

ROBERTA THOMPSON
AND
RICHARD LEE BURNHAM

IBLA 78-504 Decided December 20, 1978

Appeal from a decision of Fairbanks District Office, Bureau of Land Management, Alaska, declaring reversion to United States of title to lands formerly patented under Recreation and Public Purposes Act. F-024918. 1/

1. Patents of Public Lands: Generally--Recreation and Public Purposes Act

A grantee's transfer of the property and its subsequent use for a purpose (big game guiding service) other than the one described in the patent (mission parsonage and chapel) without consent of Department of the Interior triggers reversion of the land to the United States.

2. Administrative Authority: Laches--Estoppel--Laches -- Patents of Public Lands: Reservations--Patents of Public Lands: Suits to Cancel--Recreation and Public Purposes Act--United States

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

APPEARANCES: Richard B. Collins, Esq., Anchorage, Alaska, for appellants.

1/ The decision below was entitled "Arctic Missions, Incorporated * * * Roberta Thompson and Richard Lee Burnham * * * F 024918."

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Roberta Thompson and Richard Lee Burnham have appealed from a September 1, 1977, decision of the Fairbanks District Office, Bureau of Land Management (BLM), Alaska, declaring a reversion to the United States of title to approximately 0.87 acres of land embraced in U.S. Survey 4020, Alaska, and situated in the village of Kaltag. Appellants were not served with a copy of the District Office decision until June 1978, whereupon they seasonably perfected their appeal.

This land was initially conveyed by the United States under authority of the Recreation and Public Purposes Act, 43 U.S.C. § 869 et seq. (1970), to Arctic Missions, Inc., by means of patent No. 50-72-0203 on March 7, 1972. The patent contained the following express condition, among others:

Provided, that, if the patentee or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than a mission parsonage and chapel without the consent of the Secretary of the Interior or his delegate * * * title shall revert to the United States.

This condition in the patent follows the mandate of the authorizing statute:

If at any time after the lands are conveyed by the Government, the grantee or its successor attempts to transfer title to or control over these lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without the consent of the Secretary, title to the lands shall revert to the United States.

43 U.S.C. § 869-2 (1970).

By deed dated June 25, 1974, Arctic Missions, Inc., quitclaimed its interest in the subject land to appellants Thompson and Burnham. It appears from the record that the BLM first learned of Arctic Missions' relinquishment of the property through a March 28, 1975, letter from Robert L. Jenks of Doyon, Ltd., a Native corporation, to the Fairbanks District Manager. Subsequent field examinations led the BLM to the conclusion that appellants were using the land for operating a big game guiding service. Appellants do not on appeal deny the authenticity of the quitclaim deed from Arctic Missions or the BLM allegation with respect to the use to which appellants put the land in issue.

A letter from the Alaska field superintendent of Arctic Missions, Inc., to the Fairbanks District Office, BLM, explains that Arctic

Missions fully understood the conditions in the patent, and intended to convey only the improvements on the land. Moreover, the letter states, this was explained to Mr. Larry Thompson in a telephone conversation.

Counsel for appellants raises two contentions on appeal. First, he alleges that appellants:

[D]id get approval from the Secretary of Interior through his delegate in the BLM in Fairbanks. My clients received written authorization from the BLM for the transfer. Unfortunately, all of their files, as well as most of their possessions, were destroyed by fire in 1975. A copy of this authorization should, however, be on file at the BLM office in Fairbanks.

Second, counsel urges that:

[T]he [doctrine] of laches prevents the divestiture of title. The department supposedly became aware of the transfer on April 17, 1975. * * *

It was not, however, until September 1, 1977, that a notice was prepared and attempted to have been served on my clients * * *. Actual notice was not received by them until June of [1978] * * * when it was mailed to them at the property in Kaltag, where they had been living since receiving the BLM authorization for the transfer.

The statement of reasons goes on to note that appellants have made valuable and expensive improvements to the property and that the economic benefit of appellants' activities to the region is substantial. Appellants maintain that: "There are many many legal cases which hold that if a person has been put in a worse position by the delay of the other, then he is estopped from [asserting] his claim."

On appeal from a decision of the BLM, the burden is upon appellants to prove by substantial and positive evidence that the BLM decision is in error. See Harold and Irene Kyllonen, 16 IBLA 86 (1974); Park Center Water District, 28 IBLA 386, 84 I.D. 87 (1977); cf. Tibor W. Fejer, 11 IBLA 166 (1973); Faydrex, Inc., 14 IBLA 195 (1974) (applicant asserting claim to receive benefits of act of Congress has burden of presenting sufficient evidence of his entitlement to such benefits). In the instant matter, the case file discloses no record or indication of any consent by the BLM to the transfer in question. There is, however, a June 15, 1978, memorandum to the files by Virginia M. Ezell stating:

Received a telephone call from Larry Thompson asking for a xeroxed copy of a letter written approx. 4/1/74 thru 7/1/74 from BLM to Thompson purportedly advising Thompson that BLM agreed to the guiding service taking over. I advised Mr. Thompson that there was no such letter on file & that everything in file pointed to the contrary.

In the absence of substantial evidence in the record to corroborate appellants' unsupported claim that they received the written consent from the BLM to the transfer from Arctic Missions, we find that no Departmental consent was given.

[1] A grantee's transfer of the property and its subsequent use for a purpose other than the one described in the patent (mission parsonage and chapel) without the consent of the Department of the Interior triggers the reversion of the land to the United States. Clark County, Nevada, 28 IBLA 210 (1976), rev'd on other grounds, County of Clark v. Kleppe, Civ. No. 77-13 RDF, U.S.D.C. Nev., Jan. 20, 1978. Accordingly, as it is clear the grantee herein transferred the property without the consent of the Department and as the transferee clearly carried on a big game guiding service, we find, in agreement with the decision below, that the land in question has reverted to the United States.

[2] As for appellants' argument that the equitable doctrine of laches should be invoked here, we begin by stating the well-established general rule that the United States is not subject to a defense of laches in an action to enforce a public right. 43 CFR 1810.3. See United States v. Summerlin, 310 U.S. 414, 416 (1940); Board of County Commissioners of the County of Jackson, Kansas v. United States, 308 U.S. 343, 351 (1939); United States v. One 1973 Buick Riviera Automobile, 560 F.2d 897, 899 (8th Cir. 1977); Roberts v. Morton, 549 F.2d 158, 163-64 (10th Cir. 1977), cert. denied, 434 U.S. 834 (1977); United States v. State of Florida, 482 F.2d 205 (5th Cir. 1973); Chromcraft Corp. v. E.E.O.C., 465 F.2d 745, 746-47 (5th Cir. 1972); United States v. Overman, 424 F.2d 1142, 1147-48 (9th Cir. 1970); In Re Estate of Hooper, 359 F.2d 569, 578 (3rd Cir. 1966), cert. denied, 385 U.S. 903 (1966); Nabors v. N.L.R.B., 323 F.2d 686, 688 (5th Cir. 1963). This rule applies unless the Congress has provided otherwise. See Cassidy Commission Company v. United States, 387 F.2d 875, 880 (10th Cir. 1967); Federal Maritime Commission v. Caragher, 364 F.2d 709, 718 (2nd Cir. 1966); United States v. Rose, 346 F.2d 985, 990 (3rd Cir. 1965), cert. denied, 382 U.S. 979 (1966).

In United States v. State of Florida, supra, the United States had in 1947 quitclaimed its interest in certain lands to the State of Florida with the express condition that the property be used

"exclusively for public park purposes," and with the provision that upon breach of such condition, title would revert to the United States upon demand in writing by the Federal Government. In 1950, the Supreme Court of the State of Florida found that the State had lost its claim to the land as against certain private individuals, but that they held the property under the condition stated in the 1947 quitclaim deed. In 1970, the United States gave notice of its intention to exercise the 1947 reverter provision, and filed suit in 1971 for that purpose. The Court of Appeals affirmed the District Court finding that the land was not used exclusively for public park purposes, and also affirmed the lower court's order reverting title in the United States. In so doing, the Court of Appeals held that laches may not be applied as a defense against the United States, going so far as to say in a footnote that "[i]t is interesting to note that the United States is not bound by laches even in extreme cases." 482 F.2d at 210. The court also held that the ceding of the land by the United States to Florida was a Governmental, not proprietary, function because that action was taken for the benefit of the public.

The holding in Roberts v. Morton, *supra*, a case in which the Department of the Interior found certain placer mining claims invalid, is analogous. The claims were filed between May 1966 and February 1967, and the United States filed a contest complaint in 1968. The Court of Appeals for the 10th Circuit adhered to the "general rule that * * * the United States is not * * * subject to the defense of laches in enforcing its rights." 549 F.2d at 163.

The policy upon which this doctrine is founded is sound. Although the rule that limitation of actions does not apply against the sovereign may be explained historically as a vestige of the privileges of the English king, the rule's survival in this country is attributed to the policy that the public interest should not be prejudiced by the possible negligence of public officers. See Chromcraft Corp. v. E.E.O.C., *supra*, at 747; In Re Estate of Hooper, *supra*, at 578. Thus, even if we assume *arguendo* that appellants have made out a case of inexcusable and prejudicial delay on the part of the BLM, we hold that under the circumstances of this case, appellants may find no relief in the equitable doctrine of laches.

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.

Anne Poindexter Lewis
Administrative Judge

I concur.

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING:

The land in issue was patented and the patent recited:

[I]f the patentee [Arctic Missions, Inc.] or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than a mission parsonage and chapel without the consent of the Secretary of the Interior or his delegate * * * title shall revert to the United States.

Appellants do not controvert the BLM allegation that they are the recipients of a quitclaim deed to the land and are using it as the site of a big game guide service. The Statement of Reasons concedes non-church uses as follows:

My clients have made improvements on this property and have established a flying business, operating therefrom. This business is of vast economic importance to this area of the Yukon River and particularly to the native village of Kaltag in as much as during the summer months, my clients pick up and fly fish from the native fishermen, along the river, to fly them to a cannery on the coast at Unalakeet, Alaska. If my clients did not provide this service, the native fishermen would not be able to sell their fish, which is about their only source of cash income. My clients also have an air taxi operation and a guiding service which is highly intergrated [sic] with this property in Kaltag, with satellite cabins and hunting and sport fishing camps in the surrounding areas.

In the circumstances, the opportunity for a hearing need not be afforded appellants. Cf. Lana A. Henning, A-26755 (August 17, 1953). See Clear Gravel Enterprises, Inc., 64 I.D. 210, 213 (1957). The opportunity for a hearing is obviated because appellants have confessed the operative facts necessary to trigger a reversion.

In view of the Board's decisions in Clark County, Nevada, 28 IBLA 210 (1976), rev'd on other grounds; County of Clark v. Kleppe, Civ. No. 77-13 RDF, U.S.D.C. Nev., Jan. 20, 1978; City of Monte Vista, Colorado, 22 IBLA 107 (1975); and Clark County School District, 18 IBLA 289, 82 I.D. 1 (1975), I must necessarily recede from my formerly held position that court suit is necessary to trigger the reversion in cases such as the one presented here.

Frederick Fishman
Administrative Judge

