

CLOYD AND VELMA MITCHELL

IBLA 76-53

Decided November 4, 1975

Appeal from the rejection of Color of Title Application U-29277.

Affirmed.

1. Color or Claim of Title: Generally

The Department must reject a color of title application for land which is not described in the deed or other instrument on which the application is based, even though the applicants and their predecessors in occupancy believed that the public land was covered by the instrument.

2. Color or Claim of Title: Generally

Mere possession and improvement of public land by the applicant in the mistaken belief that he owns it is insufficient basis to qualify for a conveyance under 43 U.S.C. § 1068 (1970). A claim or color of title must be based upon a document, from a source other than the United States, which on its face purports to convey to the applicant the land applied for.

APPEARANCES: Ken Chamberlain, Esq., Richfield, Utah, for the appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Utah State Office of the Bureau of Land Management rejected appellants' application to acquire certain land pursuant

to the Color of Title Act, 43 U.S.C. § 1068 (1970), from which decision this appeal was taken. The circumstances are described in the decision below, as follows:

On January 28, 1975, Cloyd and Velma Mitchell filed application U-29277 for 13 3/4 acres of land located in Piute County, Utah under Class I of the Color of Title Act of December 22, 1928 (45 Stat. 1069), as amended.

The lands are described as the S 1/2 S 1/2 NW 1/4 SE 1/4, SE 1/4 SE 1/4 NE 1/4 SW 1/4, S 1/2 NE 1/4 SE 1/4 NE 1/4 SW 1/4, Sec. 13, T. 30 S., R. 3 W., SLM, Utah. These lands are contiguous to a 120 acre tract of land in which the Mitchell's presently hold record title.

Mr. and Mrs. Mitchell indicate that they have lived on the land for over 30 years and that the lands have been occupied by them or their ancestors for more than 50 years. They were not aware of the fact that they did not hold clear title until September 1968. The lands have been cultivated and improvements on the land are estimated at a value of \$6,000.00. Mr. and Mrs. Mitchell have also listed conveyances affecting color or claim of title in their application which dates back to January 1918. However, an examination of the county records indicate that these conveyances or transactions are for their adjoining 120 acres of land and not for the lands described in this application. There is no deed or documentation in the records of Piute County supporting any claim by the Mitchells.

The decision then held that the mere possession and improvement of public land based entirely upon a mistaken belief that the land is embraced within one's own holdings, and unsupported by any instrument which on its face purports to convey the land, is an insufficient basis for qualification under the Act, citing appropriate cases.

It is asserted on appeal, inter alia, that the instruments which comprise the chain of title upon which appellants relied do, in fact, purport to convey the land applied for, because that land has long been regarded by both private and public individuals (including agents of the federal government) as part of the land contained in the conveyances. Appellants also assert that they

have in good faith cultivated and improved the land to the extent of many thousands of dollars, and they charge the United States with "derelection [sic] and default."

Presumably, the latter allegation relates to circumstances surrounding a highway relocation which involved this land. In 1947, the Highway Department realigned State Highway No. 62, so that the realigned right-of-way embraced the property where the Mitchells' house was situated on the tract here at issue. In order to proceed with the project, the Highway Department moved the Mitchells' house to its present location, which is still within the subject tract of public land. At that time neither the Mitchells nor the Highway Department was aware that the land was public domain. Subsequently, the highway right-of-way was broadened so that it again embraced the present situs of appellants' home and other improvements. 1/ After their home was relocated appellants added on to the structure and remodeled it. 2/ They also built new corrals, sheds, and stock yards, improved the ditch and fence lines, and did some land leveling. All of these improvements, together with a portion of the 3.5 acres of cultivated land on the tract are within the present boundaries of the expanded right-of-way.

After it was discovered in 1968 that the 13-1/4 acres were public land, the Mitchells filed an application to have the land offered at public sale pursuant to the Act of September 26, 1968; 82 Stat. 870; 43 U.S.C. §§ 1431-1435 (1970), familiarly known as "The Unintentional Trespass Sales Act." Although this Act had a duration of only 3 years, expiring by its own terms on September 26, 1971, the Mitchells filed their application U-16464 and paid the requisite fees and deposits within the period provided.

However, they subsequently realized that the Act would require that the subject land be sold by public bidding. Since it included their home and other improvements they apparently were fearful of what might transpire if the land were offered at public sale. They

1/ Presumably the Mitchells received compensation for the rights in the public land taken by the Highway Department in the mutually mistaken belief that the property was owned by the Mitchells. The amount of such compensation is not reflected by the record before us, but it should be taken into account in any future analysis of the equities.

2/ The house was constructed on the original site by Velma Mitchell's father, according to the appellants.

then filed this color of title application in an effort to purchase the land by direct sale. Thus they had two applications pending in the Utah State Office for the same land.

In order to proceed with the color of title application, the Utah State Office suspended the Mitchells' application under the Unintentional Trespass Sales Act.

Meanwhile, in an effort to clear the land for purchase by the Mitchells, personnel of BLM consulted with officials of the Federal Highway Administration, who indicated their willingness to cooperate by relinquishing portions of the expanded right-of-way on either side of the highway which embraced the Mitchells' principal improvements.

Upon adjudication of the color of title application, when it was discovered that none of the instruments upon which the Mitchells were relying to show color of title described the land applied for, the BLM took the extraordinary measure of conducting its own search of the Piute County records in an effort to discover some instrument which purported to be a conveyance of the land in question. No conveyance of title or other record was found which would indicate that the land was ever regarded as privately owned. ^{3/} The application was then rejected for the reasons described above, and this appeal followed.

[1] The decision is undeniably correct. The Department must reject a color of title application for land which is outside the area described in the deed or other instrument on which the application is based, even though the applicants and their predecessors in occupancy sincerely but mistakenly believed that the public land was covered by the instrument. William P. Surman, 18 IBLA 141 (1974); S. V. Wantrup, 5 IBLA 286 (1972). The appellants presently own and occupy all of the 120 acres described in the instruments which comprise their chain of title, and there is no written instrument which purports to convey the additional adjacent land which they have occupied and now seek to acquire.

[2] Mere possession and improvement of public land by an applicant in the mistaken belief that he owns it is an insufficient basis to qualify for conveyance under the Act of December 22, 1928,

^{3/} Had the search of county records by Bureau personnel succeeded in discovering a purported conveyance of the land of which the Mitchells' were unaware, this would have raised the question of how they could claim ownership in reliance upon color of title represented by an instrument they did not know existed.

as amended, 43 U.S.C. § 1068 (1970). Myrtle A. Freer, 70 I.D. 145 (1963). A claim or color of title must be based upon a document from a source other than the United States, which on its face purports to convey to the applicant the land applied for. James E. Smith, 13 IBLA 306, 312; 80 I.D. 702, 705 (1973); Marcus Rudnick, 8 IBLA 65 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed. 4/

Edward W. Stuebing
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

4/ This holding does not preclude all possibility of relief. Appellants' suspended application U-16464 may now be reactivated and adjudicated.

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I recognize that, as an initial proposition, "claim * * * of title" in the Color of Title Act could have been construed to include claims not founded upon a deed describing the applied for land, but I also recognize that such a construction could open Class I public land to improper improvement or cultivation by trespass in the hope of forcing a patent. 43 U.S.C. § 1068 (1970); 43 CFR Part 2540. Congress by its silence has indicated assent to the Departmental construction of the Act over many years. I concur, therefore, in the majority opinion.

Joseph W. Goss
Administrative Judge

