

PAMELA JUNE WOOD FINCH

IBLA 80-107

Decided August 22, 1980

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications N 25395 and N 25397.

Affirmed.

1. Act of February 8, 1887--Indian Allotments on Public Domain: Lands Subject to

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the agricultural land laws on July 7, 1967, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

APPEARANCES: Pamela June Wood Finch, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Pamela June Wood Finch appeals from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated October 17, 1979, rejecting her Indian allotment applications N-25395 and N-25397 filed pursuant to section 4 of the General Allotment Act of February 8, 1887, 25 U.S.C. § 334 (1976). This section provides in pertinent part:

Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, Act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in * * * [other sections of the Act].

On July 19, 1979, appellant filed her application for 160 acres of land located in the SE 1/4 sec. 27, T. 19 S., R. 59 E., Mount Diablo meridian, under the above-cited Act. On the same day she filed an application on behalf of her 4-year-old daughter, Kimberly Inez Finch, for 160 acres of land situated in the NE 1/4 sec. 27, T. 19 S., R. 59 E., Mount Diablo meridian, under the above-cited Act. In her application appellant states that neither she nor the child occupies the land or has placed any improvements on it. She states that both claim a bona fide settlement.

On October 17, 1979, BLM rejected appellant's applications with the following explanations:

N-25395:

Reference is made to the Indian Allotment Application you filed on behalf of your daughter, Kimberly Inez Finch, BLM serial number N-25395. The lands requested in said application lie within an area that has been classified for retention in federal ownership. The classification segregates the land from appropriation under the agricultural land laws. Therefore, the application is hereby rejected.

N-25397:

The lands requested in your Indian Allotment Application N- 25397 lie within an area that has been classified for retention in federal ownership. The classification segregates the land from appropriation under the agricultural land laws. Therefore, your application is hereby rejected.

In her statements of reasons appellant contends:

The Agricultural Land Laws Can Not Supersede the Allotment Claim of Indians.

SEE Title 25 U.S.C.- 334

SEE 43 C.F.R. 2212 Part 3

SEE Choats V. Trapp 224 U.S. 413 (1912) [1/]

SEE U.S.C.A. Const. Amend. 5

The file contains a copy of a "Notice of Classification of Public Lands for Multiple Use Management" dated June 27, 1967, which, in pertinent part, reads as follows:

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18) and to the regulations in 43 CFR, Subparts 2410 and 2411, the public lands described in paragraph 3 below are hereby classified for multiple use management.

2. Publication of this notice segregates (a) the public lands described in paragraph 3 from appropriation under the agricultural land laws (43 U.S.C., Chs. 7 and 9; 25 U.S.C., sec. 334), and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171) and the Public Land Sale Act of September 19, 1964 (43 U.S.C. 1421-27), and (b) further segregates the public land described in paragraph 4 of this notice from operation of the general mining laws (30 U.S.C. 20). Except as provided in (a) and (b) above, the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing or material sale laws. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district, established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

3. The classified public lands are located within the Spring Mountain Planning Unit and are shown on maps, designated as N 257, which are on file in the Las Vegas District Office, Bureau of Land Management, 1859 North Decatur Boulevard, Las Vegas, Nev., and the Land Office, Bureau of Land Management, Federal Building, 300 Booth Street, Reno, Nev. The lands involved are described as follows:

T. 19 S., R. 59 E.
Secs. 16, 17, 19 to 22 inclusive;
Secs. 27 to 35, inclusive. [Emphasis supplied.]

1/ We note that the Indian allotment case at 224 U.S. 413 is Heckman v. United States.

This order specifically covers the lands sought by appellant in both applications.

Section 4 of the Act of February 8, 1887, supra, authorizes the Secretary of the Interior to issue allotments to Indians, in certain instances, where the Indians have made settlement upon public lands "not otherwise appropriated." Thurman Banks, 22 IBLA 205 (1975). In the present case, the lands were "appropriated" when they were segregated under the order published in the Federal Register on July 7, 1967. (32 FR 9995 9996.) Furthermore, there is no evidence that either appellant or her child has made "settlement" as required by the Act. Her applications show that neither occupies the land nor has placed improvements on it.

Appellant's applications were filed on July 19, 1979, years after the segregation of the land in issue. An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act at the time the application is filed. Thurman Banks, supra.

The authority cited by appellant is not in point because the instant case involves land which was segregated from entry under the public land laws at the time appellant's application was filed. The regulation cited, 43 CFR 2212 (1978), concerns miscellaneous state exchanges.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Edward W. Stuebing
Administrative Judge

