

Editor's note: Reconsideration denied by order dated June 18, 1974; Appealed -- reversed, Civ. No. A76-271 (D.Alaska Aug. 8, 1979)

ETHEL AGUILAR ET AL.

IBLA 74-87

Decided February 28, 1974

Appeals from rejection of native allotment applications AA 7927, etc.

Affirmed.

Alaska: Native Allotments--Patents of Public Lands: Suits to Cancel

Although a patent issued pursuant to an Alaska State selection may have been issued by mistake, it vested title in the State and removed from the jurisdiction of this Department the right to inquire into and consider all disputed questions of fact as well as rights in the land.

APPEARANCES: Eric Treisman, Esq., Alaska Legal Services Corporation, for appellants; Loretta C. Douglas, Esq., Division of Energy and Resources, Office of the Solicitor, for the Government.

OPINION BY MR. RITVO

The Alaska State Office, Bureau of Land Management, decision of August 3, 1973, rejected eight Native Allotment applications. ^{1/} It stated that the lands applied for were previously patented in 1962, 1963 or 1964 to the State of Alaska pursuant to its selection rights under section 6 of the Act of July 7, 1958, 72 Stat. 339, and that jurisdiction over the lands involved passed from the United States upon issuance of patent citing Everett Elvin Tibbets, 61 I.D. 397 (1954). Appellants argue that Tibbets does not require the rejection of their application because it recognizes that in proper

^{1/} Ethel Aguilar, AA-7927; Elmer R. Hotch, AA-7928; Esther L. Hotch, AA-7929; Donald S. Hotch, AA-7944; Smith J. Katzeek, Sr., AA-7946; Fred Chambers, AA- 8022; Larry Jacquot, AA-8035; Henry C. Jacquot, AA-8036.

circumstances the Department has authority to seek to have the patents cancelled. They assert that the state selections and patents were improperly allowed because the lands, being occupied by natives, not "vacant, unappropriated, and unreserved at the time of their selection." They assert that the Department is obligated to initiate appropriate steps to vitiate and cancel the patents.

The patents to the state were valid grants which effectively transferred the lands from federal ownership. And where once lands have been patented, they are no longer unappropriated lands of the United States and applications covering such lands must be rejected. Clarence March, 3 IBLA 261 (1971); Tibbets, supra. In March, a case on all fours with these appeals, we held:

The rulings in the decisions below rejecting the application because the lands have been patented to the state are correct. The effect of the issuance of a patent is to remove from the jurisdiction of this Department the inquiry into and consideration of all disputed questions of fact, including the determination of questions concerning rights to land. See Everett Elvin Tibbets, supra, at 399, and the United States Supreme Court decision and the Departmental decisions cited therein; Kelso B. Morris, A-28070 (October 26, 1959); Doris L. Ervin et al., A-29393 (July 8, 1963). This is sufficient to dispose of the proceeding at hand.

We decline to rule on appellant's request that this Board recommend institution of suit for cancellation of the State's patent. Rather, we order the case record returned to the Bureau of Land Management and suggest that the Bureau, the appellant and the Bureau of Indian Affairs, if they so desire, take the matter up with the Office of the Solicitor, the Department's office in charge of litigation matters. [3 IBLA at 264]

In view of the disposition of the case, oral argument would serve no useful purpose, appellant's request for one is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Martin Ritvo, Member

We concur:

Edward W. Stuebing, Member

Douglas E. Henriques, Member

