Vol 10 No 35

IN THE WARDEN'S COURT HEARD: 09 MAY 1995
HELD AT COOLGARDIE
BEFORE D. REYNOLDS (SM) WARDEN

DELIVERED: 24 MAY 1995
(AT KALGOORLIE)

IN THE MATTER OF OBJECTIONS 72/934 AND 73/934 AGAINST APPLICATIONS FOR PROSPECTING LICENCE 16/1754 AND 16/1755

BETWEEN

WARWICK JOHN FLINT

(OBJECTOR)

AND

RITA MARION BROOKS AND PHILIP WILLIAM MAJOR

(APPLICANTS)

Mr McSweeney instructed by Messrs McSweeney and Co. appeared on behalf of the Applicants.

Mr Lawton instructed by Lawton Gillon appeared on the behalf of the Objector.

REASONS FOR DECISION

On 3 May, 1994 the Applicants lodged applications for prospecting licences 16/1754 and 16/1755 with the Mining Registrar at Coolgardie ("the Applications"). On 30 May, 1994 the objector lodged objections to the Applications on the grounds that the Applications had not been made in accordance with the provisions of the Mining Act, 1978 and Regulations thereto ("the Act"). The grounds of the objections were later particularised in the following terms:

"A. Neither tenement was marked out at the time alleged by the Applicants.

B. The Applicants Rita Marion Brooks and Philip William Major acted in collusion with the former holders of the ground the subject of the applications, namely Tern Minerals NL and Tribune Resources NL (as Prospecting Licences 16/1339 and 16/1375) in pegging the ground after those companies had surrendered the tenements so as to frustrate the plaints 20/934 and 21/934 contrary to public interest and Section 111A of the Mining Act, 1978."

The Applications and the objections thereto have been put before me for determination of a preliminary issue whether a Warden has jurisdiction to hear and determine an objection to the grant of a prospecting licence on the ground of public policy.

At all material times Tribune Resources NL and Tern Minerals NL were the registered proprietors of prospecting licences 16/1339 and 16/1375. On 25 October, 1993 the objector lodged plaints Nos. 20/934 and 21/934 for forfeiture of both prospecting licences 16/1339 and 16/1375 respectively. Both plaints alleged non-compliance with the expenditure requirements of the Mining Act and Regulations. On 26 April, 1994 at 9:10am and prior to the hearing of the plaints, Tribune Resources NL and Tern Minerals NL, by their agent, lodged surrenders 31/934 and 32/934 in respect of both prospecting licences 16/1339 and 16/1375 with the Mining Registrar at Coolgardie. The documents in respect of the Applications provide that Spectrum Surveys, as agent for the applicants, marked out the land the subject of the Applications at 12.05pm on 26 April, 1994 for prospecting licence 16/1754 and 12.10pm on 26 April, 1994 for prospecting licence 16/1755. The land the subject of the Applications is the same as was previously the subject of prospecting licences 16/1339 and 16/1375.

The objector has alleged that the Applications were made in collusion with Tern Minerals NL and Tribune Resources NL and with a view to defeat the plaints for forfeiture. The objector alleges that this is contrary to the public interest and has made this allegation in ground B of his objection.

The surrenders and the Applications were lodged prior to the inclusion of Section 96(3a) in the Act.

The Act was amended by the inclusion of Section 96(3a) by Mining Amendment Act No. 37 of 1993 the relevant part of which became operative on 01 July, 1994. Section 96(3a) provides in essence that if a mining tenement is the subject of an application for forfeiture at the time that a surrender is lodged then the applicant for forfeiture has a right in priority to any other person to mark out and/or apply for a mining tenement in respect of land the subject of the surrendered mining tenement. The section provides for a time limitation within which this right in priority may be exercised.

Section 111A of Act provides as follows:

"111A. (1) Where an application is made for a mining tenement but in respect of the whole or any part of the land to which the application relates -

(a) a person who in relation to that land was formerly the lessee of a mining lease the term of which has expired, or is a person deriving title through such a former lessee, subsequently applies (in the manner prescribed for the purposes of section 78 notwithstanding that the application was not made during the final year of the tern of that lease) for the renewal of that mining lease with effect from the expiry of the preceding term and the Minister, being satisfied that the requirements of that expired mining lease and of this Act in relation to that lease had been substantially observed (other than as to the timing of an application for renewal) and that the applicant has continued to observe those requirements as if the term of the lease had not expired, determines that the subsequent application for renewal of the expired lease should be approved and grants that renewal; or

(b) the Minister is satisfied in reasonable grounds in the public interest that-

(i) the land should not be disturbed; or
(ii) the application in question should not be granted,

the Minister may, by notice served on the warden to whom the first mentioned application for a mining tenement has been made, refuse that application, whether or not the application has been heard by the warden.

(2) Notwithstanding anything in this Act, an application to which a notice referred to in subsection (1) applies ceases to have any effect for the purposes of this Act when that notice is served."

Pursuant to Section 111A public interest is an expressed criterion which the Minister may take into account in deciding whether an application for a mining tenement should not be granted.

In French and Serpentine-Jarrahdale Ratepayers and Residents Association (Full Court of the Supreme Court of Western Australia delivered 28 January, 1994), the issue was whether a Warden is empowered to hear an objection to an application for a mining lease, the objection based on grounds of an environmental nature. The Full Court by majority held that a Warden in hearing an application under Section 75(1) of the Act is empowered to hear objectors who raise matters of public interest. Only a person with the requisite standing may object, and it is for the Warden to determine whether the objector has that standing.

There are two passages from the judgment of His Honour Mr Justice Ipp that assist in the determination of this preliminary issue before me. First, at page 16 his Honour stated as follows:

"The Warden, in making recommendations to the Minister concerning mining lease applications, does not exercise a discretion as to "questions of policy and principle governing the exploration of mineral deposits in this State". That is a matter within the province of the Minister. Nevertheless there are very good reasons why the Warden should first investigate matters of public interest, in open court, with full opportunity for matters to be contested and argued, so that the Minister is fully apprised of all relevant material, that has fairly and publicly been ventilated, before making a decision: cf Sinclair v Mining Warden at Maryborough at 481."

At pages 15 and 16 His Honour stated as follows:

"The powers of a Warden under Section 40(1) of the Act, in deciding whether or not to grant a prospecting licence, are fundamentally different to the powers of a Warden conducting a hearing under Section 75(1) of the Act:

see Westside Mines Pty Ltd v Tortolla Pty Ltd (1985) WAR 343; Re Minister for Mines, Fuel and Energy;ex parte Trythall at 389. It is the Warden who decides whether or not to grant a prospecting licence and the public interest plays no part in that decision, the public interest not being a criterion which the Warden may take into account. On the other hand the Warden does not decide whether or not to grant a mining lease. In hearing an application for the grant of such a tenement, the Warden is performing an investigatory and recommendatory function that assists the Minister in determining whether the tenement should be granted. That function of the Warden has to be seen in the light of the fact of the Minister is expressly empowered by Section 111A to take into account the public interest."

Accepting and following these comments, I conclude that a Warden when hearing an objection to an application for a prospecting licence, is not empowered to hear an objection based on public interest. If it were otherwise then the situation may occur where the Warden and the Minister were contemporaneously considering and determining the same issue of alleged public interest.

If a person makes a submission to the Minister that in the public interest a prospecting licence should not be granted then such person may wish to make an application to the Warden that the application for the prospecting licence be adjourned pending a decision by the Minister. Reference to the public interest consideration in an objection filed by such a person would only be for the purpose of seeking an adjournment of the application for the prospecting licence pending a decision by the Minister and not for the purpose of the Warden actually hearing and determining the issue of alleged public interest. Whether any such adjournment should be granted is matter for the Warden.

D. REYNOLDS (SM)
WARDEN

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