules of Court.

"Sec. 3. Time for filing petition; contents and verification. - A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case maybe."

A petition for relief is a special remedy designed to give a party a last chance to defend his right or protect his interest.[2] It is a relief that can only be availed of in exceptional cases. Being an act of grace, so designed as it were to give the aggrieved party a second opportunity, the extraordinary period fixed therefor must be considered non-extendible and not subject to condition or contingency.

Compounding the matter, the petition for relief failed to be accompanied by affidavits of merit, showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting petitioner's good and substantial cause of action or defense. These affidavits of merit would serve as the indispensable basis for a court to be called upon to entertain a petition for relief.[3]

WHEREFORE, the instant petition is DENIED. No costs.

SO ORDERED.

Melo (Chairman), Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 38-39.

[2] Palomares vs. Jimenez, 90 Phil. 773.

[3] Torno vs. Intermediate Appellate Court, et. al., 166 SCRA 742; Omandam vs. Director of Lands, 95 Phil 450; Fernandez vs. Tan Tiong Tick, et.al., 1 SCRA 1138.

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