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FIRST DIVISION

[G.R. No. L-43938. April 15, 1988]

REPUBLIC OF THE PHILIPPINES (DIRECTOR OF FOREST DEVELOPMENT), *petitioner, vs.* **HON. COURT OF APPEALS (THIRD DIVISION) and JOSE Y. DE LA ROSA,** *respondents.*

[G.R. No. L-44081. April 15, 1988]

BENGUET CONSOLIDATED, INC., *petitioner, vs.* **HON. COURT OF APPEALS, JOSE Y. DE LA ROSA, VICTORIA, BENJAMIN and EDUARDO, all surnamed DE LA ROSA, represented by their father JOSE Y. DE LA ROSA,** *respondents.*

[G.R. No. L-44092. April 15, 1988]

ATOK-BIG WEDGE MINING COMPANY, *petitioner, vs.* **HON. COURT OF APPEALS, JOSE Y. DE LA ROSA, VICTORIA, BENJAMIN and EDUARDO, all surnamed DE LA ROSA, represented by their father, JOSE Y. DE LA ROSA,** *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW;NATIONAL ECONOMY AND PATRIMONY; CONSERVATION AND UTILIZATION OF NATURAL RESOURCES; PERFECTED MINING CLAIMS, A VESTED RIGHT; NOT AFFECTED BY EFFECTIVITY OF 1935 CONSTITUTION PROHIBITING ALIENATION OF MINERAL LANDS.** — It is true that the subject property was considered forest land and included in the Central Cordillera Forest Reserve, but this did not impair the rights already vested in Benguet and Atok at that time. Such rights were not affected either by the stricture in the Commonwealth Constitution against the alienation of all lands of the public domain except those agricultural in nature for this was made subject to existing rights.

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2. ID.; ID.; ID.; ID.; ENFORCEABLE AGAINST THE GOVERNMENT.— The perfection of the mining claim converted the property to mineral land and under the laws then in force removed it from the public domain. By such act, the locators acquired exclusive rights over the land, against even the government, without need of any further act such as the purchase of the land or the obtention of a patent over it.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OWNERSHIP; OWNER OF LAND HAS RIGHTS OVER ITS SURFACE, EVERYTHING UNDERNEATH IT AND AIRSPACE ABOVE IT. — The owner of a piece of land has rights not only to its surface but also to everything underneath and the airspace above it up to a reasonable height. The Court feels that the rights over the land are indivisible and that the land itself cannot be half agricultural and half mineral. The classification must be categorical; the land must be either completely mineral or completely agricultural.

4. CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; CONSTRUED. — The Regalian doctrine reserves to the State all minerals that may be found in public and even private land devoted to "agricultural, industrial, commercial, residential or (for) any purpose other than mining." Once minerals are discovered in the land, whatever the use to which it is being devoted at the time, such use may be discontinued by the State to enable it to extract the minerals therein in the exercise of its sovereign prerogative. The land is thus converted to mineral land and may not be used by any private party, including the registered owner thereof, for any other purpose that will impede the mining operations to be undertaken therein. For the loss sustained by such owner, he is of course entitled to just compensation under the Mining Laws or in appropriate expropriation proceedings.

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DECISION

CRUZ, *J.*:

The Regalian doctrine reserves to the State all natural wealth that may be found in the bowels of the earth even if the land where the discovery is made be private.[1] In the cases at bar, which have been consolidated because they pose a common issue, this doctrine was not correctly applied.

These cases arose from the application for registration of a parcel of land filed on February 11, 1965, by Jose de la Rosa on his own behalf and on behalf of his three children, Victoria, Benjamin and Eduardo. The land, situated in Tuding, Itogon, Benguet Province, was divided into 9 lots and covered by plan Psu-225009. According to the application, Lots 1-5 were sold to Jose de la Rosa and Lots 6-9 to his children by Mamaya Balbalio and Jaime Alberto, respectively, in 1964.[2]

The application was separately opposed by Benguet Consolidated, Inc. as to Lots 1-5, Atok Big Wedge Corporation, as to portions of Lots 1-5 and all of Lots 6-9, and by the Republic of the Philippines, through the Bureau of Forestry Development, as to Lots 1-9.[3]

In support of the application, both Balbalio and Alberto testified that they had acquired the subject land by virtue of prescription. Balbalio claimed to have received Lots 1-5 from her father shortly after the Liberation. She testified she was born in the land, which was possessed by her parents under claim of ownership.[4] Alberto said he received Lots 6-9 in 1961 from his mother, Bella Alberto, who declared that the land was planted by Jaime and his predecessors-in-interest to bananas, avocado, nangka and camote, and was enclosed with a barbed-wire fence.

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[1] Sec. 4, Commonwealth Act No. 137.

[2] Original Records, Land Registration Case No. 146, pp. 1-4.

[3] *Ibid.*, pp. 33, 68, 241.

[4] TSN, May 5, 1966, p. 61.

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She was corroborated by Felix Marcos, 67 years old at the time, who recalled the earlier possession of the land by Alberto's father.[5] Balbalio presented her tax declaration in 1956 and the realty tax receipts from that year to 1964,[6] Alberto his tax declaration in 1961 and the realty tax receipts from that year to 1964.[7]

Benguet opposed on the ground that the June Bug mineral claim covering Lots 1-5 was sold to it on September 22, 1934, by the successors-in-interest of James Kelly, who located the claim in September 1909 and recorded it on October 14, 1909. From the date of its purchase, Benguet had been in actual, continuous and exclusive possession of the land in concept of owner, as evidenced by its construction of adits, its affidavits of annual assessment, its geological mappings, geological samplings and trench side cuts, and its payment of taxes on the land.[8]

For its part, Atok alleged that a portion of Lots 1-5 and all of Lots 6-9 were covered by the Emma and Fredia mineral claims located by Harrison and Reynolds on December 25, 1930, and recorded on January 2, 1931, in the office of the mining recorder of Baguio. These claims were purchased from these locators on November 2, 1931, by Atok, which has since then been in open, continuous and exclusive possession of the said lots as evidenced by its annual assessment work on the claims, such as the boring of tunnels, and its payment of annual taxes thereon.[9]

The location of the mineral claims was made in accordance with Section 21 of the Philippine Bill of 1902 which provided that:

"SEC. 21. All valuable mineral deposits in public lands in the Philippine Islands both surveyed and unsurveyed are hereby declared

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[5] TSN, May 3, 1967, pp. 89-115.

[6] Original Records, Exhs. "J", p. 24, "K", p. 26.

[7] Original Record, Exhs. "I", p. 22, "K", p. 26.

[8] Exhs. "8 (a-e)", "9 (a-e)", "9 (f-g)," "7", and "11".

[9] Exh. "5", Atok; Exh. "6", Atok, *Rollo* (G.R. No. 44081), Annex "B", pp. 76-82.

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to be free and open to exploration, occupation and purchase and the land in which they are found to occupation and purchase by the citizens of the United States, or of said islands."

The Bureau of Forestry Development also interposed its objection, arguing that the land sought to be registered was covered by the Central Cordillera Forest Reserve under Proclamation No. 217 dated February 16, 1929. Moreover, by reason of its nature, it was not subject to alienation under the Constitutions of 1935 and 1973.[10]

The trial court** denied the application, holding that the applicants had failed to prove their claim of possession and ownership of the land sought to be registered.[11] The applicants appealed to the respondent court,*** which reversed the trial court and recognized the claims of the applicant, but subject to the rights of Benguet and Atok respecting their mining claims.[12] In other words, the Court of Appeals affirmed the surface rights of the de la Rosas over the land while at the same time reserving the sub-surface rights of Benguet and Atok by virtue of their mining claims.

Both Benguet and Atok have appealed to this Court, invoking their superior right of ownership. The Republic has filed its own petition for review and reiterates its argument that neither the private respondents nor the two mining companies have any valid claim to the land because it is not alienable and registerable.

It is true that the subject property was considered forest land and included in the Central Cordillera Forest Reserve, but this did not impair the rights already vested in Benguet and Atok at that time. The Court of Appeals correctly declared that:

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[10] Original Records, Land Registration Case No. 146, p. 291.

** Judge Feliciano Belmonte, CFI of Baguio, Benguet.

[11] *Ibid.*, p. 325.

*** Leuterio, *J.*, *ponente*, with Vasquez and Escolin, *JJ.*

[12] *Rollo* (G.R. No. 43938), pp. 38-51.

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"There is no question that the 9 lots applied for are within the June Bug mineral claims of Benguet and the 'Fredia and Emma' mineral claims of Atok. The June Bug mineral claim of plaintiff Benguet was one of the 16 mining claims of James E. Kelly, an American and mining locator. He filed his declaration of the location of the June Bug mineral and the same was recorded in the Mining Recorder's Office on October 14, 1909. All of the Kelly claims had subsequently been acquired by Benguet Consolidated, Inc. Benguet's evidence is that it had made improvements on the June Bug mineral claim consisting of mine tunnels prior to 1935. It had submitted the required affidavit of annual assessment. After World War II, Benguet introduced improvements on mineral claim June Bug, and also conducted geological mappings, geological sampling and trench side cuts. In 1948, Benguet redeclared the 'June Bug' for taxation and had religiously paid the taxes.

"The Emma and Fredia claims were two of the several claims of Harrison registered in 1931, and which Atok representatives acquired. Portions of Lots 1 to 5 and all of Lots 6 to 9 are within the Emma and Fredia mineral claims of Atok Big Wedge Mining Company.

"The June Bug mineral claim of Benguet and the Fredia and Emma mineral claims of Atok having been perfected prior to the approval of the Constitution of the Philippines of 1935, they were removed from the public domain and had become private properties of Benguet and Atok.

'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 v. 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 afterwards included in a reservation, such inclusion or reservation

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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. v. Smith*, 249 U.S. 337; *Van Mess v. Roonet*, 160 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. v. Montana Mining Co.*, 171 U.S. 650; 655; 43 Law ed., 320, 322.) 'When a location of a 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 right of adjoining locators; 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)' (*Gold Creek Mining Corporation v. Hon. Eulogio Rodriguez*, Sec. of Agriculture and Commerce, and Quirico Abadilla, Director of the Bureau of Mines, 66 Phil. 259, 265-266).

"It is of no importance whether Benguet and Atok had secured a patent for as held in the Gold Creek Mining Corp. Case, for all physical purposes of ownership, the owner is not required to secure a patent as 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.

"We agree likewise with the oppositors that having complied with all the requirements of the mining laws, the claims were removed from the public domain, and not even the government of the Philippines can take away this right from them. The reason is obvious. Having become the private properties of the oppositors, they cannot be deprived thereof without due process of law."[13]

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[13] *Ibid.*, pp. 40-42.

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Such rights were not affected either by the stricture in the Commonwealth Constitution against the alienation of all lands of the public domain except those agricultural in nature for this was made subject to existing rights. Thus, in its Article XIII, Section 1, it was categorically provided that:

"SEC. 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 60% 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 lands, 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 25 years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which case beneficial use may be the measure and the limit of the grant."

Implementing this provision, Act No. 4268, approved on November 8, 1935, declared:

"Any provision of existing laws, executive order, proclamation to the contrary notwithstanding, all locations of mining claim made prior to February 8, 1935 within lands set apart as forest reserve under Sec. 1826 of the Revised Administrative Code which would be valid and subsisting location except to the existence of said reserve are hereby declared to be valid and subsisting locations as of the date of their respective locations."

The perfection of the mining claim converted the property to mineral land and under the laws then in force removed it from the public domain.[14] By such act, the locators acquired exclusive rights over the land, against even the government,

[14] *McDaniel v. Apacible, 42 Phil. 749; Salacot Mining Co. v. Rodriguez*, 67 Phil. 97; *Salacot Mining v. Apacible*, 67 Phil. 110; *Benguet, Inc. v. Republic*, 143 SCRA 466.

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without need of any further act such as the purchase of the land or the obtention of a patent over it.[15] As the land had become the private property of the locators, they had the right to transfer the same, as they did, to Benguet and Atok.

It is true, as the Court of Appeals observed, that such private property was subject to the "vicissitudes of ownership," or even to forfeiture by non-user or abandonment or, as the private respondents aver, by acquisitive prescription. However, the method invoked by the de la Rosas is not available in the case at bar, for two reasons.

First, the trial court found that the evidence of open, continuous, adverse and exclusive possession submitted by the applicants was insufficient to support their claim of ownership. They themselves had acquired the land only in 1964 and applied for its registration in 1965, relying on the earlier alleged possession of their predecessors-in-interest.[16] The trial judge, who had the opportunity to consider the evidence first-hand and observe the demeanor of the witnesses and test their credibility was not convinced. We defer to his judgment in the absence of a showing that it was reached with grave abuse of discretion or without sufficient basis.[17]

Second, even if it be assumed that the predecessors-in-interest of the de la Rosas had really been in possession of the subject property, their possession was not in the concept of owner of

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[15] "The respondents may claim, however, that inasmuch as a patent has not been issued to the petitioner, he has acquired no property right in said mineral claims. But the Supreme Court of the United States, in the cases of *Union Oil Co. v. Smith* (249 U.S. 337), and *St. Louis Mining & Milling Co. v. Montana Mining Co.* (171 U.S. 650), held that even without a patent, the possessory right of a locator after discovery of minerals upon the claim is a property right in the fullest sense, unaffected by the fact that the paramount title to the land is in the *United State. McDaniel v. Apacible, supra*; *Salacot Mining Co. v. Rodriguez, supra*.

[16] Original Records, pp. 1-4.

[17] *Tan Hong v. Hon. Paredes*, G.R. No. 73627, Jan. 29, 1988; *Pio Padilla v. CA*, G.R. No. 75577, Jan. 29, 1988; *Verdant Acres v. Ponciano Hernandez*, G.R. No. 51352, Jan. 29, 1988; *People v. Ancheta*, 148 SCRA 178; *People v. Delavin*, 148 SCRA 257; *People v. Alcantara*, 151 SCRA 326.

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the *mining claim* but of the property as *agricultural land*, which it was not. The property was mineral land, and they were claiming it as agricultural land. They were not disputing the rights of the mining locators nor were they seeking to oust them as such and to replace them in the mining of the land. In fact, Balbalio testified that she was aware of the diggings being undertaken "down below"[18] but she did not mind, much less protest, the same although she claimed to be the owner of the said land.

The Court of Appeals justified this by saying there is "no conflict of interest" between the owners of the surface rights and the owners of the sub-surface rights. This is rather strange doctrine, for it is a well-known principle that the owner of a piece of land has rights not only to its surface but also to everything underneath and the airspace above it up to a reasonable height.[19] Under the aforesaid ruling, the land is classified as mineral underneath and agricultural on the surface, subject to separate claims of title. This is also difficult to understand, especially in its practical application.

Under the theory of the respondent court, the surface owner will be planting on the land while the mining locator will be boring tunnels underneath. The farmer cannot dig a well because he may interfere with the mining operations below and the miner cannot blast a tunnel lest he destroy the crops above. How deep can the farmer, and how high can the miner, go without encroaching on each other's rights? Where is the dividing line between the surface and the sub-surface rights?

The Court feels that the rights over the land are indivisible and that the land itself cannot be half agricultural and half mineral. The classification must be categorical; the land must be either completely mineral or completely agricultural. In the instant case, as already observed, the land which was originally classified as forest land ceased to be so and became mineral — and completely mineral — once the mining claims were perfected.[20]

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[18] TSN, Oct. 18, 1966, p. 79.

[19] Article 437, new Civil Code.

[20] Sec. 1, Presidential Legislative Act No. 4268.

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As long as mining operations were being undertaken thereon, or underneath, it did not cease to be so and become agricultural, even if only partly so, because it was enclosed with a fence and was cultivated by those who were unlawfully occupying the surface.

What must have misled the respondent court is Commonwealth Act No. 137, providing as follows:

"Sec. 3. All mineral lands of the public domain and minerals 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 60% 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 government established under the Constitution."

"SEC. 4. The ownership of, and the right to the use of land for agricultural, industrial, commercial, residential, or for any purpose other than mining does not include the ownership of, nor the right to extract or utilize, the minerals which may be found on or under the surface."

"SEC. 5. The ownership of, and the right to extract and utilize, the minerals included within all areas for which public agricultural land patents are granted are excluded and excepted from all such patents."

"SEC. 6. The ownership of, and the right to extract and utilize, the minerals included within all areas for which Torrens titles are granted are excluded and excepted from all such titles."

This is an application of the Regalian doctrine which, as its name implies, is intended for the benefit of the State, not of private persons. The rule simply reserves to the State all minerals that may be found in public and even private land devoted to "agricultural, industrial, commercial, residential or (for) any purpose other than mining." Thus, if a person is the owner of agricultural land in which minerals are discovered, his ownership of such land does not give him the right to extract or utilize the said minerals without the permission of the State to which such minerals belong.

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The flaw in the reasoning of the respondent court is in supposing that the rights over the land could be used for both mining and non-mining purposes *simultaneously*. The correct interpretation is that once minerals are discovered in the land, whatever the use to which it is being devoted at the time, such use may be discontinued by the State to enable it to extract the minerals therein in the exercise of its sovereign prerogative. The land is thus converted to mineral land and may not be used by any private party, including the registered owner thereof, for any other purpose that will impede the mining operations to be undertaken therein. For the loss sustained by such owner, he is of course entitled to just compensation under the Mining Laws or in appropriate expropriation proceedings.[21]

Our holding is that Benguet and Atok have exclusive rights to the property in question by virtue of their respective mining claims which they validly acquired before the Constitution of 1935 prohibited the alienation of all lands of the public domain except agricultural lands, subject to vested rights existing at the time of its adoption. The land was not and could not have been transferred to the private respondents by virtue of acquisitive prescription, nor could its use be shared simultaneously by them and the mining companies for agricultural and mineral purposes.

WHEREFORE, the decision of the respondent court dated April 30, 1976, is SET ASIDE and that of the trial court dated March 11, 1969, is REINSTATED, without any pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Narvasa, Gancayco, and *Griño-Aquino, JJ.*, concur.

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[21] Consolidated Mines Administrative Order, May 17, 1975, Secs. 10 & 11, as amended by Mines Administrative Order No. MRD-15.