

AGEE S. BROUGHTON, JR., TRUSTEE

IBLA 85-498

Decided February 4, 1987

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting color-of-title application ES 33017.

Affirmed.

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

Under 43 U.S.C. § 1068(b) (1982), one who files a class 2 color-of-title application is required to establish, *inter alia*, that the tract applied for has been held in good faith and in peaceful, adverse possession by the claimant, his ancestors or grantors, under claim or color of title for a period commencing not later than Jan. 1, 1901, to the date of application, during which time they have paid taxes levied on the land by state and local governmental units. BLM properly rejects a class 2 application where these requirements are not met.

APPEARANCES: J. Milton Coxwell, Jr., Esq., Monroeville, Alabama; Rodney H. Glover, Esq., Alexandria, Virginia, for appellant; Mary Katherine Ishee, Esq., Branch of Eastern Resources, U.S. Department of the Interior, Alexandria, Virginia, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Agee S. Broughton, Jr., as trustee of the Dr. W. E. and Cornelia Deer Broughton Trust, appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated February 19, 1985, rejecting its class 2 color-of-title application for the E 1/2 NE 1/4, sec. 4, T. 5 N., R. 5 E., St. Stephens Meridian, Alabama, aggregating 80 acres.

The application indicated that appellant had first learned from BLM that it did not have clear title to the land in 1983. Upon being informed of this fact, application was made for conveyance under class 2 of the Color of Title Act, 43 U.S.C. § 1068 (1982).

[1] The Color of Title Act requires a class 2 applicant to show:

that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units \* \* \*.

43 U.S.C. § 1068(b) (1982).

BLM rejected the application for failure to show either a chain of title commencing not later than January 1, 1901, or payment of taxes for the requisite time period. The decision noted that the described land did not appear in the purported chain of title until a "correction deed" was issued on March 22, 1944. Thus, the chain of title did not commence on or before January 1, 1901. Appellant's tax levy and payment report, submitted with the application, goes back to 1912 but the amount of tax paid between 1912 and 1927 is not available. Also, the tax year 1919 was omitted entirely. A supplement to the tax levy form signed by the Monroe County Tax Assessor explains as follows:

Although the Monroe County, Alabama Tax Assessment records exist since 1891, the tax levy and payment records only go back as far as 1928. Therefore, from 1891-1927 we are able to determine to whom the property was assessed, but have no record of the amount of tax paid.

Appellant contends that the tax assessment records commencing in 1891 and continuing to the present time establish the class 2 color-of-title requirements insofar as payment of taxes is concerned. Moreover, appellant further argues that these records themselves constitute color of title. In the alternative, appellant contends that the requirements of a class 1 claim have been met.

BLM correctly determined that appellant had no valid class 2 claim because such a claim must be based on a claim or color of title initiated no later than January 1, 1901. 43 CFR 2540.0-5(b). This requirement is imposed by 43 U.S.C. § 1068(b) (1982) and the Department has no authority to waive it. Weyerhaeuser Co., 89 IBLA 279 (1985). See Hal H. Memmott, 77 IBLA 399 (1983); Estate of John C. Brinton, 71 IBLA 160 (1983).

There is simply no basis in law for appellant's assertion that local or State records showing tax assessments constitute color of title to land. It has been held that a claim or color of title "must be established, if at all, by a deed or other writing which purports to pass title and which appears to be title to the land, but which is not good title." Marcus Rudnick, 8 IBLA 65, 66 (1972), citing, inter alia, Karvonen v. Dyer, 261 F.2d 671, 674 (9th Cir. 1958). Tax assessment records neither purport to be title nor to convey it. Nor does the mere existence of records showing that taxes have been assessed establish that they have been paid. Appellant has failed to establish either statutory prerequisite to the grant of a class 2 color-of-title application.

On appeal, counsel also suggests that appellant had qualified for a class 1 color-of-title grant. Appellant, however, clearly indicated on his application that he was only applying under class 2. BLM, accordingly, did not pass on this question.

A class 1 claim of title to public land requires that the claimant show that the land has been held in good faith and in peaceful, adverse possession by the claimant, his ancestors, or grantors, under claim or color of title for more than 20 years, and that valuable improvements have been placed on the land, or that some part of the land has been cultivated. See 43 U.S.C. § 1068 (1982); 43 CFR 2540.0-5. Appellant alleged on his application that the land was cultivated "as late as 1940." However, it has been held that for improvements to qualify as valuable improvements, they must exist on the land at the time the application was filed, and they must enhance the value of the land. See Felix F. Vigil, 84 IBLA 182 (1984), and cases there cited. Insofar as cultivation is concerned, where the land is not cultivated at the time the application was filed and has not been cultivated for the previous 10 years, the cultivation requirement has not been met. Richard P. Montoya, 84 IBLA 52 (1984). Thus, the bare assertion on the record of cultivation 45 years ago would not support a class 1 claim. Since no class 1 application has been filed, however, we will not comment further on this question.

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.

James L. Burski  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Will A. Irwin  
Administrative Judge

