



INTERIOR BOARD OF INDIAN APPEALS

Estate of Nicholas Joseph Belland

29 IBIA 54 (01/30/1996)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF NICHOLAS
JOSEPH BELLAND

: Order Docketing and Dismissing
: Appeal
:
: Docket No. IBIA 96-35
:
: January 30, 1996

Appellant Elnora Belland, surviving spouse of decedent Nicholas Joseph Belland, an unallotted Indian of the White Earth Indian Reservation in Minnesota, seeks review of a November 28, 1995, order nunc pro tunc issued by Administrative Law Judge Frederick W. Lambrecht in Indian Probate No. IP TIC 006S-94. Appellant states at page 1 of her notice of appeal:

Appellant does not claim an error in fact. Appellant appeals the Order * * * on the grounds that the application of Public Law No. 98-513, 98 Stat. 2411, entitled "An Act Pertaining to the Inheritance of Trust or Restricted Land on the Lake Traverse Indian Reservation in North and South Dakota," enacted on October 19, 1984 * * *, achieves an unconstitutional taking of property without just compensation, in violation of the Fifth Amendment.

As part of the Executive Branch of government, the Board lacks jurisdiction to declare an Act of Congress unconstitutional. Estate of Annie Greencrow Whitehorse, 27 IBIA 136 (1995), and cases cited therein. No purpose would be served by delaying resolution of this matter when it is clear that the Board has no jurisdiction to address the issues appellant raises.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from Judge Lambrecht's November 28, 1995, order nunc pro tunc is docketed and dismissed for lack of jurisdiction.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge