

BERNARD R. SNYDER
M. MARIE SNYDER

IBLA 82-865

Decided January 24, 1983

Appeal from a decision of the District Manager, Socorro District Office, Bureau of Land Management, rejecting color-of-title application NM 45780.

Affirmed.

1. Color or Claim of Title: Improvements

Improvements relied upon to establish a class 1 color-of-title claim must be present on the land at the time the application is filed and must enhance the value of the land.

2. Color or Claim of Title: Cultivation

The cultivation requirement of a class 1 color-of-title claim is not satisfied if the land is not reduced to cultivation at the time the application is filed and has not been cultivated for at least 5 years previously.

3. Color or Claim of Title: Generally -- Hearings -- Rules of Practice: Appeals: Hearings

The obligation to establish a valid color-of-title claim is upon claimant. Where claimants have not alleged facts which, if proved, would establish the color of title, a request for a fact-finding hearing pursuant to 43 CFR 4.415 will be denied.

APPEARANCES: Tibo J. Chavez, Jr., Esq., Belen, New Mexico, for appellants, John H. Harrington, Esq., Department Counsel, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Bernard R. Snyder and M. Marie Snyder have appealed the May 14, 1982, decision of the Acting District Manager of the Socorro District Office, Bureau of Land Management (BLM), rejecting their color-of-title application NM 45780.

Appellants filed the application with BLM on August 6, 1981, pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1976), for 3.3 acres of land in lot 11, sec. 30, T. 7 N., R. 3 E., New Mexico principal meridian. 1/ The application was filed as a class 1 claim of title. 2/

BLM rejected the application in its entirety because no valuable improvements had been placed on the land nor had any part of the land been reduced to cultivation as required by 43 CFR 2540.0-5(b). No finding was made as to the appellants' alleged good faith, peaceful, adverse possession of the land since the requirement of improvements or cultivation had not been met. 3/ The decision is supported by a color-of-title land report dated

1/ The land was described in appellants' application as follows:

"A certain parcel of land situated in school district number 1-Out, Valencia County, New Mexico, being more particularly described as being with Town 7 N, Range 3 E, Sect. 30, M/L out of conservancy W: Church Tateral, N: Casmber, E: Jose Otero, S: James Sanchez, including that portion of land within the Middle Rio Grande Conservancy District described as Tract No. 57 in map Number 71 of the amended Survey Maps of the Middle Rio Grande Conservancy District, containing 3.30 acres, more or less."

2/ Two separate grounds for a color-of-title application have been established by the Color of Title Act, 43 U.S.C. § 1068 (1976). Applications filed under the Act are classified by regulation, 43 CFR 2540.0-5(b), as either a class 1 claim or a class 2 claim depending upon which provision of the statute they are filed under. Claims based upon good faith, peaceful, adverse possession for more than 20 years under claim or color of title coupled with installation of valuable improvements or cultivation are class 1 claims. Claims founded upon good faith, peaceful, adverse possession under claim or color of title for the period commencing not later than Jan. 1, 1901, to the date the application is filed, during which period claimant and/or his predecessors in title have paid all taxes levied on the land by state and local governmental units, are class 2 claims.

3/ Another color-of-title application, NM 38541, filed by Maria Aragon for the same parcel of land was adjudicated at the same time as application NM 45780. It was also rejected on May 14, 1982, because there were no improvements on the land and no part of the land had been reduced to cultivation. No appeal was taken. Appellants herein based their claim of title on a chain of conveyances that included transfer of the disputed parcel by Vicente Aragon, Maria Aragon's husband now deceased, to Rafael Aragon in 1955. In her application, Maria Aragon asserted that although she and her husband did convey adjacent parcels of land, identified as tracts 57 and 58, they did not convey the 3.3 acres in question. She thus challenged any subsequent conveyances that purported to transfer title to the 3.3 acres. See generally Land Report. Since the other requirements for color of title had not been met BLM did not resolve this conflict in its decisions.

August 17, 1981, in which the examiner found the land at issue to be "an undeveloped parcel of land" on which existed no valuable improvements or evidence of cultivation (Land Report at 5). Pictures of the land accompany the report.

Appellants' application reflects that they first learned that they did not have clear title to the 3.3 acres in June 1981 from a BLM employee. They asserted that they purchased the land in good faith in 1974 from Mary B. Sanchez for \$4,000 with the intention to build a retirement home. They indicated that 1 acre of the parcel had been cultivated for 3 years. Appellants added that in 1974 they planted 40 grape plants that survived about 1 year until uprooted by vandals. In addition the land was used for livestock from 1955 until the late 1960's; a chicken house was built on the land in 1955 and remained there until 1970, and corn was planted in 1958-59.

In their statement of reasons, appellants assert that valuable improvements were, in fact, placed upon the land, that a portion of the land was reduced to cultivation, and that they have met the requirements for a color-of-title claim. They also request a hearing in accordance with 43 CFR 4.415.

[1] Improvements relied upon to establish a class 1 color-of-title claim must be present on the land at the time the application is filed and must enhance the value of the land. Lawrence E. Willmorth, 32 IBLA 378 (1977); Lena A. Warner, 11 IBLA 102 (1973). See Lester and Betty Stephens, 58 IBLA 14, 19 (1981). The BLM land report shows that there were no improvements on the land at the time their application was filed and appellants have presented no evidence nor any specific assertion of fact to the contrary.

[2] In Mable M. Farlow (On Reconsideration), 39 IBLA 15, 86 I.D. 22 (1979), the Board examined the color-of-title class 1 cultivation requirement. We found that generally throughout the public land law "cultivation" is viewed as a continuing activity with necessary efforts leading to the production of crops and held that where the land is not cultivated at the time a color-of-title application has been filed and has not been cultivated for 10 years previously, the cultivation requirement of the Color-of-Title Act has not been satisfied. 39 IBLA at 22-23, 86 I.D. at 25-26. In the present case, although appellants arguably made an effort to cultivate after buying the land by planting the grape plants, we cannot find that the land has been reduced to cultivation where there was no continuing production of a crop and at the time of the filing of the application the land had not been cultivated for at least 5 years. See Lester and Betty Stephens, *supra*.

[3] The granting of a hearing on a question of fact under 43 CFR 4.415 is within the discretion of the Board. In order to warrant such hearing, an appellant must at least allege facts that, if proved, would entitle him to the relief sought. Sun Studs, Inc., 27 IBLA 278, 83 I.D. 518 (1976). The obligation of proving a valid color-of-title claim is on the applicants. Lawrence E. Willmorth, *supra*. Appellants have not alleged any facts that, if proved, would establish their color-of-title claim and therefore their request for a hearing is denied. Cf. Lawrence E. Willmorth, *supra*; Mable M. Farlow, 30 IBLA 320, 84 I.D. 276 (1977) (sufficient facts alleged, hearing ordered).

Accordingly, 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.

Will A. Irwin
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

