

CLARENCE E. LESEBERG  
and  
LOUIS D. TUCKER

IBLA 73-156  
IBLA 73-162

Decided July 16, 1973

Appeals from decisions (I-5830, I-5831) of Idaho State Office, Bureau of Land Management, rejecting applications under the Color of Title Act.

Affirmed.

Color or Claim of Title: Generally -- Patents of Public Lands: Effect --Withdrawals and Reservations:  
Effect of

An application under the Color of Title Act is properly rejected when the land applied for was either patented or withdrawn as part of a national forest at the time the purported color of title claim was initiated.

APPEARANCES: Willis B. Benjamin, Esq., of St. Clair, St. Clair, Hiller & Benjamin, Idaho Falls, Idaho, for appellants.

OPINION BY MR. FISHMAN

Clarence E. Leseberg and Louis D. Tucker have appealed from decisions of the Idaho State Office, Bureau of Land Management, dated October 3, 1972, rejecting their respective applications, filed pursuant to the Color of Title Act, 43 U.S.C. §§ 1068, 1068a, 1068b (1970).

The State Office rejected the applications of appellants on the basis that the lands were withdrawn for national forest purposes on November 14, 1902, and are still retained as national forest lands. 1/ Appellants, on the other hand, assert that their lands

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1/ The land referred to by the State Office was temporarily withdrawn for a proposed forest reserve on November 14, 1902. The land is now designated as the Payette National Forest, PLO 218, March 18, 1944.

are claimed through a chain of title arising out of the patented townsite of Cuprum and are not lands situated in a national forest. 2/

The record shows that the townsite of Cuprum was patented to a townsite trustee on March 22, 1909. The land described in the patent is the S 1/2 NW 1/4, sec. 10, T. 20 N., R. 3 W., B.M., Idaho. National forest land adjoins the townsite on its north, south, and east borders. Leseberg's claim of title was initiated on April 30, 1927, and is evidenced by a recorded conveyance to one of his predecessors in interest from the trustee of the Cuprum townsite. Tucker's claim of title was initiated on March 31, 1936, and is evidenced by a recorded conveyance to one of his predecessors in interest from the County of Adams, Idaho.

We do not reach the question as to whether the lands in issue are in a national forest or situated in the patented townsite of Cuprum. While there seems to be some dispute regarding the exact location of the lands claimed by appellants, there is no dispute that the lands are either in a national forest or a patented townsite, and were so reserved or patented at the time appellants' claims purportedly were initiated.

The Color of Title Act provides in pertinent part:

The Secretary of the Interior (a) 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 \* \* \* issue a patent \* \* \*.

The implementing regulation, 43 CFR 2540.0-5(b) provides in pertinent part:

A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

The Color of Title Act applies only to public land, that is, vacant, unappropriated, unreserved Federal real property which is

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2/ The land claimed in the application of Clarence E. Leseberg is described as lots 1, 2, and 3, "supposedly situate in the Patented Townsite of Cuprum, Idaho." The land claimed in the application of Louis D. Tucker is described as lots 110 to 116, all inclusive, and "supposedly situate in the Patented Townsite of Cuprum, Idaho." All of the land in issue is located in sec. 10, T. 20 N., R. 3 W., B.M., Adams County, Idaho.

subject to the public land laws. See Beaver v. United States, 350 F.2d 4, 10 (9th Cir. 1965). Public land does not include reserved or withdrawn land. United States v. Minnesota, 270 U.S. 181, 206 (1926); Donald E. Miller, 2 IBLA 309 (1971). Therefore, if the land in question is situated in a national forest, the land is not public land subject to disposal under the Color of Title Act. Nina R. B. Levinson, 1 IBLA 252, 78 I.D. 30 (1971); Sylvan A. Hart, A-30832 (December 1, 1967). On the other hand, if the land in question is situated within the limits of the old patented townsite of Cuprum, and assuming the title thereto is still vested in the United States, <sup>3/</sup> the land cannot be disposed of under the Color of Title Act. Lands situated within townsites generally are disposable only under the townsite laws, 43 U.S.C. §§ 711-731 (1970), and where Congress has provided that lands shall be disposed of under a specific law, i.e., a townsite law, the Department has no authority to dispose of them in a different manner. Mrs. Willo M. Chandler, A-27992 (August 4, 1959); see Joseph S. White, 30 L.D. 536 (1901). Since the lands are either in a national forest or in a patented townsite, no relief is available to appellants under the Color of Title Act.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Frederick Fishman, Member

We concur:

Joseph W. Goss, Member

Douglas E. Henriques, Member

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<sup>3/</sup> While the record is not entirely clear on the matter, it may be that all right, title, and interest in the land in question is vested in private ownership, in which case the Color of Title Act has no application. Where land is patented by the United States the land is no longer public land and the Department has no further jurisdiction over such patented land. See Arizona Public Service Co., 5 IBLA 137, 79 I.D. 67 (1972); Paul Unruh v. Howard E. Stearns, A-30441 (October 27, 1965); Pollyanna Rice, A-30386 (May 12, 1965). A patent issued to a townsite trustee, however, is not a final disposition of the Government's title, City of Perry, 22 L.D. 367 (1896); Instructions, 14 L.D. 295 (1892), but rather a conveyance thereof, in trust, to be held under the direction of the Secretary of the Interior. Id. at 297.

