

Appeal from a decision of the Bureau of Land Management Area Manager, Socorro Resource Area, New Mexico, rejecting color-of-title application. NM-57067.

Affirmed.

1. Color or Claim of Title: Applications -- Color or Claim of Title: Cultivation -- Color or Claim of Title: Improvements

BLM may properly reject a class 1 color-of-title application filed pursuant to the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982), where the applicant fails to establish that, at the time his application was filed, the land either contained valuable improvements or had been reduced to cultivation.

APPEARANCES: Jerry G. Perry, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Jerry G. Perry has appealed from a decision of the Bureau of Land Management (BLM) Area Manager, Socorro Resource Area, New Mexico, dated April 16, 1984, rejecting color-of-title application NM-57067.

On April 9, 1984, appellant filed a class 1 color-of-title application for 0.51 acres of land situated in lot 14, sec. 26, T. 1 S., R. 1 W., New Mexico Principal Meridian, Socorro County, New Mexico, pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982). In his application, appellant stated that he had worked on the land "some," but did not state that he had either placed valuable improvements on or cultivated the land. Appellant noted that his chain of title originated with a tax deed from the State Tax Commission of New Mexico to the Middle Rio Grande Conservancy District, dated March 7, 1963. Appellant asserts that he acquired the land by quitclaim deed, dated September 11, 1979, from the District and has since paid annual taxes on the property.

In its April 1984 decision, BLM rejected appellant's application because "no valuable improvements have been placed upon the land, nor has any part of the land been reduced to cultivation as required by 43 CFR

2540.0-5(b)." ^{1/} BLM further stated that it was considering a direct sale of the land to appellant. The record indicates that the preliminary BLM-appraised price of the land was \$510 in April 1984.

In his statement of reasons for appeal, appellant does not challenge the lack of valuable improvements on or cultivation of the land. He states that he had purchased the land in good faith, paid all property taxes, and planned to retire and build a house on the land. Appellant states that it would be "unfair" to take the land from him.

[1] In order to establish a class 1 color-of-title claim, an applicant must prove that the land in question has been held in good faith and in peaceful adverse possession by the applicant, his ancestors, or grantors, under color of title, for more than 20 years, and that valuable improvements have been placed on the land or some part of the land has been reduced to cultivation. 43 U.S.C. § 1068 (1982); 43 CFR 2540.0-5(b); Kim C. Evans, 82 IBLA 319 (1984); Paul Marshall, 82 IBLA 298 (1984).

It is well settled that an applicant under the Color of Title Act has the burden of establishing to the Secretary of the Interior's satisfaction that each of the statutory conditions under the Act has been met. Paul Marshall, *supra* at 301; Lawrence T. Abraham, 82 IBLA 285, 287 (1984). A claimant's failure to carry the burden of proof with respect to any one of the elements of color of title is fatal to the application. Kim C. Evans, *supra* at 323; Paul Marshall, *supra* at 301.

In order for improvements to qualify as "valuable improvements" under 43 U.S.C. § 1068 (1982), they must have existed on the land at the time the application was filed and must enhance the value of the land. Malcolm C. & Helena M. Huston, 80 IBLA 53, 57 (1984); Pedro A. Suazo, 75 IBLA 212, 214 (1983); Lester & Betty Stephens, 58 IBLA 14, 19 (1981). Similarly, in order for land to qualify as "reduced to cultivation" under 43 U.S.C. § 1068 (1982), the land must be cultivated at the time the application was filed, and there must be breaking, planting or seeding, and tillage for a crop, done in such a manner as to be reasonably calculated to produce profitable results. Malcolm C. & Helena M. Huston, *supra* at 58; Bernard R. Snyder, 70 IBLA 207 (1983); Mable M. Farlow (On Reconsideration), 39 IBLA 15, 86 I.D. 22 (1979).

In the present case, appellant has submitted a color-of-title application which states as the basis for his claim that he had "bought in good faith from M.R.G.C.D., worked on it some, had survey work done, [and had] done some clearing." No further explanation was given. Subsequent to his filing an application BLM conducted a field examination of the tract and prepared a report of the findings. This report concluded that appellant had neither placed valuable improvements on the land nor reduced the land to cultivation. It is recognized that clearing brush and thinning timber may satisfy the requirement for improving the land, if doing so has improved or

^{1/} This determination was apparently based on a "field examination" of the land in conjunction with a color-of-title land report, dated Apr. 10, 1984, which stated, at page 2, that the land "appears to have been used as simply a turnout for heavy equipment for the farming of nearby cultivated fields."

enhanced the value of the land. See Ben S. Miller, 55 I.D. 73 (1934). However, appellant has neither demonstrated that the clearing noted in his application has improved the land nor disputed the findings in the report and conclusion in the decision that there are no improvements on the land. Therefore, we conclude that BLM properly rejected appellant's color-of-title application. See Richard P. Montoya, 84 IBLA 52 (1984). Appellant may, of course, pursue with BLM a direct sale of the property to him. 2/

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge

2/ The possibility of his acquiring the land through a direct sale, was mentioned in the decision rejecting his application. See 43 CFR Part 2710.

