

SOUTHERN PACIFIC TRANSPORTATION CO.,
DONALD K. LEE
CHARLES SILLER

v.

UNITED STATES FOREST SERVICE

IBLA 77-109

Decided June 2, 1978

Appeal from decision of California State Office, Bureau of Land Management, rejecting applications for patent pursuant to section 321(b) of the Transportation Act of 1940. S 5577, CA 2708.

Affirmed as modified.

1. Act of March 3, 1887 -- Railroad Grant Lands

Sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), authorizes, rather than mandates, the issuance of patents to innocent purchasers for value of lands which did not pass to a railroad under a statutory grant because of their mineral character, the rights of any such innocent purchaser being dependent upon the conditions and limitations of the Act of March 3, 1887, 43 U.S.C. § 898 (1970).

2. Administrative Procedure: Hearings -- Hearings -- Laches -- Railroad Grant Lands -- Rules of Practice: Hearings

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970) and 43 U.S.C. § 898 (1970), in which case a hearing need not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

APPEARANCES: Victor L. Huber, Esq., Grass Valley, California, for appellants; Charles F. Lawrence, Esq., Office of the General Counsel, U.S. Department of Agriculture, for the Forest Service.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Southern Pacific Transportation Company, Donald K. Lee, and Charles Siller have appealed from the decision of the California State Office, Bureau of Land Management, rejecting Southern Pacific's applications for patents for certain land in sec. 3, T. 19 N., R. 6 E., Mount Diablo meridian, California, filed pursuant to section 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), for the benefit of Lee and Siller. The land has been a part of the Plumas National Forest since 1910. Appellants have moved for separate hearings on each application. The Forest Service has entered its appearance and moved that the appeal be dismissed on the ground of res judicata or alternatively that the decision be affirmed.

The Southern Pacific Transportation Co. is the successor to a grantee of certain lands made in aid of the construction of a railroad by the Act of July 1, 1862, 12 Stat. 489, as amended by the Act of July 21, 1864, 13 Stat. 356. These Acts excluded mineral lands. After the line of the railroad was definitely located, the railroad conveyed its interest in the land to those who are claimed to be the remote predecessors in interest of Lee and Siller. The record shows distributions of residuary estates to predecessors of Lee and Siller. While the property herein was not otherwise specifically listed in such distributions, any claim would ordinarily pass with the residuary estate providing the particular right had not been otherwise transferred.

The lands have never been patented to the railroad. The Transportation Act of 1940 provides in section 321(b) that any land grant railroad wishing to take advantage of charging higher rates for carrying Government traffic must file a release of any claim it might have against the United States to lands granted to the railroad. It further states, however, that nothing in section 321(b) should be construed "to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value * * *."

The required release filed under the Transportation Act thus specifically excepted such lands sold by the railroads to innocent purchasers for value prior to enactment of the Act in 1940. In 1975, Southern Pacific filed the applications for patent involved in this appeal, stating that the applications were for lands sold to innocent purchasers for value. The State Office rejected the applications on the ground that the tracts of land applied for are and were mineral in character and were thus excluded from the grant made by the Act of July 1, 1862, supra.

The State Office based its decision on a mineral determination in a letter decision of the Acting Commissioner of the General Land Office dated June 11, 1880, a date prior to the date of the sale of the lands by the predecessor railroad company. The State Office apparently considered that such a departmental determination of the mineral character of the lands was dispositive of the issue and obviated the need for a hearing to determine both mineral character and the good faith of the railroad's vendee. The Forest Service takes a similar position in its motion to dismiss the appeal.

Appellants assert that the land has never been known to be mineral in character and that they are entitled to a separate hearing on each application. Appellants admit that a tunnel and sluicing cuts exist on portions of the land involved.

[1] The determination that the land was mineral in character was clearly binding on the railroad and precluded the passage of title pursuant to the granting acts. Contrary to appellants' assertions, an actual mineral discovery is not necessary to sustain a determination that the lands are mineral in character and excluded from the grant to the railroad. As the Board stated in Southern Pacific Transportation Co., 32 IBLA 218, 221 (1977):

In determining whether the land is mineral in character, it is not essential that there be an actual discovery of mineral on the land. It is sufficient to show only that known conditions were such as reasonably to engender the belief that the land contained mineral of such quality and in such quantity to render its extraction profitable and justify expenditures as to that end. Such belief may be predicated upon geological conditions, discoveries of mineral in adjacent land and other observable external conditions upon which prudent and experienced men are shown to be accustomed to act. United States v. Tobiassen, [10 IBLA 379 (1973)].

See also Anderson v. McKay, 211 F.2d 748 (D.C. Cir. 1954).

The only relief for innocent purchasers from the railroads was provided in section 5 of the Act of March 3, 1887, 43 U.S.C. § 898 (1970), 1/ and preserved by section 321(b) of the Transportation Act of 1940, supra. See Southern Pacific Transportation Co., supra at 223 (concurring opinion); Southern Pacific Co., Heirs of George H. Wedekind, 20 IBLA 365, 377 (1975) (concurring opinion).

1/ Quoted, infra.

Under these statutes, the mineral determination alone does not preclude issuance of a patent if the railroad's vendee was an innocent purchaser for value. The Forest Service motion to dismiss on that ground should therefore be denied.

The fact that the mineral determination preceded the conveyance of the land by the railroad does not conclusively establish the lack of innocence of the railroad's vendee, although the successor-in-interest to such a vendee carries a heavy burden to establish the vendee's innocence. Southern Pacific Transportation Co., supra at 221-22. A hearing may be ordered where the innocence of the vendee is the determinative issue in deciding whether to grant a patent application. Id.

The language of 49 U.S.C. § 65(b), however, merely authorizes rather than mandates the issuance of patents to innocent purchasers for value. Departmental regulation 43 CFR 2631.0-8 provides in part:

Subsection (b) of section 321 authorizing the issuance of such patents is not an enlargement of the grants, and does not extend them to lands not already covered thereby and, therefore, has no application to lands which for various reasons, such as mineral character, prior grants, withdrawals, reservations, or appropriation, were not subject to the grants.

The rights of an innocent purchaser for value under 49 U.S.C. § 65(b) (1970) stem from those under section 5 of the Act of March 3, 1887, 43 U.S.C. § 898 (1970), which provides as follows:

Where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said bona fide purchaser, his heirs or assigns: Provided, That all lands shall be excepted from the provisions of this section which at the date of such sales were in the bona fide occupation of adverse claimants under the

preemption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said preemption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: Provided further, That this section shall not apply to lands settled upon subsequent to the 1st day of December, 1882, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases.

The Department discussed the effect of the Transportation Act savings clause in a 1944 contemporaneous construction, Atlantic and Pacific Railroad Company, 58 I.D. 577, 581-82:

We think it clear that Congress intended by the saving clause merely to assure the survival, despite the filing of a release pursuant to the statute, among other things, of any theretofore existing authority in the Secretary to issue patents confirming the title to such lands as he shall find have been sold by a carrier to an innocent purchaser for value. The language of the clause in this respect permits no other meaning. "Nothing in this section," says the clause is "to prevent the issuance" of such a patent. The words obviously did not create a duty on the part of the Secretary to issue a patent, or a right in the carriers to receive one, if, this statute apart, neither the duty nor the right existed.

As Administrative Judge Thompson stated in her concurring opinion, Southern Pacific Co., Heirs of George H. Wedekind, *supra* at 377, "whatever rights are preserved in an innocent purchaser under the Transportation Act of 1940, must be resolved in accordance with the conditions and limitations prescribed by the Act of March 3, 1887, as well * * *," *citing Southern Pacific Co.*, 71 I.D. 224, 229, 231 (1964).

[2] While the law has generally provided for liberal construction of this remedial legislation, courts have recognized that the right of an innocent purchaser to apply for a patent may be subject to laches. The Supreme Court stated in Ramsey v. Tacoma Land Co., 196 U.S. 360, 363 (1905):

Obviously the statute [Act of March 3, 1887] is not a curative one, confirms no title, but simply grants a

privilege. We shall assume that that privilege is not one continuing indefinitely, that the land is not held free from entry until the purchaser from the railroad company has formally refused to purchase, and that he must act within a reasonable time.

Southern Pacific Transportation Co., supra, involved open public domain. The Board did not invoke laches and directed a hearing to be held on the question of the innocence of the railroad's vendees. However, the land in the instant case has been included in the Plumas National Forest since 1910, and where land has been devoted to a public purpose such as inclusion in a forest reserve, the claim of an innocent purchaser for value may be barred by laches. United States ex rel. Givens v. Work, 13 F.2d 302 (D.C. Cir.), cert. denied, 273 U.S. 711 (1926). An applicant for a patent is properly chargeable with the laches of his predecessors in interest. Id. In John Spiers, 37 L.D. 100, 102-03 (1908), the Department rejected an application filed under the 1887 Act, holding:

At the same time, the right given by the act of 1887 was a privilege or option to acquire right and title rather than a vested right in the land. It did not touch or affect title that remained complete and unimpaired in the United States until such time as the one having this privilege should so act in exercise of it as to show intent to claim the benefit and to obtain title by compliance with the condition fixed. The United States owed him no duty, was under no obligation, but of its free grace offered him a privilege which he might seize upon or not to heal his disappointment at loss of title and disembarass his entangled affairs. There are no words of grant in the act. The effective words after description of the classes of persons and the conditions of their qualifications are simply that --

it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary government price for like lands, and that thereupon patents shall issue therefor to the said bona fide purchaser, his heirs or assigns.

This was a mere privilege and was so held by the court in Ramsey v. Tacoma Land Company [quoted supra] * * *.

It is incident to such a privilege that it must be pursued with diligence and is liable to be barred by

failure to exercise it until change of conditions make it inequitable to assert it. Thus in *Moran v. Horsky* (178 U.S. 205, 208), speaking of a right much stronger than that granted by the act of 1887, the court held:

We need only refer to the many cases decided in this court and elsewhere that a neglected right, if neglected too long, must be treated as an abandoned right which no court will enforce. See among others *Felix v. Patrick*, 145 U.S., 317, *Gallihier v. Cadwell*, 145 U.S., 368, and cases cited in the opinion. There always comes a time when the best of rights will, by reason of neglect, pass beyond the protecting reach of the hands of equity, and the present case fully illustrates that proposition.

These principles equitably and properly bar the applicant. The forest reserve policy is one of great public concern, so recognized by many acts of Congress and by repeated and great appropriations of public money and exchanges of millions of acres of choice public lands to effect as far as possible elimination of private holdings of land within the forest reserves. The Jenkinses [successors in interest to the railroad's vendee] were fully warned by the proclamation of March 2, 1898, that the United States had incorporated these with a large surrounding tract in one of its forest reserves, incurring in respect to it large expenditure of money for conservation of its forest and the water sheds of the streams. If they had right it was their duty with diligence to assert and perfect it. Their title was not cured and the right not one continuing indefinitely. The proclamation saved settlers' rights during "the statutory period within which to make entry or filing of record." Obviously the holder of a mere privilege like this is entitled to no more time to show intent to exercise it than is the settler who has attached himself to the soil, made improvements, expended his money and labor and made himself a home.

Appellants have submitted no explanation of the long delay in application for the patent, nor does the record show any equities which would indicate the doctrine of laches should not be applied. A hearing is not necessary in the absence of a factual issue which would entitle an appellant to the relief sought. See *Foote Mineral Co.*, 34 IBLA 285, 85 I.D. 171 (1978). We do not decide whether the

railroad's vendees were innocent purchasers for value, and a hearing thereon is not appropriate. Rather, we hold that because the lands involved have long been included in the Plumas National Forest, the applications are barred by laches, regardless of whether or not the railroad's vendees were innocent purchasers for value. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the motion to dismiss is denied and the decision appealed from is affirmed as modified.

Joseph W. Goss
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

2/ This holding should not be construed as a ruling that appellants have otherwise satisfied the requirements of 43 CFR 2631.1.

ADMINISTRATIVE JUDGE THOMPSON CONCURRING:

I agree that the applications before us fail to show a sufficient basis for issuing the patents.

First, I wish to emphasize that the applications do not sufficiently show a complete chain of title from the alleged innocent purchaser of the railroad to the present applicant. Regulation 43 CFR 2631.1 sets forth the necessary showings for these applications. Among other matters, it requires corroboration of all statements, details of the alleged sales, and transfers of title, the use, occupancy, and cultivation of the land and the improvements placed thereon. It states that an "abstract of title may be necessary, dependent upon the circumstances of the particular case." Further, it indicates that no application for a patent "will be favorably considered unless it be shown that the alleged purchaser is entitled forthwith to the estate and interest transferred by such patent." In the chains of title shown for these applications there are gaps. For example, the chain of title shown by Charles Siller has two testamentary dispositions which do not describe the land involved. If the land was included in the decrees distributing the residuary property, there is no evidence to corroborate this. Thus, at a minimum, it would seem necessary to establish that the title records do not show any conveyances or other disposition of the property of the decedent whose estate was being probated. Under these circumstances an abstract of title by a disinterested title searcher should be required.

Second, with regard to the issue of laches by the purchaser and his successors, I expressed my opinion on this and other issues in my separate opinions in Southern Pacific Company, 20 IBLA 377 (1975), and Southern Pacific Transportation Co., 32 IBLA 223 (1977). While the majority opinion basically adopts my views expressed therein, I contemplated some notice to the applicants that they would have to show why laches does not preclude action on their applications. Other showings might be necessary also. While I would prefer some notice to the applicants before we reject the applications because of laches, I agree that the present record does not show any reason why laches should not be invoked against the applicants here.

Joan B. Thompson
Administrative Judge

