

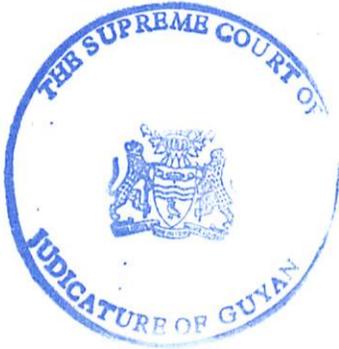
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2007

No. 124/07-M

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL JURISDICTION



In the matter of an application
by **MARJORIE ROCKE** for
Writs of Certiorari and
Prohibition

Mr. N. A. Boston for the Applicant

Mr. Fitz Peters for the Respondent

Coram: Mr. Justice Franklin D. Holder

Decision

The Applicant is the holder of four Prospecting Permits – medium Scale Operation numbered GS 8: R 190/000/05, GS 8: R 190/001/05, GS 8: R 190/003/05 and GS 8: R 190/004/05.

These permits were issued to the applicant by the Guyana Geology and Mines Commission in respect of the lands described in each permit. At all material times the permits were extant.

The permits allowed the applicant to prospect for gold and precious stones on the lands described in the permits, save and except all lands lawfully held and occupied.

The applicant alleges that the lands described in the permits were published in the Official Gazette as being open for location on the 13th day of August, 2005. However, this is not admitted by the respondent. The application to the Guyana

Min of Regulation

Geology and Mines Commission for the permits were made on the 17th day of August, 2005 which is four days after the publication in the Official Gazette.

The applicant avers that she has issue with the respondent and one Devon Prince in relation to the lands described in permits Nos. GS 8: R – 190/003/05 and GS 8: R – 190/004/05. Both permits were issued on 14th November, 2005.

It is the applicant's contention that sometime in April, 2006 Devon Prince purported to locate claims on parts of the lands enclosed in the two permits. The offending claims were given the names Lil Girl and Lil Girl 1.

A complaint in respect of this transaction by Prince was made by the applicant in the form of a letter dated 29th April, 2006 addressed to the Commissioner of Guyana Geology and Mines Commission.

In this judgement I propose to deal firstly with the order or rule nisi of Certiorari granted.

In this regard an issue for consideration is whether the order or rule nisi called on the proper functionary to show cause why a decision purportedly made on the 2nd day of July, 2007 under Regulation 98 of the Mining Regulations of the Mining Act No. 20 of 1989 to issue cease work on the claims Lil Girl and Lil Girl 1, being on the left bank of the Cuyuni River, West Bank of the Arank River and being on both banks of the White Water Creek should not be quashed on the grounds that the decision was arbitrary, unreasonably in bad faith, capricious, irrational and in breach of natural justice.

The order or rule nisi was directed to the Guyana Geology and Mines Commission, a body corporate established by Section 3 of the Guyana Geology and Mines Act 1979 and by Section 30 (1)(b) of the Interpretation and General Clauses Act Cap 2:01 it is liable to be sued in its corporate name.

There is no evidence before this Court establishing that the Guyana Geology and Mines Commission made a decision on the 2nd day of July, 2007 under Regulation 98 of the Mining Regulations of the Mining Act No. 20 of 1989 to issue a cease work order on claims Lil Girl and Lil Girl 1. However, it is the

Guyana Geology and Mines Commission which is called on to show cause by the order/rule nisi of certiorari.

There is no document exhibited on the Affidavit In Support Of Motion which could have provided evidence as to who exactly made the impugned decision. The person or functionary making the decision is important in the context of proceedings of this nature where the applicant seeks the remedy of Certiorari.

At paragraph 52 there is a short statement, "That on the 22nd day of July, 2007 I received from the Commissioner an order to cease work on claims Lil Girl and Lil Girl # 1 dated the 2nd day of July, 2007 by the 5th day of July, 2007". And at paragraph 21 of the Respondent's Affidavit in Answer there is admission to some extent of the averments made in paragraph 52.

In understand from paragraph 52 that the applicant was handed a document by the Commissioner dated 2nd day of July, 2007 which commanded her to cease work on claims Lil Girl and Lil Girl # 1 by the 5th day of July, 2007.

There is no evidence of who or which entity made the decision to issue such an order, whether it was the Guyana Geology and Mines Commission, the Commissioner of Geological Surveys and Mines, someone appointed by the Commissioner, a mines officer or any employee of the Guyana Geology and Mines Commission. Neither is there any evidence before me that the decision was made pursuant to Regulation 98 of the Mining Regulations.

It is only in the rule nisi of Certiorari there is a statement that the decision was made under Regulation 98 of the Mining Regulations of the Mining Act No. 20 of 1989. And at paragraph 64 of the Affidavit In Support of Originating Motion there is an averment made on advise of the applicant's Attorney-at-Law that before a mines officer exercises his or her power under Regulation 98 of the Mining Regulations to order cease work he should have a good reason to do so.

Regulation 98 prescribes as follows:-

The Commissioner, officer appointed by him or the mines officer may, where it appears to him absolutely necessary to do

so for the maintenance of the public peace or for the protection of the interests of the State or of private persons, order that all work shall cease on a claim, either generally or by any particular person or persons and thereupon work shall be discontinued accordingly.

The Regulation names specific functionaries who can exercise the power to issue an order to cease work after that functionary would have brought his or her own deliberate judgement to bear on the facts and circumstances presented.



This is not a vicarious power but one specifically vested in each of the named functionaries. Therefore where a cease work order is issued pursuant to Regulation 98 by one of the functionaries named therein he or she is doing so in that specific capacity and not simply in the capacity of an employee of the Guyana Geology and Mines Commission even though he or she may be so employed. Further pursuant to Section 5(1) of the Mining Act No. 20 of 1989 for the purposes of the Act, which would include Regulations made thereunder the relevant Minister is empowered to designate not only employees of the Guyana Geology and Mines Commission mines officers but may designate a public officer or any other person employed by the government a mines officer. This reinforces my view that when a mines officer exercises his powers pursuant to Regulation 98 he exercises a vested power and not a vicarious one as an employee of anyone or entity.

It is important to note that the Guyana Geology and Mines Commission which was only established in 1979 as a body corporate is not named as an entity which may issue a Cease Work Order under Regulation 98. And the Mining Regulations more specifically Regulation 98 which were made before the Guyana Geology and Mines Commission was established as a body corporate were never amended to vest in the Guyana Geology and Mines Commission the power to issue cease work orders in the particular circumstances and for the specified purposes.

Now because of the nature of a rule nisi of Certiorari which must call on the person who made the decision to show cause it means in my judgement that where a Cease Work Order purports to be issued pursuant to Regulation 98 the person to

be called on to show cause must be one of the named functionaries vested with the power to issue the order and who did issue the order.

In my judgement the Guyana Geology and Mines Commission has no power to issue a Cease Work Order under Regulation 98 and there is no evidence that it did so either.

Therefore in the instant case if the impugned decision to issue the order to cease work was made by one of the functionaries named in Regulation 98 of which there is no evidence, the Guyana Geology and Mines Commission is not the proper party to be called on to show cause. However, the Court may still order that an order nisi which calls on the proper party to show cause be served on the Guyana Geology and Mines Commission who at their option may file an Affidavit in Answer against the rule nisi being made absolute.

In the premises since there is no evidence that the Guyana Geology and Mines Commission made a decision to issue a cease work order pursuant to Regulation 98 in as much as the Guyana Geology and Mines Commission has no such power under Regulation 98 and there is no evidence informing this Court who exactly made the decision to issue the cease work order even if it was made by one of the named functionaries in Regulation 98 in my view it was inappropriate and wrong for the order or rule nisi of certiorari to call on the Guyana Geology and Mines Commission to show cause.

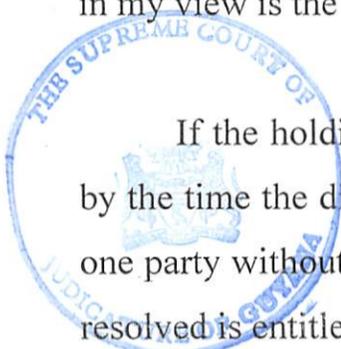
For the forgoing reasons I would discharge the rule nisi of Certiorari. However, assuming that I am wrong I do not find on the evidence presented by the Applicant that the decision to issue the cease work order was made in breach of any of the principles of natural justice. Neither do I find that the decision was irrational, unreasonable and capricious and was made in bad faith.

A reading of the Affidavits filed on behalf of both parties informs me that there was a dispute relative to certain claims including Lil Girl and Lil Girl 1. Whether the applicant filed a complaint in the prescribed manner and what are the consequences if she did not I will not rule on. However, it is quite clear to me that there were attempts by the Commissioner right up to the filing of these proceedings

to resolve the dispute. Again whether it was being done in the prescribed manner I will not rule on.

It is also clear to me is that whatever steps were being taken by the Commissioner to resolve the dispute including the issuing of the cease work order complained of was not done in an arbitrary and capricious manner, neither in my view was anything being done or was done in bad faith, in excess of jurisdiction and in breach of natural justice.

Minerals are not inexhaustible resources and if there is a dispute relative to who is entitled to its extraction it seems to me only reasonable and rationale that a halt be put to its extraction while the dispute is resolved by some fair process. This in my view is the purpose for which Regulation 98 was enacted.



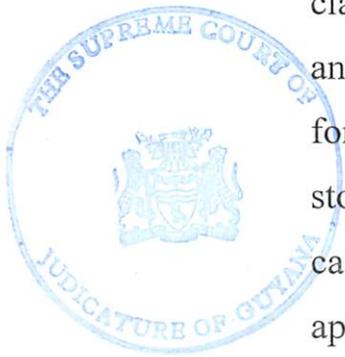
If the holding process as provided for by Regulation 98 is not effected then by the time the dispute is resolved all the real objects of the dispute may be lost to one party without the possibility of recovery by the party who it may eventually be resolved is entitled to them.

It was the applicant who brought to the attention of the Guyana Geology and Mines Commission the dispute and who was either present in person or represented at the meetings to have the issues resolved. In my view the applicant has no genuine complaint of not being treated fairly relative to the issue of the cease work order which in effect serves as a holding process while the dispute is resolved.

In respect of the application for a writ of Mandamus, counsel for the applicant in his submissions states that the jist of the applicant's complaint was that Devon Prince, who is not a party to these proceedings, did not comply with Regulation 14(1) of the Mining Regulations. This Regulation states as follows:-

Every person who locates a claim shall within a reasonable time after such location, and in any case not more than three months thereafter, or in localities where the mines officer's office is readily accessible, such shorter reasonable period as the Commissioner may

declare by notice in the Gazette, file or cause to be filed at the office of the mines officer or at the office of the Department of Geological Surveys and Mines in Georgetown, a notice in duplicate in Form 3 or in the case of a river location in Form 4, in the First Schedule, stating the name of the person for whom the location is made, the name of the person actually locating, the names of the witnesses in whose presence the location was made, the date of the location and such a description of the ground located and its situation as will enable the claim to be identified by the mines officer together with an application in writing in Form 5 in the said Schedule for a licence to mine for gold or to mine for precious stones, or to mine for gold and precious stones as the case may be, and shall pay for filing such notice and application the fee specified in the Second Schedule together with the fee for a claim licence and if such application and notice be not filed as required with the amount payable, the location shall be null and void and thereafter any person may locate a claim in respect of the same land:



Provided that the person whose location is annulled by this regulation shall not re-locate the claim without the permission in writing of the Commissioner of mines officer previously had and obtained.

There is nothing or no cogent evidence in the applicant's Affidavit in Support of Motion to establish that Devon Prince did not comply with Regulation 14(1). It is the respondent who on the other hand has produced evidence to show that Devon Prince did comply with the provisions of Regulation 14(1). There is nothing in the notices of location and applications for claim Licence exhibited as "E1-4" in respect of the claims Lil Girl and Lil Girl No. 1 to convince me that Devon Prince did not comply with Regulation 14(1) of the Mining Regulations.

A reading of paragraphs 55 and 57 of the applicant's Affidavit In Support of Motion informs me that the applicant obtained the rule nisi of mandamus in its present form on the basis of the allegations made in these two paragraphs.

I understand the substance of the allegation in those two paragraphs to be that there is no true record of any applications for claim licences and notices of location of claims filed by Devon Prince in compliance with the time fixed by the Regulation No. 14(1).

The time fixed by Regulation 14(1) for filing applications for claim licences and Notices of location as I construe it is, "within a reasonable time after location being not more than three months thereafter".

There is no allegation in the Affidavit in Support of Motion neither is there any evidence that the filing fees for the notices and fees for claim licences were not paid at the time of filing. Counsel cannot now make such an assertion in his submissions as a ground for the order nisi being made absolute. In any event there is nothing on the record to convince me that the fees were not paid and were not paid in accordance with Regulation 14(1).

Copies of both notices of location of claim in respect of Lil Girl and Lil Girl 1 exhibited on the Respondent's Affidavit in Answer state that the claims were located on the 15th August, 2005 and are dated 15th August, 2005. The copies of the applications for licence in respect of both claims are dated 15th August, 2005. There is nothing to persuade me that the copies of the notices of location of claim and applications claim for licence in respect of the claims Lil Girl and Girl 1 are not authentic.

There is a Guyana Geology and Mines Commission stamp on both applications with the date 7th October, 2005 which informs me that the application for licence along with the notices of location of claim were received at the offices of the Guyana Geology and Mines Commission within three months of location as prescribed by Regulation 14(1).

In the premises I find there has been no failure on the part of the Guyana Geology and Mines Commission or the Commissioner to perform any public duty

under the Mining Regulations whereby the Commissioner is required to declare the claims Lil Girl and Lil Girl 1 null and void for failure of Devon Prince to comply with Regulation 14(1).

In the premises both rules/orders nisi of certiorari and mandamus are discharged.



Franklin D. Holder
Puisne Judge

Dated this 25th day of March, 2011

