

SOUTHERN PACIFIC TRANSPORTATION CO.
B. K. HERNDON

IBLA 79-517

Decided April 21, 1981

Appeal from decision of the California State Office, Bureau of Land Management, holding for rejection an application for patent to public land pursuant to section 321(b) of the Transportation Act of 1940. CA 3252.

Affirmed.

1. Administrative Procedure: Generally--Railroad Grant Lands

Pursuant to 43 CFR 2631.1, the Bureau of Land Management may properly require an applicant for patent under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), to provide specific proofs of conveyances and transfers of title.

2. Laches--Railroad Grant Lands

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) (1976).

APPEARANCES: B. K. Herndon, pro se; Donald H. Coulter, Esq., Grants Pass, Oregon, for B. K. Herndon.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

B. K. Herndon by this appeal seeks reversal of the June 12, 1979, decision of the California State Office, Bureau of Land Management (BLM), holding for rejection an application for patent of the SE 1/4, sec. 9, T. 1 N., R. 6 W., San Bernardino meridian, California, filed by the

Southern Pacific Transportation Company (Southern Pacific) pursuant to section 321(b) of the Transportation Act of 1940, 54 Stat. 954, 49 U.S.C. § 65(b) (1976). 1/ In its application Southern Pacific states that it is the successor in interest of the Southern Pacific Railroad Company of California, which was granted certain lands in order to aid railroad construction pursuant to the Act of March 3, 1871, 16 Stat. 573. 2/ The lands in question have not been patented to the railroad.

Appellant asserts that he is a real party in interest in this case as successor in interest, through several intermediate conveyances, to H. M. Loud who, appellant claims, purchased the disputed parcel from the railroad in 1887.

Pursuant to section 321(b) of the Transportation Act of 1940, supra, any land grant railroad wishing to take advantage of charging higher rates for carrying Government freight was required to release any claims it might have against the United States to lands granted to the railroad. However, the section provided that nothing in the section 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 necessary relinquishment was made and the subject land was noted as being transferred to H. M. Loud on April 4, 1887. In 1975 Southern Pacific filed an application for the land in question indicating that the land had been sold to an innocent purchaser for value.

By a decision dated October 24, 1975, BLM rejected the application because the applicant had not shown that it had ever issued a deed for the land and because those claiming to be the real parties in interest could not show entitlement to the land due to the fact that the

1/ Section 321, 49 U.S.C. § 65 (1976), was repealed by P.L. 95-473, section 4(b), (c), Oct. 17, 1978, 92 Stat. 1466-1470.

2/ The Act of March 3, 1871, 16 Stat. 573, established the Texas Pacific Railroad Company and granted lands in aid of construction of the railroad. Section 23 provided at 579:

"Sec. 23. That, for the purpose of connecting the Texas Pacific railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six; Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

estates of their predecessors had not been probated. ^{3/} This 1975 decision issued without prejudice to a new filing, properly supported by documentation. No appeal was taken from the decision.

We incorporate the following summary of subsequent events as outlined in the 1979 BLM decision from which this appeal was brought:

On March 17, 1977, additional documentation was filed by the applicant, including a copy of a receipt for monies paid by H. M. Loud on April 4, 1887, to Southern Pacific Railroad Company under Contract No. 6654 to purchase the SE 1/4, Sec. 9, T. 1 N., R. 6 W., S.B.M. Also filed, were copies of the orders settling final account and decree of distribution in the estates of William F. Loud and Mary E. Loud, Numbers 45388 and 45389 respectively, in the Superior Court of the State of California in and for the County of San Bernardino, on November 24, 1976, and of deeds given to B. K. Herndon by Carl Loud, aka William C. Loud and William Carl Loud, a son and heir of William F. Loud, a single man, on June 6, 1975, and by Edward E. Loud, a single man, being a son and heir of William F. Loud, on June 18, 1975. These documents provide support for the Loud-Herndon claim to the land, but do not adequately establish a chain of title.

The applicant has still not shown that it ever issued a deed to H. M. Loud for the subject land. Only a copy of the receipt for part payment on executory Contract No. 6654

^{3/} Applicant asserted that the chain-of-title for the subject land was as follows:

"1. Southern Pacific Railroad Company of California sold the land to an innocent purchaser, one H. M. Loud, on April 4, 1887.

2. Henry M. Loud conveyed to Henry Nelson Loud by an indenture, dated November 8, 1898, 'all of the lands situate in the State of California' owned by Henry M. Loud."

The October 24, 1975, BLM decision stated:

"Southern Pacific has also submitted statements which indicate the following: That on January 22, 1900, Henry Nelson Loud quitclaimed all lands held by him situated in the State of California to William F. Loud (his youngest son); that William F. Loud married Minnie A. Loud in 1885 from which marriage three children survive; that on October 12, 1899, William F. Loud divorced Minnie A. Loud; that in 1899 William F. Loud married Mary B. Loud from which marriage two children survive; that William F. Loud died intestate on May 25, 1950 (the evidence indicates that his estate was never probated); that on August 6, 1971, Mary B. Loud died intestate (the evidence indicates that her estate was never probated); and that on June 6, 1975, William Carl Loud (one of the surviving children) quitclaimed his interest in the subject property to B. K. Herndon."

has been submitted. Also, the copy of the deed given to Henry Nelson Loud by H. M. Loud on November 8, 1898, and the copy of the deed given to William F. Loud by Henry Nelson Loud on January 22, 1900, both previously furnished, do not adequately describe the subject land.

Evidence in the file, submitted by the applicant on behalf of those purporting to be the real parties in interest, particularly the Use and Occupancy Affidavit given by B. K. Herndon on July 11, 1975, raises strong doubt that either William F. Loud, who died on May 25, 1950, or his widow, Mary B. Loud, who died on August 6, 1971, or their heirs, believed that William F. Loud and Mary B. Loud may have had a continuing interest in the land until during the 1960's, when B. K. Herndon, evidently having become aware of the status of the land, sought out possible heirs of William F. Loud and Mary B. Loud, and personally obtained statements from Henry C. Loud on August 24, 1967, and from Percy K. Loud on July 26, 1971, regarding realty affairs of H. M. Loud, Henry Nelson Loud, William F. Loud, et al. B. K. Herndon subsequently obtained the June 6, 1975 and June 18, 1975 deeds to whatever interest two of the Loud descendants may have had in the land.

The applicant's evidence also shows there are no improvements constructed on the land except a partially destroyed and abandoned water line leading from some springs on the property.

Conversely, the land has been managed for public purposes by the Forest Service as part of the national forest system since December 23, 1907, when by Proclamation 788, it was included in the San Gabriel National Forest, now the San Bernadino National Forest. The doctrine of laches against this application appears appropriate.

Within thirty (30) days of receipt of this decision, the applicant is required to file:

1. A copy of the deed from the railroad to H. M. Loud, or another document which clearly evidences that Contract No. 6654 was executed and H. M. Loud was entitled to receive such a deed from the railroad.
2. Copies of deeds to Henry Nelson Loud by H. M. Loud and to William F. Loud by Henry Nelson Loud, which specifically describe the SE 1/4, Sec. 9, T. 1 N., R. 6 W., S.B.M., as land being conveyed, and
3. An explanation for the long delay in making application for patent, together with a showing of equities which would indicate the doctrine of laches should not be applied and further action on this application precluded.

Appellant appealed the decision to this Board. Accompanying the appeal was a copy of a December 6, 1974, letter from the Southern Pacific Land Company to Mr. Herndon which stated that the disputed parcel "was transferred to H. M. Loud by agreement No. 6654, dated April 4, 1887. Our records give no indication that this deed was ever recorded." Appellant reemphasized that both the deed from Henry M. Loud to Henry Nelson Loud and the deed from Henry Nelson Loud to William F. Loud on January 22, 1900, conveyed all interests in land in the State of California. He also asserts that "property owned by grantor [presumably Henry N. Loud] included an orange grove near Etiwanda (in Sec. 27, Twp. 1 N., Range 6 W.) and that water from subject land was conveyed to the grove." Appellant adds that since the parcel shows no evidence of Government improvements, the doctrine of laches should not apply in this case. Appellant later stated that he was unable to locate further documentation.

The operative savings clause found in the Transportation Act of 1940, section 321(b), supra, can be invoked only if the land in question was sold by the grantee railroad company prior to September 18, 1940, to an innocent purchaser for value, *i.e.*, one who purchases in good faith and for value. Laden v. Andrus, 595 F.2d 482 (9th Cir. 1979), *aff'g*, Southern Pacific Co., Heirs of George H. Wedekind, 20 IBLA 365 (1975); Chapman v. Santa Fe Pacific Railroad Co., 198 F.2d 498 (D.C. Cir. 1951). ^{4/} Specific proofs of interest must be offered in support of a patent application. 43 CFR 2631.1 requires the following:

The application must be supported by a showing that the land is of the character which would pass under the grant involved, and was not by some superior or prior claim, withdrawal, reservation, or other reason, excluded from the operation of the grant. Full details of the alleged sale must be furnished, such as dates, the terms thereof, the estate involved, consideration, parties, amounts and dates of payments, made, and amounts due, if any, description of the land, and transfers of title. The use, occupancy, and cultivation of the land and the improvements placed thereon by the alleged purchaser should be described. All statements should be duly corroborated. Available documentary evidence, including the contract or deed, should be filed, which may be authenticated copies of the originals. An

^{4/} BLM made no determination on the question of whether the land was mineral or nonmineral in character at the time of the sale to H. M. Loud because of its disposition of this case, nor do we. We note, however, that section 321(b) of the Transportation Act of 1940 preserved the only existing authority, set forth in section 5 of the Act of March 3, 1887, 43 U.S.C. § 898 (1976), to issue patents to innocent purchasers of mineral land from the railroads. Laden v. Andrus, supra at 485, n.3; see Southern Pacific Co., Heirs of George H. Wedekind, supra at 377 (1975) (concurring opinion).

abstract of title may be necessary, dependent upon the circumstances of the particular case. No application for a patent under this act will be favorably considered unless it be shown that the alleged purchaser is entitled forthwith to the estate and interest transferred by such patent. Evidence of a recorded deed of conveyance from the carrier to the purchaser may be required.

[1] We have considered the record and we must agree with BLM's assessment that the applicant has failed to establish that it passed title to the land to H. M. Loud. 43 CFR 2631.1 authorizes BLM to require full details of conveyances and transfers of title. A patent cannot be granted without sufficient proof. The record contains a copy of Contract No. 6654 which shows that on April 4, 1887, southern Pacific Railroad Company received a payment from H. M. Loud of \$ 102.40 for the purchase of the subject land. The contract indicated the sales price of \$ 400 (160 acres at \$ 2.50 per acre) and that the payment was 20 percent of the sales price plus the first year's interest on the remaining \$ 320. Contract No. 6654 was an executory contract. Some act remained to be done, *i.e.*, further payment from H. M. Loud. It is distinguished from an executed contract in that with an executed contract everything is completed at the time of the agreement without any outstanding promise calling for fulfillment by the further act of either party. Linville v. Linville, 283 P.2d 34, 35 (1955); see Board of Commissioners of County of Indiana v. Midwest Associates, Inc., 245 N.E.2d 853, 855 (1969). H. M. Loud made the downpayment on the purchase of the property; further payments were necessary before a deed could issue. At best the contract was only partially executed and the record contains no evidence that legal title to the land passed to H. M. Loud.

Appellant's attempt to rely on the subsequent conveyances to establish the transfer to H. M. Loud is not well founded. Neither of those two conveyances describes the land. They merely transferred all lands owned by the grantee and situated in the State of California without further description.

Furthermore, the decrees of distribution in the record do not settle title to the land in question, but rather establish the distributive shares of the survivors of William F. Loud and Mary B. Loud.

On the basis of insufficient proof of title under 43 CFR 2631.1 alone, the BLM decision must be affirmed.

[2] In addition, we must point out that even where the law has generally provided for liberal construction of remedial legislation, the rights of an innocent purchaser to apply for a patent may be subject to laches. See Ramsey v. Tacoma Land Co., 196 U.S. 360, 363 (1905); as quoted in Southern Pacific Transportation Co. v. U.S. Forest Service, 35 IBLA 270, 274 (1978). The land at issue in this case has long been

included in a national forest. 5/ Where land has been devoted to a public purpose, such as inclusion in a forest reserve, the claim of even an innocent purchaser may be barred by laches. United States ex. rel. Givens v. Work, 13 F.2d 302 (D.C. Cir. 1926), cert. denied, 273 U.S. 711 (1926); Southern Pacific Transportation Co. v. U.S. Forest Service, supra. Appellant has neither explained the long delay in applying for this patent nor shown any equities which would contraindicate application of the doctrine of laches. Appellant is correct in pointing out that the Transportation Act of 1940 imposed no time limit on the innocent purchaser or the predecessors in interest and it is clear that mere delay is not sufficient in order for laches to be invoked. 6/ Appellant also argues that the Government has not erected any improvements on the land and that BLM did not allege any material expenditures. However, the fact that the Government may not have placed improvements on the land is not dispositive. The changed condition must be considered the fact that the land is in a national forest. See John Spiers, 37 L.D. 100, 103 (1908). While the land was already included in the forest at the time the Transportation Act of 1940 was enacted, 35 years passed without an application being filed. Appellant has not shown any equities which would militate against the application of the doctrine of laches.

BLM properly rejected the application.

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.

Bruce R. Harris
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

5/ As stated in the decision below:

"The land has been managed for public purposes by the Forest Service as a part of the national forest system since December 23, 1907, when by Proclamation 788, it was included in the San Gabriel National Forest, now the San Bernardino National Forest."

6/ Laches is, or is based on, delay attended by or inducing change of condition or relationship. Chemical Leaman, Tank Lines, Inc., 593 F.2d 241, 246 (3rd Cir. 1979); Blacks Law Dictionary 1016 (4th ed. 1968).

