



INTERIOR BOARD OF INDIAN APPEALS

James P. Bowen v. Northern Cheyenne Superintendent

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF

JAMES P. BOWEN

v.

SUPERINTENDENT, NORTHERN CHEYENNE

AGENCY, ET AL.

IBIA 74-35-A

Decided January 21, 1975

Appeal from an administrative decision of the Area Director sustaining a decision of the Superintendent refusing to cancel a lease.

Affirmed and Dismissed.

1. Indian Lands: Patent in Fee: Jurisdiction

Issuance of a patent in fee on a trust allotment results in the Secretary's loss of jurisdiction and authority thereover.

2. Indian Probate: Inheriting: Non-Indian

The United States has no interest to protect in trust lands inherited by a non-Indian, therefore not obligated to provide services or protection to such a person.

APPEARANCES: Clarence T. Belue, Attorney at Law for appellant, James P. Bowen.

OPINION BY ADMINISTRATIVE JUDGE WILSON

James P. Bowen, hereinafter referred to as appellant, through his attorney, Clarence T. Belue, has filed an appeal from a decision of the Area Director, Billings Area Office, affirming the decision of the Superintendent, Northern Cheyenne Agency, in refusing to cancel a farming and grazing lease.

The lease in dispute involves a portion of the original trust allotment of Louis Seminole, Northern Cheyenne Allotment No. 986, described as: E 1/2 SE 1/4 NE 1/4 sec. 23, N 1/2 NW 1/4 NE 1/4, N 1/2 N 1/2 S 1/2 NW 1/4 NE 1/4, N 1/2 NW 1/4, SW 1/4 NW 1/4 sec. 24 all in T. 3 S., R. 41 E., Principal Meridian, Montana, containing 165 acres.

The appellant, a non-Indian, as sole heir, inherited an undivided one-third interest in the subject allotment from his wife, Harriet Spang Seminole Bowen, a Northern Cheyenne enrollee, on January 30, 1970. A patent in fee, No. 25-70-0237, for the said one-third interest was issued to the appellant on April 24, 1970. The remaining undivided two-thirds interest in said allotment remains in trust for the benefit of eight other individual Northern Cheyenne Indians.

On or about June 5, 1970, a lease was granted and approved by the Superintendent, Northern Cheyenne Agency, Lame Deer, Montana, to Henry Sioux for the trust interest only. Thereafter, the appellant on September 21, 1973, filed a petition with the Superintendent alleging that the lease to Mr. Sioux was invalid and void since the land was in use and possession of the appellant pursuant to 25 CFR 131.2(a)(4) and 25 U.S.C. § 380 (1970) and that the lease should be declared void and of no effect. On October 29, 1973, the appellant again brought to the attention of the Superintendent his petition of September 21, 1973, and requested a hearing be held to determine the merits of the petition. The Superintendent on December 14, 1973, advised the appellant that a partition of the land would be the most equitable solution, but that services in that connection could not be extended to appellant since he was non-Indian. On December 17, 1973, in response to the Superintendent's

letter of December 14, the appellant again requested that a hearing be granted regarding the validity of the lease to Mr. Sioux. The Superintendent on December 19, 1973, referred the matter to the Area Director for disposition.

The Area Director on January 15, 1974, informed the appellant that his petition of September 21, 1973, was denied for the following reasons:

(a) Appellant is non-Indian to whom the Bureau of Indian Affairs owes no service.

(b) The Bureau of Indian Affairs has no jurisdiction over appellant's interest in such lands.

(c) This matter is not an issue for which a hearing is authorized by the Federal regulations.

In his appeal it is the appellant's contention that the Bureau of Indian Affairs' jurisdiction and services are not limited to Indians, but are limited to persons defined by 25 CFR 2.1; that the appellant is a person defined by said section and that he has been deprived of a right or privilege as a result of the actions or decisions of the Superintendent and Area Director, and that he has been effectively prevented from the use and enjoyment of his land on account of the lease in question; and that the matter is a proper one for determination of the Superintendent and for appeal pursuant to 25 CFR 2.

At the outset it is noted that the lease in dispute involves individually owned land. The definition thereof appears in 25 CFR 131.1(b) as follows:

"Individually owned land" means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance. (Emphasis supplied):

Authority for the Secretary to grant leases on individually owned lands such as in the case at bar appears in 25 CFR 131.2. In the appeal herein the lease was properly granted under 131.2(a)(4) for the interests held in trust.

Appellant's contention that the Superintendent's decision in granting the lease in question was a violation of 25 CFR 131.2(a)(4) and 25 U.S.C. § 380 (1970), and therefore void, is without merit. The record clearly indicates that the appellant's one-third interest in the land in question is in a fee or nontrust status, and accordingly, the appellant does not fall within the purview of 131.2(a)(4).

It is conceded that the appellant falls within the definition of "person" in CFR 2.1(a). However, it is rather doubtful that the appellant comes within the meaning of 25 CFR 2.1(b) as an

“interested party” in that the granting of the lease by the Superintendent in no manner restricts or prohibits the appellant’s use of his undivided one-third nontrust interest. It would therefore follow that no “right or privilege” as defined in 25 CFR 2.1(f) and (g) would be abridged or affected by the action of the Superintendent and Area Director, as to appellant’s one-third nontrust interest in the allotment.

[1] The fact that the appellant’s one-third undivided interest in the allotment in question is in fee or nontrust status, the Bureau of Indian Affairs and its officials are without jurisdiction or authority to determine the rights of the appellant thereto. Heirs of C. H. Creciat, 40 L.D. 623 (1912); Indian Trust Allotments, 48 I.D. 643 (1922). Accordingly, appellant’s recourse or remedy regarding his rights rests with a court of law. Chemah v. Fodder, 259 F. Supp. 910 (1966).

[2] Moreover, the Bureau of Indian Affairs is in no manner obligated to provide services or protection for a non-Indian heir. Bailless v. Paukune, 344 U.S. 171 (1952); Chemah v. Fodder, *supra*; Levindale Lead and Zinc Mining Company v. Coleman, 241 U. S. 432, 36 S. Ct. 644, 60 L. Ed. 1080 (1916).

Appellant's final contention that he is entitled to a hearing on the matter is likewise without merit in that his undivided one-third interest is nontrust over which the Bureau of Indian Affairs lacks jurisdiction and any hearing held thereon would serve no purpose. Moreover, we find nothing in Title 25, Code of Federal Regulations, which makes a hearing mandatory in a case such as the one under consideration herein, and neither does the appellant cite any authority for such a hearing.

Considering the appellant's contention in light of the foregoing, the Board concludes and finds the action of the Superintendent and Area Director in refusing to cancel the lease in question and denying the appellant a hearing thereon was proper, and their decisions in that respect should be affirmed, and the appeal herein dismissed.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior (211 DM 13.7, issued December 14, 1973) and 43 CFR 4.1(2), it is hereby ORDERED that the decision of the Area Director dated January 15, 1974, affirming the decision of the Superintendent, Northern Cheyenne Agency, dated December 14, 1973, be, and the same is hereby AFFIRMED, and the appeal herein is DISMISSED.

