

STATE OF ALASKA

IBLA 77-292

Decided May 22, 1978

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting in part State selection applications A-050580, A-060527, and AA-8285.

Affirmed.

1. Patents of Public Lands: Effect

The effect of the issuance of a patent, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to remove from the jurisdiction of the Department consideration of all disputed questions concerning rights to the land.

2. Alaska: Native Allotments -- Patents of Public Lands: Generally

Issuance of a certificate of allotment vests full title to the parcel concerned in the allottee, notwithstanding the fact that the Department retains the right to approve a subsequent sale of the parcel by the allottee.

APPEARANCES: Thomas E. Meacham, Esq., Assistant Attorney General, State of Alaska, for appellant; James F. Vollintine, Esq., Anchorage, Alaska, for Howard Wilson.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The State of Alaska (the State) has appealed from the March 18, 1977, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting in part three State selection applications, insofar as they conflict with Native allotment AA-8139 of Howard Wilson. We affirm.

On July 17, 1972, the Bureau of Indian Affairs filed an application on Wilson's behalf for a Native allotment pursuant to 43 CFR Subpart 2561, covering 59.55 acres of land described as lot 2, NW 1/4 SE 1/4, sec. 29, T. 5 N., R. 8 W., Seward meridian. This application claimed that Wilson had used this parcel since 1953.

On August 16, 1962, the State had amended State selection application A-050580 to include this parcel. This selection was tentatively approved by BLM on December 1, 1966. On June 16, 1972, the State had also amended selection application A-060527 to include the parcel and on December 20, 1972, applied for it yet again under application AA-8285.

On June 28, 1974, BLM issued to Wilson a certificate of allotment, No. 50-74-0179, because it had examined his claim and found it valid. This certificate excepted and reserved to the United States various rights-of-way, as well as all coal, oil and gas rights to the lands. It also provided that the land was inalienable until otherwise provided by Congress or until the Secretary of the Interior approved a deed of conveyance of the lands vesting in the purchaser a complete title to the lands. <sup>1/</sup>

On March 18, 1977, BLM issued a decision in which it notified the State that its selection applications had been denied insofar as they concerned the parcel which had been allotted to Wilson. BLM held that Wilson's claim predated the State's selections of the lands, as he had used the lands since 1953. For this reason, and also because the parcel was no longer under its jurisdiction, title thereto having passed to Wilson, BLM rescinded in part the earlier tentative approval of the State's selection and rejected its applications as to this parcel. The State has appealed from this decision.

[1] BLM properly held that it could not grant the State's selection applications, as it no longer had jurisdiction over this parcel. Title to the parcel was issued to Wilson by certificate of allotment on June 28, 1974. The effect of this certificate (or "patent") was to transfer the legal title from the United States and to remove from the jurisdiction of the Department the consideration of all disputed questions concerning rights to the lands. Germania Iron Company v. U.S., 165 U.S. 379, 383 (1897); Fernie M. Rogers, 29 IBLA 192 (1977); Nadja Davis Gamble, 23 IBLA 128 (1975); Basille Jackson, 21 IBLA 54 (1975); Ethel Aguilar, 15 IBLA 30 (1974); Bryan N. Johnson, 15 IBLA 19 (1974); Norman M. Rehy, Sr., 13 IBLA 191 (1973); Dorothy H. Marsh, 9 IBLA 113 (1973); Clarence March, 3 IBLA 261 (1971); Everett Elvin Tibbets, 61 I.D. 397 (1964). This is true even if the patent has

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<sup>1/</sup> The "Certificate of Allotment" is regarded as the equivalent of a "Patent," except for this restraint on alienation of the land.

been issued by mistake or inadvertence. Fernie M. Rogers, supra; Basille Jackson, supra; Ethel Aguilar, supra; Clarence March, supra; Everett Elvin Tibbets, supra. Accordingly, since Wilson has received title to these lands, we are without authority to consider the merits of the State's assertion that his application should not have been allowed.

[2] The State argues that the reservation by the Department of the right to approve any subsequent sale of this parcel by Wilson distinguishes this matter from previous cases, in that full patent did not actually pass to Wilson. We disagree. Under 43 CFR 2561.3(a), land allotted is the property of the allottee and his heirs in perpetuity. While the Department does retain the authority to disapprove a sale of this parcel by Wilson, it is powerless to gain back title thereto from him without undertaking a court proceeding. At most, the Department might deny Wilson's application for approval to convey title, but so doing would not affect Wilson's ownership of the land. Wilson has been vested with title to this parcel, and we are, accordingly, without authority to rule on the merits of the State's contentions.

It is unnecessary to reach the question of the propriety of BLM's holding that Wilson's claim predated the State's selections.

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.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Newton Frishberg  
Chief Administrative Judge

