

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

IBLA 84-656

Decided April 9, 1985

Appeal from a decision of the Socorro Resource Area, New Mexico, Bureau of Land Management, rejecting color-of-title application NM 57068.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title: Applications

The obligation for proving a valid color-of-title claim is upon the applicant. A failure to carry the burden of proof with respect to any one of the elements for a color-of-title claim is fatal to the application.

2. Color or Claim of Title: Applications--Color or Claim of Title: Good Faith--Color or Claim of Title: Privity

An application for a class 1 color-of-title claim made pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1982), requires that the land be adversely held in good faith for at least 20 years by the claimant or its predecessors-in-title. Acquiring title to Federal lands by tax deed initiates a new title for the purpose of determining when possession under color of title commenced. A certificate of tax sale for a period preceding execution of the tax deed does not establish a color-of-title right transferable to the grantee of the tax deed where a right of redemption continued in effect because there can be no adverse possession in such case.

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

To establish a class 1 color-of-title application filed under the Color of Title Act, 43 U.S.C. § 1068 (1982), claimed improvements must enhance the value of the land

or the land must be reduced to cultivation at the time defective title became known and the application was filed.

APPEARANCES: Subhas K. Shah, district engineer, Middle Rio Grande Conservancy District.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Middle Rio Grande Conservancy District (MRGCD) appeals from a May 16, 1984, decision of the Socorro Resource Area, New Mexico, Bureau of Land Management (BLM), rejecting its color-of-title application NM 57068. MRGCD filed a class 1 color-of-title application pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1982), on April 11, 1984, for lot 36 in sec. 23, T. 1 S., R. 1 W., New Mexico Principal Meridian, Socorro County, New Mexico (4.57 acres). By regulation, 43 CFR 2540.0-5(b), a color-of-title claim, which is based upon 20 years of peaceful adverse possession coupled with valuable improvement of, or cultivation of, the claimed land, is a "class 1" claim. After the application was received, BLM conducted a field examination to investigate MRGCD's claim to the land. Based on the resulting land report, BLM rejected the application in its May 16, 1984, decision for the following reasons:

1. The chain of title submitted dates from March 11, 1963. The application states the applicant did not learn this land was public land until "approximately 1979". This does not satisfy the 20-year holding period.

2. No valuable improvements have been placed upon the land, nor has any portion of the land been reduced to cultivation.

3. Form 2540-2 has not been verified by the Socorro County Clerk as required.

[1] At the outset of its appeal, appellant "protests" rejection of the application because BLM "did not make full depth investigation of validity of claim requested by us." MRGCD's characterization of the burden of proof for claims made in the application wrongly places such burden upon BLM. The obligation of proving a valid color-of-title claim is upon the claimant and failure to carry this burden with respect to any of the elements for a valid color-of-title claim is fatal to the application. Jerry G. Perry, 85 IBLA 93 (1985); Kim C. Evans, 82 IBLA 319 (1984); Jeanne Pierresteguy, 23 IBLA 358, 83 I.D 23 (1976). Unless MRGCD's application displays satisfactory compliance with each of the requirements for a class 1 claim, the application is properly rejected.

In response to the defects in the color-of-title claim stated in BLM's decision, MRGCD argues that it has possessed the subject property for over 21 years and, therefore, satisfies the 20-year requirement. MRGCD does not challenge the alleged lack of valuable improvements on or cultivation of the land, but asserts that it should not be accountable for such requirement because it is a political subdivision of the State of New Mexico subject to

special rules governing its business affairs. Finally, it claims that form 2540 has since been verified as required. ^{1/}

[2] 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); Jerry G. Perry, supra; Kim C. Evans, supra.

BLM rejected MRGCD's application because the asserted period of possession did not satisfy the 20-year requirement. Appellant's assertion that it claimed possession of the parcel of land at issue for over 21 years prior to filing its application is not disputed. However, the relevant sine qua non of a class 1 color-of-title claim is 20 years of good faith possession. 43 U.S.C. § 1068 (1982); 43 CFR 2540.0-5(b). Good faith possession is not found where the occupant knows that the land is owned by the United States. 43 CFR 2540.0-5(b). See United States v. Wharton, 514 F.2d 406, 408-09 (9th Cir. 1975). A color-of-title claim is made after a party in possession of Federal lands learns that his purported title is defective. Unless a 20-year period of good faith possession is achieved prior to the time the claimant learns of the title defect, the requirement has not been satisfied. Kim C. Evans, supra.

A copy of the deed purporting to convey title in the property from the State of New Mexico to MRGCD was submitted with the application in support of the color-of-title claim. Acquiring title by tax deed will initiate a new title for the purpose of determining when claim or color-of-title commenced because the holder of a tax deed is adverse to and has no privity with the delinquent taxpayer who was dispossessed of the property. See Paul Marshall, 82 IBLA 298 (1982). While the tax deed is dated March 11, 1963, the document indicates that title is based on a tax sale certificate executed by the Socorro County Treasurer on September 16, 1955, delivered to the State of New Mexico, and recorded. The pertinent question raised by the existence of such period of time where the State claimed rights in the property is whether such time may be "tacked" to appellant's period of color-of-title possession. Aside from the good faith requirement, the Color of Title Act and its regulations also provide that possession must be adverse. See Grant Howe, 56 IBLA 145 (1981). In the absence of a showing that the State exercised actual, exclusive, continuous, open, and notorious possession of the parcel, the period of time that the property was held by the State cannot be considered as part of the color-of-title applicant's 20-year period of adverse possession. Richard F. Christensen, 85 IBLA 108 (1985); see also Beaver v. United States, 350 F.2d 4, 9-10 (9th Cir. 1965). Cf. Estate of John C. Brinton, 25 IBLA 283, 286 (1976).

^{1/} The asserted verification has not been documented in the case file or appellant's presentation, but such deficiency is not critical to resolution of this appeal.

During the period 1955 through 1963, the pertinent New Mexico statute established a 1-year period where the State could not convey property deeded to it for delinquent taxes except through repurchase by the party whose title was "extinguished" by the tax sale to the State. § 72-8-31, N.M.S.A. 1953 (repealed by 1974 N.M. Laws Chap. 92, § 34). A "first and prior right to repurchase" under the statute continued after the first year until the property was deeded by the State. This right enabled the delinquent taxpayer to reacquire the property by paying taxes, penalties, interest, and costs provided a written application to repurchase was filed before the State deeded the land. § 72-8-32, N.M.S.A. 1953 (REPEALED BY 1974 N.M. Laws Chap. 92, § 34). The Supreme Court of New Mexico characterized the privilege as "nothing more or less than redemption of the property" which will restore the title of the property to its status prior to the tax sale. Velasquez v. Mascarenas, 376 P.2d 311, 315 (1962); Trujillo v. Montano, 327 P.2d 326 (1958). Thus, rights in the State of New Mexico arising under the tax sale certificate did not constitute adverse possession by the State because the delinquent taxpayer's right of redemption had not expired. Richard F. Christensen, *supra* at 111. Accordingly, the period of color-of-title possession commenced for appellant on March 11, 1963, when the prior claimant's right of redemption was severed and a new title in the property adverse to all others was established.

MRGCD admits in its application that it learned of the title defect in "approximately 1979." The record shows that it was notified of a possible conflict in a letter from BLM dated February 14, 1978. It is clear that appellant does not meet the requisite period of good faith possession. We conclude that this failure to establish such qualifying possession is a proper basis for rejecting the application.

[3] BLM also properly rejected MRGCD's application under class 1 requirements because no valuable improvements had been placed upon the land nor had any part been reduced to cultivation as required by the Color of Title Act. See also 43 CFR 2540.0-5(b). MRGCD responded negatively to questions in the application form regarding this requirement. The record indicates that BLM's field examination revealed neither improvements nor cultivation. To establish a class 1 color-of-title claim, there must be improvements on the land which enhance its value or some part of the land must have been reduced to cultivation prior to the time when the claimant learns of his or her title defect. Benton C. Cavin, 83 IBLA 107 (1984); Malcolm C. and Helena M. Huston, 80 IBLA 53 (1984). Appellant asserts that this requirement is inapplicable to its situation. However, we find no provision in the statute or elsewhere which would allow waiver of this portion of the requirements for a class 1 application. 2/ Without evidence of either qualifying improvements or cultivation,

2/ In limited situations where a color-of-title possession does not support the requisite elements of a class 1 application, the land may be sought under a class 2 application where proof of improvements or cultivation is not required. Under such approach, the claimant must show payment of local taxes levied on possession commencing no later than Jan. 1, 1901. 43 U.S.C. § 1068 (1982); 43 CFR 2540.0-5(b). For a discussion of the nature and origin of the two classes of application under the Color of Title Act, see Benton C. Cavin, *supra* at 116.

MRGCD is not entitled to this parcel under its application pursuant to the Color of Title Act.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge.

