

JOHNNY S. BUSTOS
MARGARET BUSTOS

IBLA 2001-368

Decided August 23, 2002

Appeal from a decision of the Field Office Manager, Taos Field Office, New Mexico, Bureau of Land Management, rejecting Class 1 color-of-title application NMNM-102592.

Affirmed.

1. Color or Claim of Title: Applications--Color or Claim of Title:
Cultivation--Color or Claim of Title: Improvements

BLM properly rejects a Class 1 color-of-title application pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994), when a claimant fails to present any evidence that the land sought had valuable improvements or some part of it had been reduced to cultivation at the time of application.

APPEARANCES: Johnny S. Bustos and Margaret Bustos, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Johnny S. Bustos and Margaret Bustos, husband and wife, have appealed a July 19, 2001, decision issued by the Manager, Taos Field Office, New Mexico, Bureau of Land Management (BLM), rejecting Class 1 color-of-title application NMNM-102592, because they had failed to demonstrate that there were valuable improvements on the land or that some part of the land had been reduced to cultivation.

[1] Section 1 of the Color of Title Act provides, in relevant part:

The Secretary of the Interior * * * shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, * * * issue a patent for not to

exceed one hundred and sixty acres of such land upon the payment of not less than \$1.25 per acre[.] [Emphasis added.]

The requirement to place valuable improvements on land, or to reduce some part of it to cultivation is also set out in the Department's regulations. See 43 CFR 2540.0-5(b). Thus a party seeking title under the Color-of-Title Act must show that valuable improvements were placed on the land, or that some part of it was reduced to cultivation, by tillage or other efforts to produce a crop. Louis C. Scalise, 129 IBLA 334, 338 (1994); John P. Montoya, 113 IBLA 8, 16 (1990); Richard P. Montoya, 84 IBLA 52, 55 (1984).

The burden of demonstrating that the requirements of the Color of Title Act are satisfied rests with the color-of-title claimant. Hi-Country Estates Phase II, 155 IBLA 129, 131 (2001); James E. Gaylord, Jr., 94 IBLA 392, 395 (1986); Kim C. Evans, 82 IBLA 319, 323 (1984). If an applicant fails to show that there are valuable improvements on land or that part of it is cultivated, a color-of-title application is properly rejected. Louis C. Scalise, 129 IBLA at 334, 336 (1994); Estate of Edna Turney, 123 IBLA 354, 358 (1992); Richard P. Montoya, *supra* at 56.

On September 14, 2000, Johnny S. Bustos filed Class 1 color-of-title application NMNM-102592, seeking a 2.18-acre parcel of public land described as Lot 36, sec. 8, T. 20 N., R. 9 E., New Mexico Principal Meridian, Santa Fe County, New Mexico, pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994).

The chain of title to this tract originated with an October 5, 1956, Deed (No. 6487) from the State Tax Commission of New Mexico to Juan D. Bustos, Bustos' father. ^{1/} This deed describes the land as "Tract #973, Map #9 [of the Santa Cruz Irrigation District (SCID)]," and this description was carried through in the 1962 deed, the next conveyance in the chain of title. An SCID map depicting SCID's Tract #973, Map #9 shows that Tract 973 covers Parcel No. 241-287, which contains 2.18 acres. That tract is also clearly shown on a copy of a portion of Santa Fe County tax assessor's map attributing ownership on Bustos and his wife. That parcel coincides with Lot 36, sec. 8, T. 20 N., R. 9 E., New Mexico Principal Meridian, Santa Fe County, New Mexico. Bustos' color-of-title application expressly lists Lot 36, sec. 8 as the land being sought.

^{1/} The application has a check in the box indicating that it is a Class 1 application. However, in his application, Bustos also checked a box which states that his color-of-title claim "originated before January 1, 1901," which indicates that he was also applying under the Class 2 provisions of the Color of Title Act. See 43 CFR 2540.0-5(b). The obvious break in the chain of title evidenced by the Oct. 5, 1956, tax deed precludes the grant of title under the Class 2 provisions. Estate of Edna Turney, *supra*; Richard P. Montoya, *supra* at 54-55; Paul Marshall, 82 IBLA 298, 301 (1984).

Juan D. Bustos conveyed the tract to Bustos' mother, Margaret V. Bustos, by Quitclaim Deed dated January 17, 1962. A copy of this deed was included with a December 2000 letter from Bustos to BLM. 2/ The tract was inherited by Bustos on the death of his mother in 1976. 3/ Bustos stated, in his application, that he had first learned from BLM that he did not have clear title to the land in "November of 1984." 4/

In his July 2001 decision, the Field Office Manager rejected Bustos' Class 1 color-of-title application. After stating that the land had been held in good faith adverse possession, under color or claim of title for 20 years beginning with the 1956 deed, he concluded that Bustos had failed to demonstrate that valuable improvements had been placed on the land or that any part of the land had been reduced to cultivation. The Field Office Manager stated "[t]herefore, the claimant fails to meet the requirements under the Act. * * * A claimant's failure to carry the burden of proof on one of the elements is fatal to the application." (Decision at 1 (citing Kim C. Evans, supra.)

The Bustoses appealed. 5/

The application was rejected because the claimant failed to demonstrate that the land sought had valuable improvements or had been reduced to cultivation, in some part. This is borne out by the record. In his application, Bustos answered "No" to the question whether the land was currently under cultivation, and, when asked to specify the years the land

2/ He also submitted a typed deed, also dated Jan. 17, 1962. In this deed Bustos' father conveyed the land to his mother and himself. This inconsistency has no material effect, as the land was ultimately conveyed to Bustos' mother, either under the 1956 deed or as the survivor under the 1962 deed.

3/ The party or parties seeking title must have full "title" to the land being sought. Bustos' mother died intestate. In a Dec. 31, 2000, letter, Bustos agreed to obtain a quitclaim deed from his brothers and sisters, conveying their interest in the land to him. On appeal, Bustos indicates that he has the requisite conveyances. See Notice of Appeal/Statement of Reasons for Appeal (NA/SOR), dated Aug. 9, 2001 ("All h[ei]rs of Juan D. and Margaret V. Bustos have signed over their portion of the land to Johnny S. Bustos, therefore making me administrator of my mother's estate").

4/ In his application Bustos also states that at the time of his mother's death in 1976, he learned that "the U.S. Government claimed they owned [the land]." This indicates that Bustos first learned that the United States held title to the land some time in 1976, rather than in 1984. This statement raises a question regarding the satisfaction of the 20 year requirement. Failure to do so would result in rejection of his later color-of-title application. Daniel J. Boles, Jr., 137 IBLA 35, 37 (1996); Louis C. Scalise, supra at 336-37; Kim C. Evans, supra at 321-22.

5/ The Bustoses seek to have the Board stay the effect of the Field Office Manager's July 2001 decision. This opinion constitutes a decision on the merits of Bustos appeal. Their petition for a stay is denied, as moot.

was cultivated, he said: "No specific year, but the Bustos family has had water rights for over 75 years." When asked to list any improvements made to the property, he stated:

Improvements could not be made because the U.S. Government claimed they owned [the land]. I have been trying to resolve this issue since my mother Margaret V. Bustos passed away in 1976. When a clear color-of-title is obtained improvements will be made legally.

Bustos also noted that the estimated value of "structural and cultural improvements" on the land on the date of purchase and added to the land since that date was "zero."

The record contains a July 16, 2001, Case Profile, in which Martinez, a BLM realty specialist, relates that, following the receipt of the application, he inspected the tract and found that "there were not any improvements to the land." This is documented by photographs of the land in the case file. No cultivation is evident in the photographs.

In their statement for reasons for appeal the Bustoses refer to a June 16, 1986, color-of-title application filed by Johnny Bustos. This application was returned without adjudication because Bustos had failed to demonstrate that the claim was being pursued by the current color-of-title holder. His mother was considered to be the current color-of-title holder and there was no evidence that Bustos had been appointed the administrator of his mother's estate. Bustos claims to have overcome this deficiency in his original application, but does not address the issue of existence of valuable improvements/cultivation as required by the Act. ^{6/} They make no effort to show that valuable improvements were ever placed on Lot 36, sec. 8, or that any part of that land has been reduced to cultivation.

We therefore conclude that the Field Office Manager properly rejected Class 1 color-of-title application NMNM-102592, for 2.18 acres of public land in Lot 36, sec. 8, T. 20 N., R. 9 E., New Mexico Principal Meridian, Santa Fe County, New Mexico, for failure to show compliance with the valuable improvements/cultivation requirement of section 1 of the Color of Title Act. ^{7/} Richard P. Montoya, *supra* at 56.

^{6/} A copy of Bustos' original color-of-title application and two deeds are attached to the Bustoses' NA/SOR. These deeds, dated 1904, conveyed land from Jose Savas Quintana to Blas M. Bustos and from Doloritas Quintana to Pedro Herrera. The deeds seem to relate to land in Las Cuartelas, which appellants have said is not the land in La Puebla. See Letter to BLM, dated Dec. 31, 2000, at 1. No effort has been made to demonstrate that Lot 36 was conveyed by those instruments. Thus, we fail to see the relevance of either deed.

^{7/} In her July 16, 2001, Case Profile, Martinez recommended that BLM pursue a direct sale of the parcel, at its current fair market value. The land has been identified in BLM's land-use plan as difficult and uneconomic to manage and suitable for disposal. BLM would be free to pursue this option.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' petition to stay the effect of BLM's July 2001 decision, rejecting their Color-of-Title application, NMNM-102592, is denied, and that decision is affirmed.

R.W. Mullen
Administrative Judge

I concur:

T. Britt Price
Administrative Judge