

IN THE WARDEN'S COURT  
HOLDEN AT SYDNEY  
ON 24TH APRIL 1992  
BEFORE J L McMAHON  
CHIEF MINING WARDEN

MINING REGISTRAR v DAVID DOUGLAS  
CASE NO 430/91

BENCH:

The within has been the hearing of an application by the Registrar for cancellation of registered Claim No 10503 under the provisions of Section 36 of the Mining Act on the grounds that the registered holder had failed to comply with the conditions of the claim.

The respondent, Mr David Douglas, was the registered holder of Claim 10503 within the Lightning Ridge Mining Division and that as a condition of registration of that claim, being Condition No 9, it was provided that the registered holder should not erect or construct any improvements on the claim area without the prior written approval of the Mining Registrar and subject to such conditions as he may impose.

It is appropriate that I should deal with a history of the matters as to this condition upon claims. It is provided by Section 31(1)(b) that the registration of a claim may be effected subject to such conditions as may be prescribed or as may be imposed by the Mining Registrar in any particular case, who is then empowered under subsection (2) to issue a Certificate of Registration to the registered holder. Arising out of a decision by the Lightning Ridge Advisory Committee which was made up of representatives of a number of government departments, local business organisations and miners, the Department of Mineral Resources required that the Registrar from February 1987, insert Condition No 9 as described above as a condition imposed on the registration

of all claims. The evidence suggests that one of the basis for that decision by the Advisory Committee was that the land the subject of claims is also used for grazing purposes, and considerable resistance had been raised by those who hold Western Lands Grazing leases to persons who up until that time held mining claims but who built substantial buildings for residential purposes on the claims without limitation on the nature or size of the construction. The Lightning Ridge Advisory Committee which, as I have said, was a cross section of the local community, had determined that the size and nature of the buildings should be restricted by virtue of Condition No 9. The Registrar was given discretion to give approval for construction but otherwise without written approval after 1987 all claims were the subject of this condition.

The evidence is that the registered holder of Claim No 10503, Mr David Douglas, having renewed it for the current year was subject to that condition. On the afternoon of 9th August 1991 he was interviewed by the Registrar and Regional Mining Officer Dillon and informed that the alterations to a construction of a building on his claim was outside the guidelines and was illegal. There is no dispute that he said to the officers "take me to court - take me to court - I'll go ahead with it". A letter was handed to him specifying these instructions. There is evidence that Mr Douglas ignored this letter for when Mr Dillon inspected the claim again on 13th August 1991 additional work had been carried out to the construction over and above that witnessed on 9th August. It was then that the officers successfully applied for an injunction to issue preventing further work. Later work was permitted to allow for the temporary construction of a toilet and bathroom in the building for obvious convenience purposes.

Mr Douglas gave evidence that he was suffering from injury which had occurred at work in 1978 and as a result he had headaches and his back was continually sore. In addition, he had treatment for his stomach resulting in him not being able to leave the close proximity of a toilet. He had commenced the reconstruction work on his premises in 1985, planning to build it in three stages. In 1987 he put up the framework and subsequently concluded it in 1991. He agreed that he had gone on with the work and when asked why he did not get permission from the Registrar or indeed seek to bring the Registrar's attention to the fact that he said he had commenced the work in 1985, he replied that he needed the facility and what as the sense in asking for permission because it would not be given.

With the consent of the parties I carried out an inspection of the work, simply to better understand the evidence. Otherwise the area is the subject of the photographs which are exhibits before me together with a plan.

Mr Browne in his final address referred in the evidence to the fact that Mr Douglas has health problems, has a family living in the house and definitely would need the facilities. He felt that Condition No 9 which provides for any improvement to be the subject of the written approval were outside the ambit of the matters allowing the Registrar in effect the right to prohibit construction and that the conditions did not appear to come from any authority which was a recognised local government body. Furthermore he said because the section talked about "any particular case" the fact that the condition applied to the registration of all claims from 1987 was ultra vires the Act in that it was a blanket condition and not specific as to any particular claim.

As far as the health and family problems of the claim holder are concerned, it is the claim holder who has chosen to live on this particular claim and any inconvenience to him and his health is surely a matter for him. In relation to the right of the Registrar to impose a condition prohibiting "any improvements" from being constructed, because of the nature of the imposition of the condition being the result of a local community effort, I believe the existence of the condition is reasonable. Likewise, as to the blanket nature of the condition, this is also a matter which is in my view clearly within the right of the Registrar to impose on all claims which are registered; indeed if that were not to be the case, then the registered holders of some claims the subject of the imposition of the condition could well claim they are discriminated against when compared to those who hold claims which are not subject to the condition. I overrule his submissions but now deal with the question of the construction of the footings which the claim holder says he inserted in 1985.

It was obvious that some of the structure on the claim had come into existence before 1987 so any additions done were carried out to a pre 1987 existing structure. If the work commenced before 1987 then it seems to me on an interpretation of the conditions of the claim that the claim holder would be entitled to carry on the work and take it through to completion. The fact that he carried on when reasonable doubts arose in the minds of the Registrar and the Senior Regional Mining Officer and they had therefore told him to stop, was certainly for the claim holder unwise and blatant; but if the work was commenced before 1987 it was in my view not illegal.

The question is was the work commenced before 1987? The Registrar and the Regional Mining Officer cannot throw any light on this subject and my visual inspection of the premises left me in some doubt. For instance, there was both new and old concrete and even some form boards which looked suspiciously like they had only been recently used. However the claim holder was adamant that he had commenced work in 1985 and frankly in the absence of firm evidence that the work was commenced after 1987 I must, on the balance of probabilities, decide that the work was not illegal. The application for cancellation is therefore refused.

I direct that in the circumstances the parties pay their own costs.