INTERIOR BOARD OF INDIAN APPEALS

Henry Kocer Garnett v. Aberdeen Area Director, Bureau of Indian Affairs

3 IBIA 180 (12/05/74)

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United States Department of the Interior

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

ADMINISTRATIVE APPEAL OF

HENRY KOCER GARNETT, OS-3667

v.

AREA DIRECTOR, ABERDEEN,

AND ALL OTHER PARTIES IN INTEREST

IBIA 74-34-A Decided December 5, 1974

Appeal from a decision of the Area Director, Aberdeen, concerning repurchase rights under the Act of August 8, 1968 (82 Stat. 663), and 25 CFR 257.

Affirmed.

1. Statutory Construction: Generally

   Statutes should be given their natural meaning and receive a fair and reasonable interpretation with respect to the objects and purposes thereof.

APPEARANCES: Henry Kocer Garnett, appellant, pro se.

OPINION BY ADMINISTRATIVE JUDGE WILSON

The appeal of Henry Kocer Garnett, hereinafter referred to as appellant, is from a decision of the Area Director, Aberdeen Area Office, Bureau of Indian Affairs, denying his claim as a former owner to purchase a greater share in three tracts of land hereinafter described than the other four former owners pursuant to the Act of August 8, 1968 (82 Stat. 663), hereinafter referred to as the Act, and 25 CFR 257.

The lands involved in this appeal were a part of the lands acquired in 1942 by the United States of America as a part of the Badlands Air Force Gunnery Range, sometimes referred to and known as Pine Ridge Aerial Gunnery Range. Several years ago the Department of the Air Force declared a greater portion of the gunnery range surplus or excess to its needs. The surplus or excess land, which includes the three tracts involved in this appeal, was transferred to the jurisdiction of the Secretary of the Interior, effective as of August 23, 1969. Thereafter, regulations were promulgated and approved by the Secretary of the Interior on June 24, 1969, to implement the Act of August 8, 1968, supra. The implementing regulations appear in 25 CFR 257.

The appeal herein involves repurchase rights under the Act, supra, in the following tracts of land:

AGR Tract No. B-1014, formerly the allotment of Charles Garnett, OS-3671, described as the SE 1/4 sec. 1, township 41 N., range 41 W., 6th P.M., Shannon County, South Dakota, containing 160 acres, more or less.

AGR Tract No. 1300, formerly the allotment of William Garnett, Sr., OS-1601, described as lots 1, 2, E 1/2 NW 1/4, sec. 7, township 41 N., range 40 W., 6th P.M., Washabaugh County, South Dakota, containing 154.40 acres, more or less.

AGR Tract No. C-1304, formerly the allotment of William Garnett, Jr., described as lots 6, 7, E 1/2 SW 1/4, SE 1/4 sec. 6, township 41 N., range 40 W., 6th P.M., Washabaugh County, South Dakota, containing 314.25 acres, more or less.

Title to the above-described tracts vested in the United States of America as of December 31, 1942, the date of taking. Prior and up to that date, December 31, 1942, the record indicates the United States held the three tracts of land in trust for the following Indian owners in the proportions indicated:

Filla Garnett, also known as Filla Janis Garnett, Pine Ridge Allottee No. 1830 - 1/3 or 9/27.

Charles Garnett, Pine Ridge Allottee No. 3734 - 2/9 or 6/27.

Henry Kocer Garnett, Pine Ridge Allottee No. 3667 - 2/9 or 6/27.

Add Theodore Garnett, Pine Ridge Allottee No. 7213 - 2/27.

Frances E. Garnett, Pine Ridge Unallotted No. 9555 (also known as Frances Garnett Hogan and now known as Frances Garnett Puskar) - 2/27.

Cynthia Bertha Garnett, Pine Ridge Unallotted No. 9556 (also known as Cynthia Garnett Red Owl and now known as Cynthia Garnett Lawrence) - 2/27.

Three of the above-named Indian owners, namely Filla Janis Garnett, Charles Garnett and Add Theodore Garnett, died prior to August 8, 1968, the date of the Act, supra. Accordingly, their repurchase rights vested in the parties hereinafter identified and designated under the provisions of the Act, supra, as implemented by 25 CFR 257.3(b) and (c). Three of the original owners, as of

the date of taking, namely Henry Kocer Garnett, Pine Ridge No. 3667, Frances E. Puskar, Pine Ridge Unallotted No. 9555, and Cynthia Bertha Lawrence, Pine Ridge Unallotted No. 9556, are living and therefore "former owners" under 25 CFR 257.3(a). Accordingly, as of August 8, 1968, the approval date thereof, the following persons qualified under the regulations as "former owners" with the right to repurchase the three tracts in question provided they filed timely applications:

Henry Kocer Garnett, PR-3667.
Frances Garnett Puskar, PRU-9555.
Cynthia Garnett Lawrence, PRU-9556.
Edith Little Bear, PRU-3782.
Alice O'Rourke, PRU-7874.
Charles Garnett, PRU-11009.
Anthony James Garnett, PRN-60900.
Gary Anthony Garnett, PRN-60901.

Only the following five individuals of the above eight qualified or eligible individuals filed applications to repurchase the tracts in question pursuant to 25 CFR 257.6(a):

Henry Kocer Garnett, PR-3667.
Cynthia Garnett Lawrence, PRU-9556.
Edith Little Bear, PR-3782.
Alice O'Rourke, PR-7874.
Charles Garnett, PRU-11009.

The record indicates the five individuals were notified on November 8, 1973, by the Acting Superintendent, Pine Ridge Agency, by certified mail, return receipt requested, that unless they could agree to the share each was to acquire in the three tracts the applications to purchase would not be considered and the tracts made available for lieu selection.

The appellant under date of December 20, 1973, in response to the letter of November 8, 1973, advised the Aberdeen Area Office it was his contention that he was legally entitled to repurchase a 7/18 interest in the three tracts rather than an undivided 1/5 interest. The appellant based his contention on the normal rules of heirship descent that would have taken place if the land had remained in Indian ownership. In response thereto, the Area Director on January 11, 1974, advised the appellant that he was reaffirming his position to the effect that any right the appellant had to repurchase was created by the Act of August 8, 1968, supra, and that his right under the Act, supra, to repurchase was no greater than the right of the other four applicants. The appellant was further advised that if he and the other four applicants could agree to acquire the tracts in other than equal undivided shares or interests of 1/5 each, a sale in the proportions agreed would be

made. In the same letter appellant was further advised the responsibility of reaching an agreement as to the shares or interests to be purchased by each applicant rested entirely with such individuals. Moreover, the appellant was given an additional 30 days from the date of the letter to execute sales contracts and failure to do so would result in the proposed purchase being abandoned and the lands made available for lieu selection.

The record indicates the appellant upon receipt of the letter of January 11, 1974, still remained unconvinced and maintained he was legally entitled to acquire a larger share in the three tracts than the other four applicants and advised the Aberdeen Area Office to that effect on January 28, 1974. The Aberdeen Area Office treated the letter as an appeal and referred the matter to the Commissioner, Bureau of Indian Affairs, for review and decision. The Commissioner, pursuant to 211 DM 13.7, dated December 14, 1973, referred the matter the Board of Indian Appeals for disposition.

The appellant in support of his appeal contends that:

(1) William Garnett, Sr., was the original owner of the tracts involved and since his wife, Filla, and all his children, with the

exception of the appellant, are deceased, preferential repurchase rights should vest in the appellant as a sole surviving child, and

(2) appellant, as a son, applied for and was granted the right to repurchase other lands that had been owned by Filla Garnett and taken by the government and that the appellant should have the same right to repurchase the lands taken over from William Garnett, Sr., as the only surviving son, and

(3) appellant owns a 5/9 interest in the tracts involved as compared to the outstanding 4/9 interest owned by seven other persons in various proportions, and

(4) by virtue of custom and usage, appellant has a vested right to purchase such property since he was born on the land, lived thereon until the land was taken by the U. S., and that he moved back on the land after the military quit using the land in 1945.

(5) that the appellant has expended approximately $50,000 in improving the premises.

(6) that appellant uses the tract involved as headquarters for his operations consisting of other interests he has acquired in the vicinity.

A review of the record indicates the appeal involves only one issue that requires consideration and resolution by this Board and that is:

Does the Act of August 8, 1968, as implemented by 25 CFR 237 provide for the appellant, a former owner, to purchase a greater share in the tracts involved than the other four former owners?

The appellant's contentions as hereinabove set forth are considered and disposed of as follows:

Appellant's first contention is clearly without merit as William Garnett Sr., was not a "former owner" within the meaning of 25 CFR 257.3(e) which provided in its pertinent part:

> * * * "Former owner" means each person from whom the United States acquired an interest in a tract of land, or if such person is deceased, the surviving spouse, or if such spouse is deceased, his children. * * *

Contention number 2 is likewise without merit as it is immaterial and of no consequence insofar as the three tracts in question are concerned that appellant applied for and was granted the right to repurchase other lands owned by Filla Garnett which had been taken by the government as part of the gunnery range.

Appellant's third contention is unsupported by the record in that title to the three tracts still remains in the United States of America. Moreover, the only right the appellant and the other four former owners have in the land in question is what is granted them under the Act of August 8, 1968, supra, that being merely the right to repurchase the land in question under the conditions set forth in the Act, supra, as implemented by 25 CFR 257.

The appellant's fourth contention is likewise without merit and unacceptable in that the Act, supra, as implemented by the regulations, 25 CFR 257, makes no provision for the consideration of custom and usages or for the other items mentioned by the appellant in his contentions regarding repurchase rights. Regrettable and unfortunate as it may be, any investment or improvements the appellant made on the lands involved in this appeal were strictly at his own risk.

The record indicates that appellant and the other four parties have qualified as "former owners" as to the three tracts and in such capacity made timely applications to repurchase the three tracts involved pursuant to 25 CFR 257.6(a). Title 25 CFR 257.3(e), among other things, provides that not more than five of the former owners

may join in purchasing a tract of land. Neither the Act, supra, nor Part 257 of the regulation makes any provision for the former owners under such circumstances to acquire anything other than equal interest or shares therein.

[1] Statutes as a general rule should be given their natural meaning and receive a fair and reasonable interpretation with respect to the objects and purposes thereof. The words of the statute will be given their plain meaning where to do so does not lead to an absurd or unjust result. H. Leslie Parker, M. N. Wheeler, 62 I.D. 88 (1955).

In view of the reasons hereinabove set forth, the Board finds that the appellant under the provisions of the Act of August 8, 1968, supra, and 25 CFR 257, is not entitled to purchase a greater share or interest in the three tracts involved than the other four applicants. Accordingly, the Area Director's decision of January 11, 1974, affirming the Pine Ridge Acting Superintendent's action of November 8, 1973, must be sustained and appellant's appeal 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), the decision of the Area Director, Aberdeen Area Office, Bureau of Indian Affairs,

dated January 11, 1974, be and the same is hereby AFFIRMED and the appeal herein is DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge