

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CONSTITUTIONAL AND ADMINISTRATIVE DIVISION/JURISDICTION



In the matter of an application by WAYNE VIEIRA for Writs/Orders of Certiorari and Mandamus.

BEFORE:

HON. MR. JUSTICE IAN CHANG – CHIEF JUSTICE (ag.)

Mr. Rex Mc Kay, S.C with Ms. Jamela A. Ali for the Applicant.

Mr. Ralph Ramkarran, S.C with Mr. Kamal Ramkarran for the named Respondent.

HEARD ON:

2013

JANUARY 4

FEBRUARY 27

DECISION

On the 3<sup>rd</sup> January 2013, the applicant, Wayne Vieira, by way of Notice of Motion, applied to the Court for the following reliefs:

- “(1) *An order or rule nisi of Certiorari directed to the Geology and Mines Commission to remove into the High Court all documents, books, papers and other matters used and considered by the Guyana*



*Geology and Mines Commission in respect of its decision not to renew the applicant's Mining Permits Nos. 23/01, 24/01, 25/01 and 47/98 situate at Tassawini, North-West, and show cause why the said decision should not be quashed on the grounds that the said decision was made in bad faith, unreasonable, irrational, arbitrary, procedurally improper, made without and in excess of jurisdiction, in breach of the principles of natural justice and legitimate expectation, without legitimate or proper reasons, is ultra vires, null void and of no legal effect.*

- (11) An order or rule nisi of Mandamus directed to the Guyana Geology and Mines Commission to show cause why an order or rule nisi of Mandamus should not issue compelling the said Guyana Geology and Mines Commission to accept payments from the applicant for the renewal of his Mining Permits Nos. 23/01, 24/01, 25/01 and 47/98 situate at Tassawini, North-West, on the grounds the refusal to accept payments was made in bad faith, is unreasonable, irrational, arbitrary, procedurally improper, made without or in excess of jurisdiction, in breach of the principles of natural justice and legitimate*

*expectation, without legitimate or proper reasons, is ultra vires, null, void and of no legal effect.*

*(111) An order or rule nisi of Mandamus directed to the Commissioner (ag.) of the Geological Surveys and Mines, officer appointed by him or the Mines Officer of the Guyana Geology and Mines Commission to show cause why a order or rule nisi of Mandamus should not issue directing the said Commissioner (ag.) of the Geological Surveys and Mines, officer appointed by him or the mines officer of the Guyana Geology and Mines Commission to consider and determine pursuant to their powers under Mining Regulation 98 of the Mining Act 20/1989 whether they should issue cease work orders on the lands comprising the applicant's said Mining Permits Nos. 23/01, 24/01, 25 and 47/98 situate at Tassawini, North-West to all persons of the Chinese Landing Village Council, their servants and agents and all other persons, either generally or to any particular person or persons trespassing and unlawfully occupying and carrying out mining operations on the lands comprising the applicant's said Mining Permits Nos. 23/01, 24/01, 25/01 and 47/98 situate at Tassawani, North-West, on the grounds that it is absolutely necessary to do so for the protection of*

*the interests of the State and the applicant and his said mining permits and to ensure the applicant's use and enjoyment of the said lands within the Mining Permits and the minerals thereto and their failure and refusal to do so is made in bad faith, is unreasonable, irrational, arbitrary, procedurally improper, made without or in excess of jurisdiction, in breach of the principles of natural justice and legitimate expectation, without legitimate or proper reasons, is ultra vires, null, void and of no legal effect."*

On the 4<sup>th</sup> January 2013, the court ordered the said Order or Rules nisi of Certiorari and Mandamus to issue in terms of the paragraphs above-stated with an order for service upon the named respondents, the Guyana Geology and Mines Commission (G.G.M.C) and the Commissioner (ag.) of the Geological Surveys and Mines. On the 19<sup>th</sup> February 2013, the G.G.M.C and the Commissioner filed an Affidavit in Answer. On the 26<sup>th</sup> February 2013, the applicant filed an Affidavit in Reply. The issue for consideration is whether the named respondent (the G.G.M.C) and/or the Commissioner or have/has shown cause for the discharge of the said Orders or Rules nisi of Certiorari and Mandamus or whether they should be made absolute.

In his Affidavit in support of Motion, the applicant deposed that he is the legal and beneficial owner of the following Medium Scale Mining Permits (M.S.M.P's) Tassawini, North-West Mining District:

**(i) Mining Permit No. 47/98**

**(ii) Mining Permit No. 23/01**

**(iii) Mining Permit No. 24/01**

**(iv) Mining Permit No. 25/01**

and that, on the 14<sup>th</sup> June 1995, he purchased the tract of land described in the 4 MSMP's at public auction held in Georgetown for the sum of U.S.\$100,000 paid in Guyana dollars. The said tract of land was purchased for the purpose of prospecting for and mining gold and precious stones in the Tassawini area of the North-West Mining District. After the payment of the purchase price in 1995, he was issued with a prospecting licence. In 1998 and 2001, he was re-issued with 4 MSMP's i.e Nos. 47/98, 23/01, 24/01 and 25/01 which gave him the exclusive right to occupy and mine for gold and precious stones. Between 1995 to the time of his application, he spent or cause to be spent in excess of U.S \$24,000,000 (twenty four million U.S. dollars) or G \$4,800,000,000 (four billion eight hundred million Guyana dollars) on developing the said MSMP's for large scale gold mining. His investment, expenditures, drilling and other operations led to the discovery that the land was having 500,000 ounces of gold reserves.

From 1995 to 2011, he paid all the necessary annual fees and continues to do so and, to date, has completely complied with all the terms and conditions of the MSMP's.

On the 5<sup>th</sup> September 2011, he paid the GGMC the sum of \$672,361 as annual fees for the said 4 MSMP's and, on the 25<sup>th</sup> September 2011, the said MSMP's were automatically renewed. But, he subsequently received a letter dated the 11<sup>th</sup> October 2011 from the GGMC stating that the said mining permits had expired on the 15<sup>th</sup> September 2011 and would not be renewed. By that letter, he was informed that he should visit the Land Management Department to receive a refund of the rental fees he had paid. He was not given a hearing before that decision was made.

On the 12<sup>th</sup> April 2012, based on his Affidavits in support of Summons and Reply sworn to on the 22<sup>nd</sup> December 2011 and 7<sup>th</sup> March 2012 respectively and arguments advanced by his counsel, he obtained from the High Court an injunction restraining the G.G.M.C, by themselves, their servants, agents or otherwise:

***“from interfering with or revoking the plaintiff's four Medium Scale Mining Permits (MSMP's) Nos. 47/98, 23/01, 24/01 and 25/01 registered by G.G.M.C in the name of the plaintiff since 1995.”***

The applicant deposed that he was replying on the facts set out in those affidavits and exhibited the Order of Court and the affidavits in support and in Reply (Exhibits A, B and C respectively).

The said Order of Court of the 12<sup>th</sup> April 2012 was extant and was served on the GGMC in April 2012 and again on the 21<sup>st</sup> September 2012 personally on Mrs. Karen Livian, the then Commissioner (ag.), Mr. Eaton Chester (Chairman) of the G.G.M.C and 8 other directors of G.G.M.C.

MSMP's 23/01, 24/01 and 25/01 expired on the 15<sup>th</sup> September 2012 and the 4<sup>th</sup> adjoining MSMP 47/98 would be expiring on the 25<sup>th</sup> September 2013 as shown on Exhibit B.

Notwithstanding the said Order of Court dated the 12<sup>th</sup> April 2012, since September 2012, the GGMC was refusing to accept renewal payments for the 3 mining permits thereby breaching the said Order of Court by "interfering with or revoking" the said mining permits. On or around 14<sup>th</sup> September, the applicant went to pay for the prescribed annual renewal for the 3 mining permits but he was told by the cashier and other persons from the Land Management Department that they were instructed by the senior officers of the G.G.M.C not to accept any payments from Wayne Vieira.

On the 24<sup>th</sup> September 2012, the applicant went to meet the Commissioner (ag.) to speak to her about the Order of Court, the

renewals of the permits and illegal mining taking place on the land covered by the permits. But the Secretary of the Commissioner (ag.) advised him to go on the 26<sup>th</sup> September 2012 and discuss the matters at the Wednesdays open day miners' meeting held between 9 am to 12 noon. He attended that meeting which was chaired by Mr. Joslyn Mc Kenzie, the Permanent Secretary, Ministry of Natural Resources. Mr. Permanand Persaud, Mr. Mohan Persaud and Mr. Kerwin Josiah were present at that meeting. He raised the issues of the Order of Court of the 12<sup>th</sup> April 2012, payments for the 4 mining permits and the illegal mining. Mr. Joslyn Mc Kenzie promised to call him on Friday the 29<sup>th</sup> September 2012 in relation to the permits and the illegal mining by failed to do so. Subsequent efforts to get on to him proved futile.

On the 29<sup>th</sup> October 2012, the applicant attended a meeting with Mrs. Karen Livian, the Commissioner (ag.) and the G.G.M.C legal adviser, Mrs. Noble. **He was told by Mrs. Livian that she was "instructed by the Minister of Natural Resources, Mr. Robert Persaud, not to accept any rentals from him and that the GGMC had appealed against the Order of Court and that nothing could be done until the matter was heard in court.** At that meeting, he showed Mrs. Livian photographs of illegal mining by persons from the Chinese Landing Village Council and by others with the permission of the Amerindians and by other persons. But she said that she could do nothing about the illegal mining.

On Monday the 5<sup>th</sup> November 2012, he had a telephone conversation with Mr. Rickford Vieira, the Commissioner (ag.) about the refusal of GGMC to accept payments for the renewal of his mining permits and the illegal mining. Mr. Vieira told him that he would like to solve the matter as a matter of urgency but that the matter was political and his hands were tied and that it had to do with the Amerindians. He mentioned to the acting Commissioner that the Guyana Gold and Diamond Miners Association (GGDMA) had recently won their case in court and that GGMC was renewing permits on lands within the Amerindian reservation.

Several other officers of the GGMC also refused to accept payments.

The applicant further deposed that the Commencement Order for the Amerindian Act 2006 was published on the 1<sup>st</sup> December 2010 i.e. more than 15 years after he purchased the property and after he had already expended more than U.S. \$24,000,000 or G\$4,800,000,000 on it. He deposed that he had a legitimate expectation that, since he had purchased the tract of State lands on the 14<sup>th</sup> June 1995 at public auction for consideration, was issued with mining permits by GGMC, had complied with all the terms and conditions of those permits, spend or caused to be spent a total of over US\$24,000,000 or G\$4,800,000,000 since 1995, he would be entitled to continuous exclusive rights to enter, occupy and carry on mining activities on the said lands without

interruption, to the renewal of his mining permits and to protection from the Commissioner and the GGMC in accordance with their statutory duties.

On the 26<sup>th</sup> November 2010, GGMC served him with a cease work order in relation to the MSMP's on the ground that there was no agreement between himself and the Chinese Landing Village Council. That cease work order was discharged on the 24<sup>th</sup> May 2011 by the High Court in Motion No. 35 M of 2010 (Demerara).

He deposed that, prior to 2011, the Amerindians of the said Chinese Landing Village Council were having a history of illegally working and producing gold in the same area and damaging the environment. He made several complaints to the GGMC who failed to take appropriate action. Since October 2011, the Amerindians from the said Chinese Landing Village Council increased their illegal use of the said tract of land held under the said 4 mining permits by unlawfully using land dredges to produce gold therefrom and also had been granting permissions to 3<sup>rd</sup> parties to work the said land for a percentage of produce. The Commissioner and the GGMC had refused or failed to take appropriate steps to stop those unlawful acts.

On the 18<sup>th</sup> April 2012, he again wrote to the then Commissioner (ag.) informing him that over 12 land dredges were illegally operating

and producing gold from the Tassawini Mine on his 4 mining permits without his permission and that, to the best of his knowledge, 4 of the said dredges were registered in the names of Amerindians of the Chinese Landing community and that the others were 3<sup>rd</sup> parties who were paying 10% royalty to Amerindians of the said Chinese Landing community. He requested appropriate action be taken in the letter (Exhibit D).

On the 21<sup>st</sup> May 2012, he informed Minister of Natural Resources and Environment about the illegal mining by way of letter (Exhibit E). But he received no response to that letter.

On the 26<sup>th</sup> July 2012, he received a letter from GGMC dated 18<sup>th</sup> July 2012 acknowledging his complaint of the 18<sup>th</sup> April 2012 of “persons working your blocks without permission” and stating that “the matter is being investigated” and that he would be advised accordingly (Exhibit F). But no action was ever taken.

On the 13<sup>th</sup> August 2012 and again on the 27<sup>th</sup> August 2012, the applicant wrote the Commissioner (ag.) and copied letters to the other officers of the GGMC complaining, *inter alia*, that there were about 12 – 16 land dredges in the Doubtful Creek area of his said mining permits producing about 8 – 11 ounces of gold per day with 4” and 6” dredges and that the Amerindians and their agents were working without any guidance or hindrance and causing increased environmental damage

and requesting that steps be taken to halt the illegal mining (Exhibits G and H). But he received no response to these letters.

The applicant claimed that, at the time of the making of his affidavit, there were over 40 dredges working illegally on the land covered by his mining permits and producing gold therefrom by persons who had been given permission by the Amerindians to work for a percentage and, in so doing, were destroying the lands and damaging the environment while the Commissioner (ag.) and the Mines Officers of the GGMC unlawfully, unreasonably and in bad faith were refusing to carry out their statutory duties to prevent the unlawful mining and production of gold and to protect the lands in his mining permits.

On the 19<sup>th</sup> September 2012, Mr. Rex Mc Kay S.C on his behalf wrote a letter to Mr. Eton Chester, Chairman of the GGMC, and to Mr. Robert Persaud, Minister of Natural Resources and Environment, enclosing the Order of Court of the 12<sup>th</sup> April 2012 and informing them of the injunction restraining:

***“The Guyana Geology and Mines Commission by themselves, their servants, agents or otherwise .....from interfering with or revoking the Plaintiff’s four Medium Scale Mining Permits (MSMP’s) Nos. 47/98, 23/01, 24/01 and 25/01 registered by GGMC in the name of the Plaintiff since 1995.”***

and further informing them that employees at the GGMC's office had refused to accept payment from the applicant for the renewal of his mining permits and that, in his view, the said refusal by the said employees was an interference with the applicant's mining permits and a breach of the Order of Madam Justice Insanally dated 12<sup>th</sup> April 2012 (Exhibits J and K). But no response was received from the Chairman of the GGMC.

He was advised by his counsel, Mr. Rex Mc Kay S.C, that he had received a letter dated the 25<sup>th</sup> October 2012 from Cameron and Shephard, Attorneys-at-law, in response to the letter to the Minister in which it was stated that they had interpreted the word "interference" to mean "physical interference" and that the Court did not order the GGMC to accept payments from the applicant (Exhibit L).

The applicant further deposed that the Amerindians were not holders of mining permits or otherwise in the area of his mining permits in the Tassawini area and that the Amerindians and their agents and servants consisting of over 120 persons and 40 dredges were unlawfully carrying on mining activities and raiding the lands which fell within his mining permits and producing gold with the tacit approval and consent of the Commissioner (ag.) and mines officers of the GGMC inasmuch as they had been in receipt of several oral and written complaints from him since 2011 and had refused to issue cease work orders and had failed to take appropriate action to stop the illegal mining and protect his use

and enjoyment of the lands which fall within his 4 mining permits. The applicant further deposed that the conduct of the Commissioner (ag.), the mines officers and the GGMC were calculated to infringe his rights after he had developed the land and had discovered that it was having over 500,000 known ounces of gold reserves and had made a huge financial investment towards the development of a large scale gold mine.

The applicant deposed that, in January 2011, the GGMC had written to him to have the boundary lines of his MSMP's cleared and marked and that he had spent a huge financial sum and had sent four persons to Tassawini to do so. The Amerindians attempted to frustrate his efforts to comply with the GGMC's request and the mining laws. A report was made to the GGMC who failed to take appropriate action against the Amerindians and their servants and agents were unlawfully trespassing thereon, raiding same and producing gold therefrom and had threatened to kill him if he entered upon the lands. But the Commissioner (ag.), the mines officers of the GGMC and the GGMC were refusing to carrying out their statutory duties to protect the lands, and mining claims thereto and the minerals therein.

He had purchased the tract of land on the 14<sup>th</sup> June 1995 at public auction and was issued with prospecting permits which were later converted in mining permits which gave him exclusive right of occupation and of mining. He subsequently invested or caused to be

expended in excess of US\$24,000,000 or G\$4,800,000,000. He consequently acquired certain rights and interests in the property which could not be taken away arbitrarily and capaciously by GGMC without due process of law without giving reasons therefor and without affording him a fair hearing. He drew the court's attention to the admission made by the GGMC in Action No 671 W of 2011 that he was given neither a hearing or reasons therefor (Exhibit M). He stated that before cancelling a mining permit, the GGMC, with approval of the Minister, had to serve a written notice on the holder of the permit of the default and must give him not less than 30 days' notice and must specify a date for the holder to respond – in accordance with section 65 of the Mining Act 1989 and the GGMC never did so.

He claimed that the GGMC's refusal to accept the annual prescribed fees and the refusal of the Commissioner to perform his statutory duties to issue cease work orders to stop illegal mining and to protect the lands covered by his 4 mining permits were causing him substantial loss and prejudice.

In his Affidavit in Answer, Rickford Vieira, the Commissioner (ag.) deposed that, on the 11<sup>th</sup> October 2011, the GGMC advised the applicant by way of letter that the mining permits had expired and would not be renewed and denied that the MSMP's were automatically renewed on payment of the annual prescribed fees since payment of the annual fees to a cashier was a routine administrative matter and

represented at most an application for the mining permits having regard to section 63 of the Mining Act.

The Commissioner (ag.) further deposed that the applicant was in violation of sections 5 and 48 of the Amerindian Act in that he did not have the permission of the Tassawini/Chinese Landing Amerindian Village Council to work on the lands to which the mining permits related to enter thereon, and had no written agreement with the Village Council in relation to matters set out in section 46 of the Amerindian Act and that mining on the lands without the permission of the said Village Council or without a written agreement constituted a criminal offence under the provisions of that Act. He deposed that, under the provisions of section 27 of the Mining Act, the applicant was obliged to observe the provisions of the Amerindian Act.

He further deposed in his Affidavit in Answer that the Order of Court (Exhibit A) did not order the GGMC to accept payments for the renewal of the 3 mining permits and merely stayed the revocation of the said permits by staying the effect of the letter dated the 11<sup>th</sup> October 2011. He denied that it was the intention of the GGMC or its officers to infringe any of the applicant's rights. He admitted that the Order granted by Justice Insanally on the 12<sup>th</sup> October 2012 (Exhibit A) was on appeal but had not been stayed.

In his Affidavit in Reply, the applicant reiterated that he had complied with all the terms and conditions stated on his 4 Medium Scale Mining Permits (MSMP's) and the applicable laws. **He stated that he had not been in default in terms of section 63 of the Mining Act and that the respondent had never alleged that he had been in default in terms of section 63.**

He pointed out that the respondent produced no evidence to show that the lands on his MSMP's were lands owned by the Tassawini/Chinese Landing Amerindian Village Council under title and that he was not in violation of sections 5 and 48 of the Amerindian Act 2006 since his mining permits were all issued prior to the coming into operation of the Amerindian Act and therefore no permission or written agreement was needed. He asserted that, in any event, a violation of section 5 or 48 of the Amerindian Act did not confer any discretionary power on the GGMC to refuse to accept payments for the renewal of his MSMP's and that GGMC was not invested with the authority to enforce the Amerindian Act since its role is limited to "facilitate consultations ..... but may not take part in any negotiations" pursuant to section 48 (2) of the Amerindian Act.

He deposed that the GGMC's interpretation of the Order of Court of the 12<sup>th</sup> April 2012 on advice was misconceived as was the advice itself tendered to the Minister of National Resources and that the instruction, given by the Minister to the GGMC not to accept rental

payments from him for the renewal of his MSMP's, was given without jurisdiction and was of no legal effect. For the GGMC to have acted on such an instruction meant that the GGMC had surrendered its statutory discretionary power and abdicated its statutory function and duty.

He further deposed that the GGMC had admitted that he was the legal and beneficial owner of the 4 MSMP's and that he was not given a hearing before the decision not to accept renewal payments was made or any reason for such a decision. Further, the GGMC had admitted that, from 1995 to 2011, he had complied with the terms and conditions of the MSMP's.

Senior Counsel for the respondent has submitted to the court that the present proceedings constitute an abuse of the processes of the court since, in Action No. 671 W of 2011, the applicant had obtained an interlocutory injunction from Justice Insanally restraining the GGMC from interfering with or revoking the MSMP's. He has submitted that, since such an injunctive order was issued by the court in that action, it is an abuse of the processes of this court for the applicant to seek a Writ of Certiorari quashing the decision of the GGMC not renew the MSMP's and a Writ of Mandamus compelling the GGMC to accept annual renewal payments from the applicant in respect of the MSMP's.

It does appear to the court that the submissions of Senior Counsel fail to recognize the distinction between the cancellation of a mining

permit and the non-renewal of a mining permit. The cancellation of a mining permit is governed by section 65 of the Mining Act 1989 while non-renewal of such a permit is governed by section 63 of the said Act. A perusal of the remedies sought in Action 671 W of 2011 reveals that, in that Action, the applicant claimed:

- (a) A declaration that the plaintiff is the owner of the MSMP's (medium scale mining permits) and is entitled to their use and occupation*
- (b) A declaration that the plaintiff, his agents and workmen, are entitled to enter the area of the MSMP's and carry out mining and other legal activities.*
- (c) An injunction restraining the defendant (GGMC) from interfering or revoking the MSMP's.*
- (d) An injunction restraining the defendant from preventing the plaintiff from entering, occupying, mining or carrying out lawful activities in the area (Exhibit B).*

The remedies sought by the applicant in Action No. 671 W of 2011 were concerned not with non-renewal but with cancellation of the MSMP's. The present application is concerned not with cancellation or revocation but with non-renewal of the mining permits.

Senior Counsel for GGMC has submitted that since the applicant had obtained in Action No. 671 W of 2011 an interlocutory injunction prohibiting GGMC from interfering with or revoking the MSMP's until the determination of the Action, it is an abuse of the processes of the court for the applicant to seek in these proceedings a Writ of Mandamus to compel GGMC to accept annual payments from the applicant for the renewal for the said mining permits. Yet, curiously, Senior Counsel has conceded that the injunction is prohibitory only and does not mandate GGMC to do anything – such as to accept the prescribed annual renewal fees from the applicant. It therefore does appear that neither the final injunctive reliefs sought in Action No. 671 W of 2011 nor the interlocutory injunction obtained therein relates to the acceptance of annual renewal fees for the mining permits.

In paragraph 10 of the Affidavit in Answer, acting Commissioner Rickford Vieira deposed:

***“I admit paragraph 10 save that it is denied that, upon payment of annual fees the MSMP were automatically renewed. I was advised by my Attorneys-at-Law and do verily believe that the payments of annual fees to a cashier is a routine administrative matter and represents at most an application for renewal of the mining permits having regard to section 63 of the Mining Act.”***

If the payment and acceptance of annual fees do not spell renewal of the mining permits, then it is difficult to see how the applicant's

application for a Writ of Mandamus to compel GGMC to accept such fees from the applicant can constitute an abuse of the court's processes – especially as the interlocutory Order of Court did not order the GGMC to accept the prescribed annual renewal fees as sought in this application. Indeed, since the Order of Court prohibited the GGMC from revoking (i.e. cancelling) the applicant's mining permits, it is difficult to see a rational connection between the GGMC's refusal to accept from the applicant the prescribed annual renewal fees. In the light of the said interlocutory injunction, it would be the duty of the applicant to pay such fees and it would be the corollary or concomitant duty of the GGMC to accept payment of such fees while the Order of Court of Justice Insanally remains in force **unless the GGMC has lawfully refused not to renew the mining permits of the applicant.** In the view of this court, the plea of abuse of process fails since the Order of Court of Justice Insanally has nothing to do with the question of non-renewal in contradistinction to the question of cancellation (revocation) of the applicant's mining permits. It is the legality of the decision of the GGMC not to renew and not the decision to revoke the mining permits of the applicant which lies at the heart of this case.

Part 111 of the Mining Act 1989 deals with "Prospecting and mining on a **large** scale" (See pg. 23 of the Act) while Part 1V of the Act deals with "Prospecting and mining on **medium** and small scale" (See pg. 73 of the Act). Mining permits relate to **medium** scale. Therefore, neither section 50 nor section 52 has application. Neither does section

65 have application since, while it applies to mining permits, it applies only to cancellation (revocation) of such permits. It is section 63 of the Mining Act 1989 which is of relevance in this matter.

Section 63 (1) provides:

*“subject to this Act, a mining permit granted pursuant to section 61 –*

- (a) shall be valid for a period of five years from the date of the grant of the permit;*
- (b) may, on application made to the Commission, be renewed for further periods, not exceeding five year on each occasion or for the life of the deposit of the mineral in respect of which it is granted, whichever is shorter.”*

Section 63 (3) provides:

*“A mining permit or claim licence shall not be renewed pursuant to subsection (1) –*

- (a) unless the Commission is satisfied that the applicant for the renewal has carried on, in good faith, within the limits of his competence and resources, mining operations in the claim area and intends to continue to do so; or*

***(b) if the applicant for the renewal is in default and the Commission is not satisfied that there are sufficient grounds to waive the default.”***

It may be significant to note that, unlike section 50 (1) of the Mining Act which deals with the renewal of mining licences (large scale) and which requires that GGMC to first obtain the approval of the Minister before granting a renewal of such a licence, section 63 (3) does not at all require the GGMC to first obtain the approval of the Minister before granting a renewal of a mining permit (medium scale). Simply put, unlike in the case of an application for renewal of a mining licence (large scale), the exercise of the statutory power of renewal of a mining permit (medium scale) is not fettered by the requirement of Ministerial approval. Therefore, if the refusal of the GGMC not to grant the application for renewal of the mining permits (MSMP's) was based wholly or partially on the non-approval of the Minister, the GGMC acted ultra vires section 63 of the Mining Act and in effect unlawfully surrendered exercise of its statutory power to a non-existent Ministerial approval.

In paragraph 20 of his Affidavit in support of Motion, the applicant deposed:

***“That on the 29<sup>th</sup> October 2012, I attended a meeting with Mrs. Karen Livian, the then Commissioner (ag.) and the GGMC Legal Adviser Mrs. Noble, Attorney-at-Law, and I was told by Mrs. Livian that she “ was instructed by the***

***Minister of Natural Resources, Mr. Robert Persaud, not to accept rental payments from you and GGMC has appealed a court order and we cannot do anything until the court hearing.”***

In paragraph 17 of the Affidavit in Answer, Rickford Vieira, the Commissioner (ag.) deposed:

***“Paragraph 20 is admitted. The position adopted by the Minister of Natural Resources, the Hon. Robert Persaud, as well as the Respondent, is based on legal advice obtained from its Attorneys-at-law reflected in a letter dated 25<sup>th</sup> October 2012 which is a letter written by the Respondent’s Attorneys-at-Law to Mr. Rex Mc Kay S.C attached as Exhibit L by the Applicant’s Affidavit in support which was in response to Mr. Mc Kay’s letter attached as Exhibit “K”.”***

It has already been stated that the Order of Court of Justice Insanally had nothing to do with the non-renewal of the applicant’s mining permits but rather related to the revocation or cancellation of those permits. Further, that Order of Court prohibited the GGMC from revoking the applicant’s mining permits and it was admitted that no stay of that prohibitory injunctive order pending appeal had been obtained. The Minister had no legal authority to instruct the GGMC not to renew the applicant’s mining permits since the exercise of the statutory discretionary power of renewal by the GGMC under Section 63 was not

subject to his approval (as in Section 50 of the Act). And, the GGMC could not lawfully act on such an unlawful instruction without abdication of its statutory discretionary power. It need not be stated that legal advice carries no presumption of correctness.

In paragraph 22 of the Affidavit in support of Motion, the applicant deposed:

***“That on Monday 5<sup>th</sup> November 2012, I had a telephone conversation with Mr. Rickford Vieira, Commissioner (ag.) about the refusal of GGMC to accept payments for the renewal of my Mining Permits and the illegal mining and he said that he would like to solve the matter urgently but it was “political”, his hands were tied and it also had to do with the Amerindians.”***

In paragraph 18 of the Affidavit in Answer, Rickford Vieira, the Commissioner (ag.) deposed:

***“I admit the fact of the meeting and the fact of the conversation referred to in paragraphs 21, 22 and 23 but I do not admit what transpired at the meeting or the nature of the conversation.”***

It is important to note that Rickford Vieira admitted that he had the telephone conversation with the applicant as mentioned in paragraph 22 of the applicant’s Affidavit and, while he did not admit the nature of the conversation, he did not at all deny or dispute that he did say the

things alleged by the applicant in paragraph 22 of the applicant's Affidavit. The court must therefore find in favour of the applicant in respect of the fact of the conversation and the contents thereof. The Affidavit of the Applicant is probative evidence of what was said while the Affidavit of Rickford Vieira, the Commissioner (ag.) is negative as to the contents of that conversation. It therefore appears to the court that one of the reasons why the applicant's application for renewal of his mining permits was not granted by the GGMC had to do with the Amerindians.

Indeed, in paragraphs 12 and 13 of the Affidavit in Answer, Rickford Vieira deposed:

***"12. I am advised by my Attorneys-at-law and verily believe that the applicant was in violation of sections 5 and 48 of the Amerindian Act in that he did not have the permission of the Tassawini/Chinese Landing Amerindian Village Council on whose land the properties to which the Mining Permits relate are located to enter thereon and no written agreement with the Village Council in relation to the matters set out in section 46. I am advised as aforesaid that mining on the said land without the permission of the said Village Council or***

*without a written agreement constitutes criminal offences pursuant to the aforesaid provisions.”*

**13. *I am further advised by my Attorneys-at-Law and verily believe that under the provisions of Section 27 of the Mining Act the Applicant is obliged to observe the provisions of the Mining Act.”***

It should be noted that section 27 of the Mining Act 1989 falls within Part 111 of the Act which relates to “Prospecting and Mining on Large Scale” and is therefore inapplicable to the mining permits of the applicant (which are statutorily categorized as “Mining on Medium Scale” and fall under Part IV of the Act).

In any event, since the applicant was granted his mining permits in 1998 and 2001 long before the advent and operation of the Amerindian Act 2006 under which grants of communal land was made to Amerindian Villages, the lands covered by such permits could not form part of the area of any Amerindian Village lands. Section 2 of the Amerindian Act 2006 defines “Village lands” as meaning:

***“lands owned communally by a Village under Title granted to a Village Council to hold for the benefit of the Village”***

Quite apart from the fact that the respondent did not exhibit to the court any Title grant of lands to show what area of land was held by the Chinese Landing Amerindian Village Council, it is clear that since the applicant’s mining permits were granted long before the advent or

operation of the Amerindian Act 2006, no grant of title under that Act could lawfully embrace lands which were already the subject of grants of mining permits under the Mining Act.

In Perreira V Manning (1988) 42 W.I.R 209, George C., delivering the judgment of the Guyana Court of Appeal, stated at 2013 C – D:

*“It is trite law that a licence is a species of immovable property, a usufruct or a profit a` prendra (See Pellew V. Griffith (1940) LRBG 114 and J.A.K. Syndicate V Central Guyana Exploration Co. (1967) GLR 160); and like any other property to owner has a right to its enjoyment against all comers unless he is deprived of it by some lawful process.”*

In the case of An Application by Daniel Dazell No. 158 M of 2008, this court stated:

*“The submission of Senior Counsel for the applicant would have been meritorious if the applicant had held not merely prospecting permits but leases, claims or some other form of occupational and transferable rights over the land .... In such a case, the lands would not be part of the Isseneru Amerindian Village since they would have been excepted under the words “save and except all lands legally held” in the State grant of lands to the Isseneru Amerindian Village. Such words in such grants clearly indicate the*

*State's respect for private occupational rights and its intention not to derogate from them outside of any factual condition or legal requirement which may attend them. Indeed, any such derogation would invite constitutional challenge for breach of Article 142 which protects property rights".*

The dicta above seemed to have been embraced by Justice Insanally in the recent case of In the matter of an application by Joan Avanelle Chang No 136 M of 2011 in which the learned judge held that section 5 of the Amerindian Act 2006 has no application to persons who already hold claim licences to and have already been in occupation of the land prior to the operation of the Amerindian Act 2006. In the instant case, the applicant held mining permits (medium scale) which carries the same exclusive occupational rights as claim licence (small scale) and mining licence (large scale).

Since the lands covered by the mining permits of the applicant do not fall within the definition of "Village lands" in section 2 of the Amerindian Act, Sections 5 and 48 (1) of that Act have no application to this matter. In any event, it is not the function of the G.G.M.C to enforce any provision of the Amerindian Act in relation to the holders of mining licences (large scale), mining permits (medium scale) or claim licences (small scale). Section 27 of the Mining Act simply directs the court not to construe any provision of the Mining Act as authorising the doing or any act contrary to the prohibition or regulation contained in

any other written law. It does not impose upon the G.G.M.C any enforcement function for breach of any other written law including the Amerindian Act.

It is therefore clear that the G.G.M .C, in deciding not to renew the applicant's mining permits not only unlawfully fettered or abdicated its statutory discretionary power by subjecting such discretionary power to the Minister's instruction but also took into consideration matters of fact and law which were not at all relevant-due to a misperceived application of provisions of the Amerindian Act. The decision of the G.G.M.C not to renew the applicant's mining permits Nos. 23/01, 24/01, 25/01 and 47/98 was therefore unlawful and must therefore be quashed by Certiorari - the court so orders.

It was not the contention of the GGMC that the applicant had failed to satisfy it that he had carried on mining operations in good faith within the limits of his competence and resources in making his application for renewal. Indeed, the applicant deposed that he had complied with all the terms and conditions of his mining permits and had expended billions of Guyana dollars in his operations, it was never the contention of the GGMC that the applicant was guilty of any such default. Rather, it was always the contention of the GGMC that its decision not to renew was based only on Ministerial non-approval and the applicant's failure to meet certain requirements of the Amerindian Act. Since the court has found that those grounds were not proper or

legal grounds for non-renewal and it was not disputed that there was no default in the applicant in carrying out his mining operations, the court sees it fit to issue the writ of Mandamus against the GGMC to renew and to accept payments for renewal of the applicant's mining permits.

The applicant deposed in his Affidavit in support of Motion:

***“31. That at the said meeting, I showed her (Mrs. Livan, Commissioner ag.) photographs of the illegal mining by persons from the Chinese Landing Village Council and others with permission from the Amerindians and other persons and she said she cannot do anything about the illegal mining.***

***32. That since October 2011, the Amerindians from the Chinese Landing Village Council have increased their illegal use of the said tract of land held under the aforesaid 4 MSMP's by unlawfully using land dredges to produce gold therefrom and are also granting permissions to third parties to work the said land for percentage and GGMC, the Commissioner and the mines officers have refused or failed to take appropriate steps to stop these unlawful acts.***

***33. That, on the 18<sup>th</sup> April 2012, I again wrote the then Commissioner (ag.) GGMC informing him that in***

*excess of land dredges were operating illegally and producing gold from the Tassawini Mine on my 4 Mining Permits without my permission and, to the best of my knowledge, four of the dredges were registered in the names of the Amerindians of Chinese Landing community and the others were third parties who were paying 10% royalty to the said Amerindians of Chinese Landing Community and requested that all appropriate action be taken. I exhibit hereto a copy of the said letter and mark same "D".*

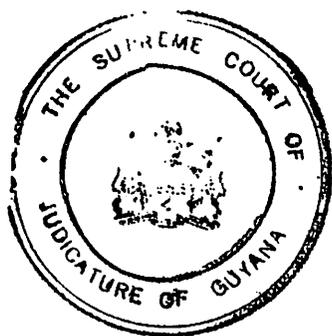
36. *That on the 13<sup>th</sup> August 2012 and again on the 27<sup>th</sup> August 2012 I wrote the Commissioner (ag.) and copied letters to other officers of GGMC complaining, inter alia, that there were 12 and 16 land dredges in the Doubtful Creek area of my said Mining Permits producing around 8 to 11 ounces of gold per day with 4 inch dredges and the Amerindian and their agents were working without any guidance or hindrance and causing increased environmental damage and requested be taken to stop the illegal mining. I received no response to these letters. I exhibit hereto copies of the said letters and mark them G and H respectively."*

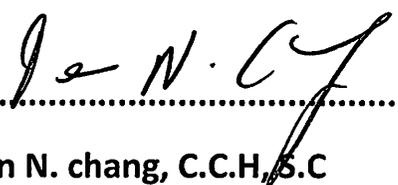
**37. There are presently in excess of 40 dredges working illegally on the said mining permits, producing gold therefrom by persons who have been given permission by the Amerindians to work for a percentage, destroying the lands, polluting and damaging the environment and the Commissioner (ag.) and the mines officers of GGMC unlawfully, unreasonably, and in bad faith refuse to carry out their statutory duties to protect the lands comprised in my 4 mining permits and present the unlawful acts of mining and producing gold.”**

The above allegations of fact sadly show not only an intentional dereliction of statutory duty and responsibility by at least two acting Commissioners (past and present) and mining officers but also their complicity (by deliberate omission) in large scale illegal mining. In his Affidavit in Answer, the present Commissioner (ag.) sought to justify such inaction on the mistaken belief (no doubt founded on erroneous legal advice) that the lands covered by the applicant's 4 mining permits formed part of the Amerindian Village area. But such deliberate inaction remains a dereliction of statutory duty and responsibility – irrespective of the reasons for such inaction – and has undoubtedly contributed to an unhappy, unhealthy and undesirable state of public affairs in the mining sector - which must be inimical not only to the private interests of the applicant but to those of the State itself and must pose a threat to public order.

In such circumstances, the Court sees it fit to compel by Mandamus the Commissioner (ag.) of Geological Surveys and Mines as the primary officer responsible for the issuance of cease work orders under Regulation 98 of Mining Regulations to consider forthwith the state of affairs in relation to the lands covered by the applicant's mining permits and to determine whether it is not absolutely necessary to issue cease work orders to all persons (who are not the applicant or his servants or agents), including the Chinese Landing Amerindian Village Council to forthwith cease all mining operations on the lands covered by the applicant's 4 running permits (i.e. Nos. 23/01, 24/01, 25/01 and 47/98).

The Orders or Rules nisi of Certiorari and Mandamus issued on the 4<sup>th</sup> January 2013 are accordingly made absolute. Costs in the sum of \$150,000 are ordered against the named respondents, jointly and severally.



  
.....  
Ian N. Chang, C.C.H., S.C.  
Chief Justice (ag.)

Dated this 17<sup>th</sup> day of May, 2013