# 1902 — 1985: A REVIEW OF STATE POLICY ON MINERAL LANDS AND ITS LEGAL IMPLICATIONS ON SURFACE RIGHTS UNDER PHILIPPINE LAW

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*Introduction*

The Philippine experience shows that the political history of the Philippines runs along parallel lines with the development of state policy on the treatment of mineral lands of the public domain. How such state policy affected private property rights is vastly determined by the socio-economic factors prevailing during each period of the country's history.

The regalian doctrine presently applied to mineral lands as basis for state ownership of all mineral land and mineral resources is a remnant of the Philippines' colonial past which was prevalent during the time when kings and queens claimed and fought for territories known to be rich in gold, silver and other precious stones and metals that could enrich the royal coffers of the conqueror. Although it may be said that the regalian doctrine had its origin in the remote history of the human race when mighty rulers, like the pharaohs, had power over the life and death of their subjects, had pre-emptive rights over all things existing in their domain, it cannot be definitely ascertained whether such omnipotence and absolute ownership could likewise be attributed to the pre-hispanic datus that ruled political aggrupations in the Philippines called "barangays" composed of individuals related to each other either by sanguinity or affinity. It is safe to surmise that while there could not have been a state where the concept of private property in its purest sense was recognized, neither was the regalian doctrine prevalent since the *datu* or *ayona* (chief) did not have absolute powers but was subject to the persuasive powers of the Council of Elders. At most, the prevailing concept was communal property where the people of the barangay respected each other's rights to partake of common benefits derived from harvests from communal fields and precious minerals derived from communal mineral lands to assure the survival of each member of the family that constituted the barangay.

The regalian doctrine, as the name implies, is derived from basic concepts of royalty which gave preferential and absolute powers to the ruler over their subjects and over the territory and resources of the kingdom. Mineral resources being material to the wealth of the king were invariably

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claimed for the king and he was given full and absolute ownership over mineral lands and the minerals contained therein. The regalian doctrine was applied by the king of Spain to the Philippines during the Spanish rule for three centuries in the Islands, although it has been said that the extractive industry (mining) was not fully developed in the Philippines during the Spanish times and the Philippines remained a basically agricultural economy during that time.

The coming of the Americans in 1898 had serious impact as far as state policy on mineral resources was concerned. With the Philippine Bill of 1902, there was a departure from the regalian doctrine with the introduction of the freehold system which granted title and ownership over mineral lands to private individuals who discovered and located mining claims throughout the archipelago. This can be said to be the start of a legal history that has assumed various ramifications for the past eighty-three years from 1902 to 1985 so illustrative of the socio-economic and political development of the Philippines; the interplay of public policy and private property rights arising from various attempts at stratification of property rights on the basis of physical stratification of the earth's crust as warranted under nature's law dividing the land into surface and subsurface where minerals may be found. The state policy on mineral lands also demonstrates the manner by which government seeks to balance public and private interests on the basis of what the resources of the country can do to meet specific needs of the population (e.g., agricultural development of surface) and the need of the state to have adequate resources to draw from to support its (i.e., minerals extracted and mined from the subsurface.).

### A. *Ownership and the Severability of Surface and Mineral (subsurface) Rights*

Article 37 of the Civil Code may be said to define the "physical" extent of the exercise of the rights of ownership, to wit:

> "The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation."

It is evident from this provision that there are recognized rights to the (1) surface; (2) subsurface or subsoil; and (3) space above the surface.

In commenting on this provision referring to "right to the subsurface", Justice J.B.L. Reyes said:

> "The rights to the subsurface should equally be limited to the depth reasonably required to the exploitation and utilization of the soil. Just as the Code denies to the surface owner the right to limit aerial navigation over his land, it should also refuse him any right to impede subterranean travel or mining, or the digging of underground shelters and depots

> (remember the atom bomb) with proper state authority, so long as the enjoyment of the surface or the structures thereon is not substantially disturbed. If the ownership does not extend "ad coelum", neither should it go down "usque ad inferos."[1]

Other civil law commentators affirm the same basic principle:

> "The criterion for the limit of the right to the space and subsoil is thus the economic utility which such space or subsoil offers to the owner of the subsurface. His right extends to such height or depth where it is possible for him to obtain some benefit or enjoyment, and it is extinguished beyond such limit because there would be no more interest to be protected by the law. The benefit need not be connected with the use of the surface; it may be an independent utility, but it must be actual and concrete, not remote and imaginery. To give the owner of the land unlimited right over the space and subsoil would hinder aerial navigation and tunnels for railways cannot be made through mountains where the surface is owned privately."[2]

As can be implied from the above provision, the law recognizes three distinct levels over which ownership may be exercised, to wit: (a) the surface and everything on the surface, (b) the subsurface but only as far as necessary for the owner's practical interests or to the point where it is possible to assert his dominion; (c) space above the land extending as far as he has some interest, that is, only to the point necessary for the use or enjoyment of the land itself, because as stated by a commentator, "The aerial space is not juridically a thing susceptible of private appropriation and must be considered a common thing just like the sea."[3]

B. *Mining Patents and Ownership*

A mining patent is unique in that it gives title not only to the surface of the parcel of land identified as the mining claim, but also to the right to exploit the mineral underneath. Thus, the surface virtually becomes a mere "accessory" to the subsurface mineral deposit which is the primary interest of the owner. It may rightly be said that it is unlike a Torrens Title which is understood as a title to a parcel of land measured and valued principally on the surface and therefore, subject to the confines of Article 437. A mining patent is more comprehensive in scope since in addition to surface rights, it has defined the economic value, that is, the scope and extent of the interest of the patentee to the subsoil or subsurface and its mineral content. Thus, operationally and actually, the exercise of ownership over the parcel of land or "mining claim" is severed or severable. Severability is possible because of practical and juridical limitations as established in Article 437, on the exercise of ownership over each particular physical dimension of the property, *viz.*, surface as determined by boundaries of the

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[1] 2 A. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 83 (1983).
[2] *Id.* at 84.
[3] *Ibid.*

parcel of land; subsurface, as determined by economic value or interest of the minerals found therein.

C. *Nature of a Patent as Title*

A patent perfects title to a mining claim. Without a patent, the fee belongs to the government although possession and ownership already belongs to the locator of a validly-located mining claim.

A patent, although an evidence of title to a mining claim, does not have the same qualities as a Torrens Title which vests and guarantees absolute title a given property. The prime purpose of the Torrens system as established under the Land Registration Law[4] is to decree land titles that shall be final, irrevocable, and indisputable.[5] Thus, one of the essential characteristics of a Torrens title is its "indefeasibility" with respect to the registered owner as against the rest of the world, except as to matters declared in the statute and as to burdens noted on the certificate. No title to registered land in derogation of the registered owner can be acquired by prescription or adverse possession.[6]

There is no law or case law that declares or describes a patent to be "indefeasible." It stands to reason, therefore, that while a patent grants ownership to the claimowner, unless covered by a Torrens Title, the exclusive rights and possession of the patentee, both to the surface and the minerals covered by the mining patent, can be defeated by a claim of ownership by another based on acquisitive prescription, or adverse possession. On this premise, there is reasonable ground to believe that a patentee can be deprived of his surface rights to mining claims whether or not covered by patent on the basis of prescription or adverse provision acquired by third parties.

D. *Nature of Mining Patents under the Philippine Bill of 1902*

*Gold Creek Mining Corp. v. Rodriguez and Abadilla*[7] was one of the test cases instituted to determine the status under the 1935 Constitution and the Mining Act,[8] of unpatented mining claims which were located pursuant to the provisions of the Act of Congress of 1902, a situation analogous to the present, where the regalian doctrine as reaffirmed under the 1986 Provisional Constitution and the Mining Decree[9] co-exists with "unpatented" claims located pursuant to the Philippine Bill of 1902. In both Constitutions and mining laws, alienation of natural resources, with the exception of public agricultural land, is *prohibited.*

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[4] Act No. 496 (1902).
[5] Gov't. v. Abural, 39 Phil. 996 (1919).
[6] Act No. 496 (1902), sec. 46.
[7] 66 Phil. 259 (1938).
[8] Com. Act No. 137 (1936).
[9] Pres. Decree No. 463 (1974).

The question, therefore, was "Whether the unpatented mining claim located prior to the Constitution formed part of the public domain."

The *Gold Creek* case meets squarely this issue and in essence states the following principles:

1. A valid location segregates the mining claim from the public domain.

2. Such claim becomes private property of the locator of which the government cannot deprive him.

3. Valid location grants the locator the right of exclusive possession and ownership.

4. A patent is only needed to render the locator's title *perfect.*

5. Until a patent is issued, the government holds the title *in trust* for the locators or their vendees.

6. The owner is not required to secure a patent but so long as he complies with provisions of the mining laws, his possessory right, for all practical purposes of ownership, is as good as though secured by patent.

In the *Gold Creek* case, it was ruled that 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.*"

E. *Patented/Patentable Mining Claims as "Private Property"*

It is clear from the *Gold Creek* case that a patent or a patentable claim by its valid location segregates public land from the mass of land of the public domain.

> "The legal effect of a valid location of a mining claim is not 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."[10]

As such, the land becomes private property. On this premise, as affirmed in the *Gold Creek* case, its alienation can no longer be prohibited by the subsequent adoption of the regalian doctrine under the prevailing Constitutions or the mining laws; neither are these covered by the Public Land Laws[11] nor can these be made part of other lands of reservations. As explicitly ruled in the *Gold Creek* case relative to reservations:

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[10] St. Louis Mining and Milling Co. v. Montana Mining Co., 171 U.S. 650, 655 (1898).

[11] Com. Act No. 141 (1936).

> "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 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."[12]

F. *Surface Rights*

The same case explicitly includes surface rights in the enjoyment and possession of a validly located mining claim, to wit:

> "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 rights 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."[13]

G. *Reversion of Patented Claims to the State by Legislation*

During a time when policy makers thought it expedient to increase the available disposable public land for agricultural purposes and in view of the prevalence of actual cultivation of surfaces of mineral lands by homesteaders, reversion of mineral lands as considered so that surface rights could be granted to actual occupants and titles could be issued to them pursuant to the public land law. From the point of view of land reform and social justice, for equitable distribution of wealth, and under the policy of giving land to the landless and of giving preferential rights and opportunity to acquire lands actually tilled, Parliamentary Bill No. 171 was devised to effect reversion of patented mineral lands/claims to the public domain and provide for their disposition in cases where mineral deposits have been exhausted and mining operations have ceased or been abandoned. The Minister of Justice in his opinion dated November 20, 1979 declared the constitutional difficulties that may be encountered with such kind of legislation.

Parliamentary Bill No. 171 is entitled "An Act Reverting to the Public Domain all Patented Mineral Lands/Claims, Prescribing Conditions Therefor, and Providing Provisions for Disposition." The bill, among others, provides:

> "Section 1. The provisions of any law, executive order, or regulation to the contrary notwithstanding, all patented mineral lands/claims shall revert to the public domain upon the existence of certain conditions."

[12] Union Oil Co. v. Smith, 249 U.S. 337 (1919).
[13] Noyes v. Mantle, 127 U.S. 348, 351 (1888).

"Section 2. *Conditions.* — Patented mineral lands/claims shall revert to the public domain if any of the following conditions, as determined by competent authority, exist:

(a) Exhaustion of the mineral deposits;

(b) Abandonment or cessation of mining operations."

During the deliberations on the bill, the Bureau of Mines expressed its doubts on the constitutionality of said bill in view of the ruling of the Supreme Court in the cases of *McDaniel vs. Apacible,*[14] and *Gold Creek Mining Corporation vs. Rodriguez.*[15]

The Minister of Justice whose opinion was asked, pointed out that in the *McDaniel* case, the court in declaring unconstitutional Act No. 2932, which withdrew from sale and declared free and open to exploration, location, and lease all public lands containing petroleum or other mineral oils on which no patent had been issued on the date the Act would have taken effect, stated:

"The owner of a perfected valid appropriation of public mineral lands is entitled to the exclusive possession and enjoyment against every one, including the Government itself. Where there is a valid and perfected location of a mining claim, the area becomes segregated from the public domain and the property of the locator.

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"Even without a patent, the possessory right of a qualified 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 Government, and it is capable of transfer by conveyance, inheritance, or devise."

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"The discovery of minerals in the ground by one who has a valid mineral location perfects his claim and his location not only against third persons, but also against the Government. A mining claim perfected under the law is property in the highest sense of that term, which may be sold and conveyed, and will pass by descent, and is not therefore subject to the disposal of the government."

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"From all of the foregoing arguments and authorities we must conclude that inasmuch as the petitioner had located, held and perfected his location of the mineral lands in question, and had actually discovered petroleum oil therein, he had acquired a property right in said claims; that said Act No. 2932, which deprives him of such right, without due process of law, is in conflict with Section 3 of the Jones Law, and therefore unconstitutional and void."

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The Minister's opinion likewise relied on the *Gold Creek* case. In the *Gold Creek* case, the question at issue was whether unpatented mining claims which were located under the provisions of the Act of Congress of July 1, 1902, formed part of the public domain on November 15, 1935,

[14] 42 Phil. 749 (1922).

[15] 66 Phil. 259 (1938).

the date of the effectivity of the 1935 Constitution, Article XIII of which prohibited the alienation of natural resources. The Court answered the question in the negative, stating:

> "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. . . . 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.*
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> "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.... It is not disputed that the location of the mining claim 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,* a valid location of a mining claim segregated the area from the public domain."
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> "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 location.' x x x "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 enjoyment of all the surface ground as well as of all the mineral within* the lines of claim, except as limited by the extra-lateral rights of adjoining locators; and *this is the locator's right before as well as after the issuance of the patent."* (Emphasis supplied.)

Accordingly, those mining claims which had been validly located when the 1935 Constitution went into effect were as of that date already segregated from the public domain and had become the property of the locator, so that they were no longer within the purview of the provision in the same Constitution prohibiting the alienation of natural resources. As the property of the locator, any such mining claim thenceforth would come within the coverage of the guarantees afforded to private property by both the 1935 Constitution, such as the guarantee against a person being deprived

of property without due process of law[16] and the guarantee against the taking of private property for public use without just compensation.[17]

It was therefore the Ministry's view on the basis of the foregoing premises, that Section 2 of Parliamentary Bill No. 171, in providing for the reversion to the public domain of patented mineral lands/claims under the conditions mentioned therein, would in effect cause the patent holders of such mineral lands/claims to be deprived of their property without the due process of law and would amount to the taking of such property by the State without just compensation, in violation of the above-mentioned constitutional provisions.

The opinion ended with a clarificatory note which stressed that the foregoing conclusion applies only to those mining claims which had been validly located and/or patented under the Act of U.S. Congress of July 1, 1902 or before the 1935 Constitution went into effect because these were the only mining claims which would be deemed to have become private property. Thenceforth, or upon the effectivity of the 1935 Constitution which expressly declared that *all mineral lands* of the public domain and minerals and other natural resources belong to the State and prohibited their alienation,[18] mineral lands and minerals have become no longer subject to private acquisition.

H. *Reversion of Patentable Claims*

As early as 1922, in the case of *McDaniel vs. Apacible*[19] the Philippine Supreme Court, relying on American authorities, upheld the rights of the locator who located mining claims under the Philippine Bill of 1902, even if these were not yet patented or more simply "patentable claims." Thus, the Court stated:

> "The general rule is that a perfected, valid appropriation of public mineral lands operates as a withdrawal of the tract from the body of the public domain, and so long as such appropriation remains valid and subsisting, the land covered thereby is deemed private property. A mining claim perfected under the law is property in the highest sense, which may be sold and conveyed and will pass by descent. It has the effect of a grant (patent) by the United States of the right of present and exclusive possession of the lands located. And even though the locator may obtain a patent to such lands, his patent adds but little to his security. (18 Ruling Case Law, p. 1152 and cases cited.)
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> "The owner of a perfected valid appropriation of public mineral lands is entitled to the exclusive possession and enjoyment against every one, including the Government itself. Where there is a valid and perfected location of a mining claim, the area becomes segregated from the public domain and the property of the locator."

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[16] CONST., art. IV, sec. 1; CONST. (1935), art. III, sec. 1(1).
[17] CONST., art. IV, sec. 2; CONST. (1935), art. III, sec. 1(2).
[18] CONST., art. XIII, sec. 1.
[19] 42 Phil. 749 (1922).

The act of disvoery of mineral and perfection of the claim under the law gives proprietory rights to the locator.

> "The discovery of minerals in the ground by one who has a valid mineral location perfects his claim and his location not only against third persons, but also against the Government. A mining claim perfected under the law is property conveyed, and will pass by descent, and is not therefore subject to the disposal of the government. (Belk vs. Meagher, 104 U.S., 279, 283; Sullivan vs. Iron Silver Mining Co., 143 U.S., 431; Consolidated Mutual Oil Co. vs. United States, 245 Fed. Rep., 521; Van Ness vs. Rooney, 160 Cal., 131, 136, 137.)[20]

It is a property right that can hold even against the government and the owner cannot be unduly deprived of his property without due process of law.

> "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 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 on 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, 160 Cal., 131; 27 Cyc., 546.)"[21]

Such exclusion from the public domain of "patentable" mining claims located under the Philippine Bill of 1902 was further confirmed in the case of *Comilang vs. Buendia.*[22]

One will note that the *McDaniels* case arose in connection with a law, Act No. 2932 which took effect on August 31, 1920, passed by the Philippine legislature declaring open for lease lands containing petroleum deposits.

It will also be noted from the provisions of said Act No. 2932 that "all public lands containing petroleum, etc., on which no patent, at the date this Act takes effect (August 31, 1920), has been issued, are hereby withdrawn from sale and are declared to be free and open to exploration, location and lease," with a preference, however, in favor of those who had theretofore filed claims for such lands. It will be further noted from the provisions of said Act, that "all public lands containing petroleum, etc., are hereby withdrawn from sale and are declared to be free and open to exploration, location and lease," without any preference to any claim or right which citizens of the Philippine Islands or the United States had theretofore acquired in any public lands, and that the only right left to

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[20] *Id.* at 755.
[21] *Id.* at 756.
[22] G.R. No. 24757, October 25, 1967, 21 SCRA 486 (1967).

them is one of "preference," and that even the preference was limited for a period of six months from the 31st day of August, 1920.

Upon the foregoing facts the petitioner contended that said Act No. 2932, in so far as it purports to declare open to lease, lands containing petroleum oil on which mineral claims have been validly located and held, and upon which discoveries of petroleum oil have been made, is void and unconstitutional, in that it deprives the petitioner of his property without due process of law and without compensation.

The issue raised in the *McDaniel* case paved the way to the ruling on the legal status of patentable claims under the Philippine Bill of 1902 in the light of a law withdrawing such property right and reverting it to the state which can only lease the property to qualified individuals.

The *McDaniel* case is closely analogous to the legal situation created by the passage of Presidential Decree No. 1214 promulgated on October 14, 1977 which reverts the patentable mining claims to the public domain by reducing them to the level of mineral lands disposal only by lease under Presidential Decree No. 463 under the regalian doctrine adopted in the 1935 and 1973 Constitutions of the Philippines, to wit:

> "SECTION 1. Holders of subsisting and valid patentable mining claims, lode or placer, located under the provisions of the Act of Congress of July 1, 1902, as amended, shall file a mining lease application therefor with the Mines Regional Office concerned with a period of one (1) year from the approval of this Decree, and upon the filing thereof, holders of the said claims shall be considered to have waived their rights to the issuance of mining patents therefor: Provided, however, That the non-filing of the application for mining lease by the holders thereof within the period herein prescribed shall cause the forfeiture of all his rights to the claim."[23]

The above section should be read togther with Sec. 97 of Presidential Decree No. 463, known as the "Mineral Resources Development Decree of 1974" which states:

> "SECTION 97. Recognition and Survey of Old Subsisting Mining Claims. — All mining grants, patents, locations, leases and permits subsisting at the time of the approval of this Decree shall be recognized if registered pursuant to Section 100 hereof; Provided, That Spanish Royal Grants and unpatented mining claims located and registered under the Act of the United States Congress of July 1, 1902, as amended, otherwise known as the "Philippine Bill", shall be surveyed within one (1) year from the approval of this Decree: Provided, further, That no such mining rights shall be recognized if there is failure to comply with the fundamental requirements of the respective grants: And provided, finally, That such grants, patents, locations, leases or permits as may be recognized by the Director after proper investigation shall comply with the applicable provisions of this Decree, more particularly with the annual work obligations, submittal of reports, fiscal provisions and other obligations."

[23] Pres. Decree No. 1214 (1977), sec. 1.

It is very important that patentable claims are still recognized as property rights, although certain conditions to maintain their validity will have to be performed.

There is a case questioning the constitutionality of Presidential Decree No. 1214 pending with the Supreme Court which issued an order restraining the Minister of Natural Resources and Bureau of Mines from enforcing and implementing the law against Sta. Rosa Mining Co., Inc., the petitioner.

It is to be expected that the petitioner will have to rely on the authority of the same cases of *McDaniel v. Apacible,* and *Gold Creek* — all cases leaning towards the superior status of private property rights over the power of the state to determine the use and disposition of lands and minerals within Philippine territory.

## I. *Surface Rights and Recent Developments*

### (1) *The Regalian Doctrine*

The regalian doctrine of the Constitution and laws implementing this doctrine, is evidence of the juridical acceptability of separate titles for each level of land in favor of different owners. Thus, under the old and the new Constitutions, the minerals belong to the state, but the surface over these minerals, if falling under the class of "alienable public lands" or "private lands" could very well belong to persons other than the state. In cases of lands of the public domain, which are mineralized zones, *both* the surface and the subsurface belong to the state, but the state may at any time declare the surface as disposable public lands which are open for acquisition to qualified citizens.

The case of a parcel of land covered by a mining patent is *no different* from the state owning the surface and subsurface mineralized area or a case where the surface is owned by private persons with the state retaining ownership of the subsurface minerals. In the case of patented mining claims, the claimowner is owner of *both* the surface and the subsurface mineralized area. If these are severable levels as illustrated above, it stands to reason that the owner could segregate his title to the surface from that of the subsurface.

#### *Presidential Decree No. 1214 severability of title*

Lateral severability of property rights is further affirmed under Presidential Decree No. 1214. There is an attempt at segregating surface rights and mineral rights to unpatented (patentable) claims. There are, however, constitutional objections to this Presidential Decree No. 1214 which deserve serious consideration such as (a) impairment of vested rights as affirmed in the *Gold Creek* case discussed above, considering the rights to the claim vests upon valid location *not* upon issuance of a patent; (b) enforced waiver

of the claimant's rights to the issuance of mining patents under penalty of forfeiture which amounts to a "deprivation of property without due process of law."

As discussed above, the trend seems to be towards the segregation of title for both surface and subsurface of mineral lands, the latter being covered by the regalian doctrine under the present Constitution of the Philippines. There is, however, a problem with respect to patented or patentable mining claims located with the Philippine Bill of 1902 which granted title and ownership both the surface and subsurface of the claims.

The segregation of title may become necessary when the owner of the mineral lands want to develop the surface separately from the subsurface, not as a mineral property but for a purpose not connected with mining operations and development. It is, therefore, an added convenience if the surface is covered by a separate title, apart from the mineral subsurface rights which is all consolidated in one patent previously issued pursuant to the Philippine Bill of 1902.

(2) *Patented Claims*

It is quite ironic that the very anchor of our claim to surface rights, i.e., the principle of "private proyerty," the land being segregated from the public domain, hence, no longer covered by restrictions of the Constitution, the Public Land Laws, reservations, etc., would be the very basis for the principle which could defeat a claimowner's right to the surface as private property.

It is a recognized rule that "all things which are within the commerce of men are susceptible of prescription, unless otherwise provided by law." The pertinent exceptions are: (1) Property of the state or any of its subdivision not patrimony in character;[24] (2) Lands registered under the Torrens System.[25] While it is true that prescription does not lie against the government by express provision of law[26] possession of public lands because of an imperfect or incomplete title may be the basis of registrable title.[27] The basis would be open, continuous, exclusive and notorious possession with a bona fide claim of ownership.[28]

A patent/patentable mining claim being no longer a part of the public domain and neither a title acquired under the Torrens System, is "private property" which could be acquired by acquisitive prescription in favor of third parties complying with all requirements provided by law for prescription to lie against an existing claimant/owner possessor or title holder.

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[24] CIVIL CODE, art. 1113.
[25] Act No. 496 (1902), sec. 46.
[26] Act No. 926 (1903), sec. 54(6); Act No. 2874 (1920), sec. 45; and Com. Act No. 141 (1936), sec. 57.
[27] Com. Act No. 141 (1936), sec. 48.

Although a Patent is for all intents or purposes a *perfect title*, nonetheless, it can be defeated by prescriptive title in favor of another. As stated in *Arnedo Cruz v. de Leon*:[29]

> "By abandonment, negligence or carelessness, owners provided with the most perfect titles may be deprived and dispossessed of their properties by *usurpers*, who by the lapse of the time specified by law, acquire the same by prescription."

As discussed above, a patent perfects title to a mining claim, and not the Torrens Title itself. But such patent is the *basis* for obtaining a Certificate of Title (Torrens Title) under Sec. 122 of the Land Registration Act (LRA).

Claims may be covered by certificates of title under the Torrens System by being registered under the LRA. This could be done under Section 22 of the Act which states:

> "The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall take effect as contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and effect the land, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate an downer's duplicate, such land shall be registered land for all purposes under this Act."

In order for a patent to acquire the qualities of a Torrens Title, it should be *registered* under the LRA pursuant to the provisions of Section 122 which states:

> "Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands."

If the mining claim covered by a mining patent is brought within the provisions of the LRA, then Section 46 protecting the registered owner from acquisitive prescription or adverse possession of third parties will apply. The title to the claim becomes "indefeasible."

It is noted that most, if not all patented claims are likewise covered by Certificate of Title (OCT or TCT) per registration pursuant to Section 122 of the LRA above cited. For surface areas covered by Mining Patents registered under Section 122 of the LRA, the legal problem posed relating to acquisitive and adverse possession in favor of third persons will not

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[28] Susi v. Razon, 48 Phil. 424 (1925); Gov't. v. Adelantar, 55 Phil. 703 (1931); Gov't. v. Abad, 56 Phil. 75 (1931); see PONCE, THE PHILIPPINE TORRENS SYSTEM 182-83 (1964).

[29] 21 Phil. 199 (1912).

"in theory exist." Note that presently land registration will be done pursuant to Presidential Decree No. 1459.

If there are surface areas of patented (registered) claims on which a Torrens Title has been issued in favor of another, such Torrens Title is null and void. It cannot be indefeasible.[30] The claimowner can, therefore, assert its right as an original title holder even as against a Torrens Title issued subsequent to its own. The case of *Legarda v. Saleeby* is in point:

> "May the purchaser of land which has been included in a "second original certificate" ever be regarded as an "innocent purchaser", as against the rights or interest of the owner of the first original certificate, his heirs, assigns, or vendee? The first original certificate is recorded in the public registry. It is never issued until it is recorded. The record is notice to all the world. All persons are charged with the knowledge of what it contains. All persons are dealing with the land so recorded, or any portion of it, must be charged with notice of whatever it contains. The purchaser is charged with notice of every fact shown by the record and is assumed to know every fact which the record discloses. This rule is so well established that it is scarcely necessary to cite authorities in its support. (Northwestern National Bank vs. Freeman, 171 U.S., 620, 629; Delvin on Real Estate, sections 710, 710 [a])."[31]

(3) *Patentable Claims*

With respect to "patentable" mining claims, such segregation might not be too easy.

The *Gold Creek* case recognizes the right of possession and ownership of a locator of a mining claim from the moment of its valid location in accordance with law. Such rights extend to both minerals (subsurface) as well as the *surface,* in accordance with the freehold system established under the Philippine Bill of 1902. A patent merely perfects an otherwise imperfect title to the property. An unpatented claim is, therefore, property although title thereto is still imperfect by reason of the lack of a patent issued in favor of a claimowner by the government.

It may be assumed that the lack of patent is due not to the fault of the claimowner but to delays attributable to government. If it can be said that the issuance of a patent is *ministerial* on the administrative official concerned, after the applicant has complied with everything the law requires of him, then a writ of *mandamus* could lie against the official concerned to compel him to issue the patent. *A contrario,* however, it may be argued, quite strongly, that the task is not merely ministerial but requires an exercise of discretion and judgment in determining whether or not the applicant is qualified and entitled to a patent considering the facts attendant to each application, e.g., validity of the location; compliance with requirements

[30] Legarda v. Saleeby, 31 Phil. 590 (1915); Reyes v. Borbon, 50 Phil. 791 (1927); Hodges v. Dy, Buncio and Co., G.R. No. 16096, October 30, 1962, 11 SCRA 729 (1962).

[31] 31 Phil. 590 (1915).

such as annual assessment work and payment of fees; absence of overlapping/conflicting claims, etc. In which case, *mandamus* is not proper.

Although the *Gold Creek* and *McDaniel* cases affirm the subsurface right of a locator upon a valid location of claims, it is unlikely that a separate title over the surface can be obtained on this basis alone, because of the following considerations:

a) Surface right is linked with mineral rights or deemed an accessory to the principal source of the title — the mineral rights. As such, the logical course of action of agencies responsible for land titling is to await the issuance of the mining patent which may be deemed as the "mother" title. Without the latter, it is unlikely that the accessory title should precede the principal.

b) Unpatented mining claims are segregated from the public domain from the moment of valid location (*Gold Creek* case) as these are private property. The surface areas could be occupied by third parties who may acquire the area on the basis of possession and acquisitive prescription within the period prescribed by laws. This is the prime consideration behind Pres. Decree No. 1214.

c) Because of possible existence of circumstances described in b) above, certificates of title over the surface areas will likely be issued *not* only on the basis of prior mineral rights under a freehold system of the Philippine Bill of 1902. The title will be premised on such right *coupled* with actual possession, open and adverse occupancy of the area to the *exclusion* of third parties and the rest of the world.

d) The government will surely object particularly when surface areas are included as part of a reservation (forest, etc.) or areas which had been treated or dealt with in prior years as part of the public domain, (*without any objection of the claimowner*) such that it granted certain licenses/concessions over such surface areas like pasture leases, timber/forest concessions or even homestead, free patent, etc. to actual occupants or tillers of the surface. The inaction or lack of objection of the claimowner could be interpreted as grounds for laches, estoppel, waiver of surface rights allowing acquisition by prescription of the surface areas in question.

4) *Severability of Title under more recent case law*

While the *McDaniel* and *Gold Creek* cases remain as authority for vested rights acquired under the freehold system for mineral properties introduced by the Americans under the Philippine Bill of 1902, a more recent case has more definitely established the distinction between surface rights and mineral rights (subsurface) and admits more clearly the possibility of separate titles for the surface, apart from the mineral land title (patent) both of which were originally held by the claimowner.

In *Comilang v. Buendia,*[32] the claimowner, Nicolas Comilang staked a mining claim in 1908 with an area of 76,809 sq. meters. Several of the claimowner's relatives settled on the surface area of the mining claim. A portion of 1-1/2 hectares was later confirmed as belonging to Marcos Comilang who declared the area for tax purposes in his name. This parcel of land was later sold to a third party at an execution sale. Subsequently, the claimowner was issued his patent over the mineral claim. On the basis of the *Gold Creek* and *McDaniel* cases, Marcos Comilang disclaimed the validity of the sale of portions of the surface to third parties at public auction. The Supreme Court in ruling on the validity of the separate disposition of the surface declared:

> "There is no room for doubt, therefore, that the right to possess or own the surface ground is separate and distinct from the mineral rights over the same land. And when the application for lode patent to the mineral claim was prosecuted in the Bureau of Mines, the said application could not have legally included the surface ground sold to another in the execution sale. Consequently, We have to declare that the patent procured thereunder, at least with respect to the 1-1/2 hectares sold in execution, pertains only to the mineral right and does not include the surface ground of the land in question."[33]

The segregation of title over the surface apart from the patent over the mineral property affirmed in the *Comilang* case allows the issuance of separate titles, one for the surface and another for the subsurface minerals.

> "Said vested rights include the ownership of both the minerals and the surface ground; that such was the locator's right before as well as after the issuance of the patent; and that such was vested property although fee remains in the Government until patent issues. Such vested right of herein appellant passed to the appellees under the sale on execution aforementioned of the 1-1/2 hectares portion of the mineral claim. The subsequent issuance of the Lode Patent to the entire area of the Bua Mineral Claim did not militate against that acquired rights, for Sec. 45 of the Philippine Bill of 1902 expressly provides that nothing in said Act shall be deemed to impair any lien which may have attached in an way whatever prior to the issuance of the patent. Moreover, it is significant to note that the very Lode Patent No. V-24 aforementioned expressly declares on its face that "the mining premises hereby conveyed shall be held subject to all vested rights and accrued rights", the legal import of which is that the patentee Marcos Comilang, shall hold the 1-1/2 hectares portion of the area embraced in the patent as described in the Tax Declaration No. 4771, in trust for the appellees."[34]

This is the implication in the light of the fact that the patentee was originally the owner of both the surface and the mineral property but because of the writ of execution issued against him, his "surface" property was sold to a third party at public auction. With the subsequent issuance of the mining lode patent, his title related to the entire property, except such

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[32] G.R. No. 24757, October 25, 1967, 21 SCRA 486 (1967).
[33] *Id.* at 493-94.
[34] *Id.* at 494.

portion pertaining to the buyer at the execution sale. This necessarily *implies* that such third party could secure a separate title to his surface right segregated from the patent of his predecessor-in-interest.

*Concluding Statement*

a) *Claim Ownership*

On the basis of the *Gold Creek* and *McDaniel* cases decided by the Supreme Court, patented and patentable claims located under the Philippine Bill of 1902 are private property of which a claimowner cannot be deprived of without breach of the constitutional right to due process. This case law was used as the basis of the Minister of Justice in affirming the unconstitutionality of a Batasan bill reverting *patented* claims to the public domain, even if the mining operations have ceased or been abandoned. With respect to *patentable* claims, Pres. Decree No. 1214 was promulgated reverting these claims to the public domain which can be leased from, but not sold by, the government. This has been questioned as unconstitutional in a pending case involving Sta. Rosa Mining Company and its Paracale mining claims.

b) *Surface Ownership*

Ownership of the surface of a *patented* claim would be settled in the claimowner's favor, if the claimowner's ownership is covered by a Torrens Title under the Land Registration Act, which grants "indefeasible" title. Third parties cannot acquire rights to the property covered by a Torrens Title by "prescription."

It would be different with *patentable* claims. Since they are *not* yet covered by a patent or a Torrens Title, it is possible for third parties to acquire title to the surface by actual occupancy of such nature that meets the requirements of "prescription." Examples are certain agricultural lands (surface areas) of the Sta. Rosa claims in Paracale, over which several third parties have been issued homestead patents or free patents by the government. In these instances, the latter title to the surface area should prevail.

c) *Surface Development/Subdivision Into Lots*

Considering the legal stratification which is in harmony with the physical segregation of land, into surface and subsurface, there is basis for a horizontal titling (one title for the subsurface; the other for the surface) which will facilitate the break up of the surface title into several titles corresponding to a subdivision plan (as is a practice in land development). There is strong legal basis for this under the *Comilang v. Buendia* case.

The above suggested horizontal segregation is a better alternative to a break-up of the title, at the outset, because the latter would result in a vertical subdivision (top to bottom) of the property and subsequent buyers

acquiring the title (as subdivided) would, technically and legally, have corresponding mineral rights to that portion covered by the title.

With respect to *patentable* claims, in the light of Pres. Decree No. 1214 and recent trends towards land distribution to a greater mass of the population, one can no longer expect *patents* to be ever issued. To protect *surface rights,* it is best to undertake separate titling of the surface on areas over which the claimowner can claim actual occupancy as warranted under existing land registration laws. Absent such actual posession and control, the claimowner's claim over the surface can not hold against actual tillers and homesteaders occupying the surface adversely to claimowner's claim.

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