INTERIOR BOARD OF INDIAN APPEALS

Christine Nix v. Acting Sacramento Area Director, Bureau of Indian Affairs

21 IBIA 42 (11/07/1991)

Related Board case:
18 IBIA 387

United States Department of the Interior

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

CHRISTINE A. NIX
v.
ACTING SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-55-A Decided November 7, 1991

Appeal from a decision concerning ownership of a house constructed under the Bureau of Indian Affairs' Housing Improvement Program.

Affirmed.

1. Indians: Housing: Housing Improvement Program--Indians: Lands: Tribal Lands

   Under the Bureau of Indian Affairs' 1979 Housing Improvement Program regulations, title to a house constructed on tribal land did not vest in the grant recipient during the first 5 years following construction.

APPEARANCES: Christine A. Nix, pro se; Marilyn B. Miles, Esq., Eureka, California, for Peter E. Nix.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Christine A. Nix seeks review of an October 12, 1990, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning ownership of a house located on Yurok tribal land and constructed under BIA's Housing Improvement Program (HIP). For the reasons discussed below, the Board affirms the Area Director's decision.

Background

The house at issue in this appeal was constructed in 1979 under a HIP grant made to appellant's Yurok husband, Leo Nix, Jr., who died in May 1979, before construction was completed. The house is located on a 1.97-acre parcel of Yurok tribal land. Leo Nix, Jr., did not have a land use permit for the tribal land; although he had been sent a permit form to sign, he died before signing and returning it. In July 1979, appellant, a non-Indian, was issued a revocable land use permit on behalf of her minor Yurok son.

In December 1989, the Area Director held that appellant had no right to remain on the tribal land because the permit issued on behalf of her son had terminated by its own terms upon her son's death in 1988. In July 1990,

the Board affirmed the Area Director's conclusion that the permit had terminated. However, because the Area Director had made no determination concerning ownership of the house, the Board remanded the matter for such a determination. Nix v. Acting Sacramento Area Director, 18 IBIA 387 (1990) (Nix I). 1/

By memorandum dated October 12, 1990, the Area Director adopted the recommended conclusion of the Area Housing Program Officer that appellant had no ownership rights in the house. Appellant was informed of her right to appeal the Area Director's decision by letter from the Superintendent, Northern California Agency, BIA, dated January 24, 1991. 2/

Appellant's notice of appeal, which included a statement of reasons, was received by the Board on February 28, 1991. Peter E. Nix filed a brief opposing appellant's position.

Discussion and Conclusions

Appellant's statement indicates that she still seeks to remain on the tribal land. As determined in Nix I, appellant no longer has a right to live there. If she were determined to own the house, however, she would be allowed a 90-day period in which to remove it from the property, as provided in section 7 of the expired permit, quoted below.

[1] The HIP regulations in effect in 1979 included the following provision:

> The applicant [for assistance in financing new housing] must have ownership (as defined in § 261.2(h)) [3/] of the land on which the house is built. In the case of a leasehold interest, it must be for not less than 25 years. Within five years after completion of construction if an owner of a house built on tribal lands desires to move, he must first notify the tribe of his intention. Within 60 days of such notice, the tribe shall have the right to either assume his interest in the house or designate someone to assume his interest. If the tribe takes no action, he may dispose of the house without regard to any restrictions in this Part.

25 CFR 261.4(d)(4) (1979). Although this provision uses the term "owner of a house," in apparent reference to a HIP grant recipient, it is clear

---

1/ See the Board's earlier decision for further background of this matter.

2/ Under 25 CFR 2.7(a), notice should have been given by the Area Director. Parisian v. Acting Billings Area Director, 19 IBIA 109 (1990).

3/ 25 CFR 261.2(h) (1979) provided: "'Ownership' means having fee title, trust title (including participation in multiple ownership), leasehold interest, use permit, indefinite assignment or other exclusive possessory interest."

from the substance of the section that title to a HIP house located on tribal land was not intended to vest in the grant recipient during the first 5 years following construction.

In this case, it appears especially clear that the grant recipient, Leo Nix, Jr., acquired no vested rights in the HIP house, not only because he died prior to completion of the 5-year period, but also because he did not have a valid land use permit and thus lacked "ownership * * * of the land on which the house is built," as required by section 261.4(d)(4). The Board concludes that appellant acquired no rights in the house from her husband.

As noted in Nix I, the land use permit issued to appellant on behalf of her minor son provided at section 7:

> BUILDINGS: Ownership of any buildings placed upon the land will vest in Permittee or Permittee's heirs, it being understood and agreed, however, that Permitter is in no way obligated to assist in building a house or otherwise improving the permitted property. Upon termination of this Permit, Permittee or Permittee's heirs will be allowed ninety (90) days within which to remove or otherwise dispose of said buildings.

The Board finds that this provision is most reasonably construed to include only buildings placed upon the land during the term of the permit. The HIP house was under construction in May 1979; it is not clear when construction was completed. The Board finds, however, for purposes of this section, that the house was "placed upon the land" when construction was initiated, i.e., prior to the issuance of a permit to appellant on July 9, 1979. Therefore, the Board concludes that title to the house did not vest in appellant under the terms of the permit.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Sacramento Area Director's October 12, 1990, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge