

L. A. GILLETTE

IBLA 77-236

Decided December 21, 1977

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting Appellant's preference right claim and declaring Bertha T. Schooler to be purchaser of two tracts offered in public sales I-016511 and I-565.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Rules and Regulations -- Federal Land Policy and Management Act of 1976: Sales -- Public Sales: Preference Rights -- Regulations: Interpretation

As between two preference right applicants for land offered at public sale under the Isolated Tract Act, 43 U.S.C. § 1171 (1970), departmental regulation 43 CFR 2711.4(b)(2) continues in effect pursuant to 43 U.S.C.A. §§ 1713, 1740 (West Supp. 1977) and is strictly construed with regard to the deadline for making the required showing of fee title to contiguous land.

2. Federal Land Policy and Management Act of 1976: Rules and Regulations -- Federal Land Policy and Management Act of 1976: Sales -- Public Sales: Generally

Although the Federal Land Policy and Management Act, 43 U.S.C.A. § 1701 et seq. (West Supp. 1977), repealed the Isolated Tract Act, 43 U.S.C. § 1171 (1970), where a public sale was held prior to Oct. 21, 1976, with the decision to hold the sale fully supported by land use plans, and there is an explicit finding that disposal criteria of the Federal Land Policy and Management Act have been met, final certificate and

patent may be issued to the highest preference right bidder pursuant to 43 CFR 2711.4 et seq.

APPEARANCES: Norman H. Nielson, Esq., Nielson & Bedke, Burley, Idaho, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

L. A. Gillette has appealed from the March 10, 1977, decision of the Idaho State Office, Bureau of Land Management, which rejected his preference right claim to purchase and declared Bertha T. Schooler the purchaser of two tracts offered in public sales I-016511 and I-565. 1/

An auction for the two parcels was held on October 6, 1976, and Appellant was declared high bidder by notice dated October 7, 1976. The notice stated that a purchaser would not be declared until expiration of a 30-day period within which owners of fee title to contiguous lands could assert a preference right to purchase. The sale was held under authority of the Isolated Tract Act, 43 U.S.C. § 1171 et seq. (1970). On October 21, 1976, this act was repealed by the Federal Land Policy and Management Act (FLPMA), section 703, 90 Stat. 2789. 2/ Preference right regulations are authorized under 43 U.S.C.A. §§ 1713(f), 1740 (West Supp. 1977). For the sale herein concerned, adjoining owners were required to show that they had whole fee ownership as of November 5, 1976. 43 CFR 2711.4(b)(2), infra.

Pursuant to 43 CFR 2711.4(b), Appellant and Bertha Schooler each offered to purchase the land, and they each asserted a preference right as owners of contiguous lands as of November 5. The authorized officer by letter of November 11, 1976, instructed that proof of ownership of the contiguous land be submitted within 30 days of receipt of such notice. 3/ As to parcel I-565, the time was extended to December 28, 1976. The notice stated that the proof of ownership must consist of 1) a certificate of the local recorder of deeds, or 2) an abstract of title or a certificate of title prepared and certified by a title

1/ I-016511 included lots 2, 3, 5, sec. 31, T. 6 S., R. 21 E., Boise Meridian, containing 96.55 acres. I-565 included lots 9, 10, sec. 31, T. 6 S., R. 21 E., containing 33.23 acres.

2/ Section 203 of FLPMA, 43 U.S.C.A. § 1713 (West Supp. 1977), now provides for sales of public lands. Certain existing regulations continue in effect under section 310 of the Act, 43 U.S.C.A. § 1740 (West Supp. 1977).

3/ Appellant received the letter November 13, 1976.

company, an abstracting company, or a duly qualified attorney authorized to practice in the State of Idaho stating that on the basis of an examination of title records the Applicant owned contiguous land in fee simple title as of November 5, 1976.

Mrs. Schooler submitted her proof of ownership on December 9, 1976, consisting of a Certificate of Ownership prepared by Security Title Company of Gooding, Idaho, certifying that she held lot 4, sec. 31, T. 6 S., R. 21 E., Boise Meridian, in fee simple absolute as of November 5, 1976. This proof was timely and in compliance with the regulation.

Mr. Gillette submitted his proof of ownership on December 6, 1976, consisting of a Certificate of Ownership prepared by Land Title and Escrow, Inc., of Jerome, Idaho as to lot 8, sec. 31, T. 6 S., R. 21 E., Boise Meridian, certifying that L. A. Gillette and Florence Gillette, his wife, were the sole owners in fee simple by a Partnership Grant Deed dated November 2, 1976, delivery date unknown, and recorded November 16, 1976. The deed states that execution thereof was acknowledged before a Notary Public on November 2, 1976. The title insurance policy accompanying the certificate shows an effective date of November 16, 1976, and a declaration that title to the fee simple estate was vested in L. A. Gillette and his wife, Florence Gillette, as of that date. This proof was considered by the State Office to be insufficient compliance with the requirements of 43 CFR 2711.4(b)(2), *infra*. ^{4/}

Under BLM Organic Act Directive No. 77-16 of February 9, 1977, BLM State Directors were given authority to perfect Isolated Tract Act public sales held prior to October 21, 1976, if the sale was fully supported by land use plans. Final certificate and patent could then be issued to the highest bidder under FLPMA, section 203, provided an explicit finding is made that the disposal criteria in FLPMA have been met.

Following a report from District Manager, Shoshone District, that the disposal criteria in FLPMA had been met, the State Office

^{4/} The record contains a statement of Land Law Examiner Eugene E. Babin dated November 11, 1976, regarding telephone calls from Appellant: on November 9, 1976, Appellant stated that for tax and other reasons he could not get clear title to the contiguous land; on November 10, 1976, he stated that Connecticut General Insurance Company had released its hold and a warranty deed was in the mail. On April 25, 1977, affidavits were submitted stating the deed was sent by mail November 2 and received November 4, 1976.

issued its decision rejecting the bids by L. A. Gillette and declaring Bertha T. Schooler to be high bidder for the two parcels. This appeal followed.

[1] Appellant cites Idaho cases which hold that title is vested upon delivery of the deed and asserts that he had whole fee title on November 5. However, the issue here is not only whether Appellant actually had title on November 5, but also whether his proof of title was submitted within the time required in 43 CFR 2711.4(b)(2). That regulation provides:

Each preference-right applicant must, within the time specified by the authorized officer, or such extensions of time as he may grant, submit proof of ownership of the whole title to the contiguous lands, that is, he must show that he had the whole title in fee on the last day of the 30-day period. The authorized officer will specify that date. Such proof must consist of (i) a certificate of the local recorder of deeds, or (ii) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, or by a duly qualified attorney authorized to practice in the State stating on the basis of an examination of title records that the applicant owned adjoining land in fee simple on the last day of the 30-day period. If the preference-right applicant does not own adjoining land at the close of the preference-right period, his preference-right claim will be lost. After a case has been closed, the data filed pursuant to this section may be returned by the authorized officer. [Emphasis added.]

As between two preference right applicants for the same parcels, this regulation must be strictly construed. James L. Thompson, 14 IBLA 131 (1974). Appellant's proof of ownership was not submitted as required by the regulation, and his preference-right claim was properly rejected.

[2] Within the discretion of the Department, a patent may be issued to Bertha Schooler, assuming that the requirements of FLPMA are met. 5/ See e.g., 43 U.S.C.A. §§ 1713, 1718-20 (West Supp. 1977).

5/ In this case, no right to a conveyance had vested when 43 U.S.C. § 1171 (1970) was repealed. See Ferry v. Udall, 336 F.2d 706 (9th Cir. 1964), cert. denied, 381 U.S. 904 (1965); Willcoxson v. United States, 313 F.2d 884 (D.C. Cir. 1963), cert. denied, 373 U.S. 932 (1963).

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 as modified.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

