

LESLIE AND LUCY NEILSON

IBLA 72-181

Decided December 20, 1972

Appeal from decision (A-6337) by Arizona State Office, Bureau of Land Management, rejecting application to purchase land pursuant to the Mining Claims Occupancy Act.

Affirmed.

Mining Occupancy Act: Generally -- Mining Occupancy Act: Principal Place of Residence

A qualified applicant for conveyance of land under the Mining Claims Occupancy Act of October 23, 1962, must have been on that date a residential occupant-owner of valuable improvements in an unpatented mining claim which constituted for him a principal place of residence, and where on that date an applicant has only occupied the claim in a tent and small portable trailer, which were removed during the winter months, there were not valuable improvements on the claim which could constitute a residence under the Act.

APPEARANCES: Leslie T. Neilson and Lucy Neilson, pro se.

OPINION BY MRS. THOMPSON

Leslie T. Neilson and Lucy Neilson have appealed from the decision of the Arizona State Office, Bureau of Land Management, dated October 22, 1972 (A-6337), which rejected their application for fee title to a five-acre tract of land. This application was filed on June 16, 1971, pursuant to the Mining Claims Occupancy Act of October 23, 1962, as amended, 30 U.S.C. §§ 701-709 (1970).

The tract is within the unpatented Sheep Springs Manganese No. 1 lode mining claim which was declared null and void for lack of a discovery by an Administrative Law Judge's decision (A-4443), dated December 2, 1970. An appeal by the Neilsons to this Board was summarily dismissed March 31, 1971 (IBLA 71-141).

The State Office found that the Neilsons were not qualified applicants under the Mining Claims Occupancy Act as they were not residential occupant-owners of improvements constituting a principal place of residence

on October 23, 1962. As defined by section 2 of the Mining Claims Occupancy Act (30 U.S.C. § 702):

\* \* \* a qualified applicant is a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962.

We have carefully considered appellants' objections to the decision below and their reasons for appeal. We find there is no basis for disturbing the conclusion reached below in view of appellants' statements in this appeal. Although appellants deny certain statements of the facts concerning their occupancy and improvement of the tract as stated in the decision, they admit other facts which establish that they are not qualified applicants.

In response to the statement in the decision that they did not reside on the mining claim during the period 1954 through 1959 except for a few short term visits when roads were passable, they state in part:

This statement is entirely false. During this period we resided in a large tent and a small portable trailer thru out the summer while we were doing the improvements necessary to fulfill our claim obligations. We left only when winter weather made it necessary for us to go to a lower altitude.

They also state the tent and trailer were removed each winter to protect them from the weather. They admit they moved a house trailer on the claim in 1963, and indicate it remained on the property and a building was constructed around the trailer in 1966. They also admit they did not live on the claim during the winters of 1953 through 1970, but assert that they have retained residence there since 1963.

The Mining Claims Occupancy Act limits a qualified applicant to one with valuable improvements on the claim as of October 23, 1962. These must have been a principal place of residence, and the applicant must have had possession for seven years prior thereto. Therefore, the crucial issue is whether the admitted facts show there were "valuable improvements" on the claim at that time and if they would be a "principal place of residence." The alleged improvements on this claim prior to October 23, 1962, were the tent and small trailer which were removed each winter. These do not constitute "valuable improvements" within the meaning of the Act.

The legislative history of the Act and common law usage of the term "improvement" dictate that only structures of a permanent nature placed on the land which tend to increase its value constitute such improvements, thus excluding a mobile trailer or other mobile property which is not permanently affixed to the land. Stanley C. Haynes, 73 I.D. 373 (1966); Christian E. Wicks, 73 I.D. 166, 170 (1966). In the Haynes case, an applicant's house burned in 1962 and the claimant moved a mobile home onto the claim shortly thereafter. Because this was not a permanent structure on the land it was not a "valuable improvement" under the Act. In the Wicks case, a one-room cabin with unfinished walls and no amenities was deemed uninhabitable because it was not "suitable for residential use" and thus could not be a "principal place of residence" under the Act. The decision also stated that a lean-to could not constitute a valuable improvement within the meaning of the Act, although it might be shelter for a rugged outdoorsman. The rationale of those cases applies here. Appellants' tent and trailer added no value to the land. In 1962 they could easily and readily remove any tent and small mobile trailer (and apparently did so in the winter). Therefore, if they had then been deprived of their use of the claim they would not have been deprived of their tent and trailer. Congress authorized relief to prevent the loss of permanent improvements then existing. Congress did not authorize such relief where the improvements were constructed after the Act.

Although a house trailer was subsequently moved to the claim (1963) and a structure was built around it (1966), such actions followed the crucial date and, therefore, do not establish that the requisite conditions of the Act were met. There is no basis for any evidentiary proceedings in this case as appellants have not alleged facts which, if substantiated at a hearing, would entitle them to relief under the Act. Freda Turner, 76 I.D. 105 (1969).

As the lands are within a national forest any further occupancy of the tract must be sanctioned by the Forest Service, United States Department of Agriculture.

Accordingly, the decision of the Arizona State Office is affirmed pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1.

Joan B. Thompson, Member

We concur:

Newton Frishberg, Chairman

Martin Ritvo, Member.

