

LOUIS MARK MANNATT

IBLA 87-790

Decided June 5, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting color-of-title applications CA 20535 and CA 20536.

Affirmed.

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

A class I color-of-title claim must be based upon a document which, on its face, purports to convey the claimed land to claimant or his predecessor. Where the only evidence of conveyance is a bill of sale conveying a cabin located on the claimed land, a color-of-title application is properly rejected.

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

An applicant for a color-of-title claim must show good faith possession of the land. Where the applicant has previously sought to lease part of the land from the United States, that action constitutes acknowledgement of Federal ownership which negates good faith.

3. Color or Claim of Title: Adverse Possession--Color or Claim of Title: Applications

An applicant for a class I color-of-title claim must show peaceful adverse possession of the claimed lands for a period of at least 20 years. Mere occupancy of public lands and the making of improvements thereon give rise to no vested rights against the United States, absent some colorable claim of right of possession.

APPEARANCES: Robert E. Mannatt, Independence, California, for appellant. 1/

1/ Robert Mannatt is Louis Mark Mannatt's son.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Louis Mark Mannatt has appealed from an August 10, 1987, decision of the California State Office, Bureau of Land Management (BLM), rejecting his class I color-of-title applications CA 20535 and CA 20536, which describe adjoining lands totalling 22.5 acres. 2/

Mannatt filed the applications pursuant to 43 CFR 2540.0-5 which provides:

A claim of class I is one which 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 more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. * * * A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

See 43 U.S.C. § 1068 (1982).

BLM rejected the applications because Mannatt failed to show good faith possession of the land. It also noted that there was no evidence of peaceful adverse possession because the land had been withdrawn in 1931.

In his statement of reasons (SOR), appellant argues that the historical significance of the described land justifies granting the applications. 3/ He also asserts that the applications should be granted because the land was occupied prior to its withdrawal by the Act of March 4, 1931, 46 Stat. 1530, and because various occupants of the land have been trying to acquire title thereto since March 21, 1925. He further alleges that the occupants of the described land have been paying taxes on the land since 1936 and suggests this is a basis for grant of the color-of-title application. Finally, he disputes BLM's assertion that his December 11, 1950, small tract lease application for lands in sec. 26 is evidence of his knowledge of Federal ownership and that, therefore, his occupancy could not have been in good faith.

The record reveals that on October 18, 1912, Power Site Reserve No. 293 was established by Executive order withdrawing from settlement, location, sale, or entry under the public land laws certain lands, including the N\ N\ of sec. 26, T. 13 S., R. 34 E., Mount Diablo Meridian,

2/ Application CA 20535 describes the S\ SE^ SE^ of sec. 23, T. 13 S., R. 34 E., Mount Diablo Meridian, California, while CA 20536 applies to the N\ N\ NW^ NE^ NE^ of sec. 26, T. 13 S., R. 34 E., Mount Diablo Meridian, California.

3/ Appellant has attached copies of various documents relating to the occupancy of this land since 1925. It is apparently appellant's position that the occupancy itself equates with historical significance.

California. On March 21, 1925, one Harry Heaton filed a homestead entry application for those same lands. On July 24, 1926, the application was cancelled on the basis of the 1912 withdrawal. Thereafter, on May 16, 1929, by Exec. Order No. 5117, secs. 23 and 26, T. 13 S., R. 34 E., Mount Diablo Meridian, California, among other lands, were withdrawn in aid of legislation, which was subsequently enacted on March 4, 1931, 46 Stat. 1530, 1536, whereby Congress withdrew those lands from settlement, location, filing, entry or disposal under the public land laws for the protection of the watershed supplying water to the City of Los Angeles and other cities and towns in the State of California.

On August 13, 1940, Carl Julius Walters filed application Sac 033274 seeking to lease from the United States the S\ S\ SW^ SE^ SE^ of sec. 23, and the N\ N\ NW^ NE^ NE^ of sec. 26, T. 13 S., R. 34 E., Mount Diablo Meridian, California, under the Small Tract Act of June 1, 1938 (43 U.S.C. | 682a (1970), repealed effective Oct. 21, 1976, by sec. 702 of the Federal Land Policy and Management Act, 90 Stat. 2787). On September 4, 1945, the General Land Office rejected the application as to the land in sec. 23, following receipt of notice from Walters that he only desired to pursue the application as to the lands in sec. 26.

On June 9, 1950, Mannatt purchased from Frieda Walters personal property described as: "That certain Cabin containing two rooms and sleeping porch, located on Independence Creek about three miles west of Independence at the place known as the Cottonwood." By letter dated July 3, 1950, Mannatt inquired of the Commissioner of the General Land Office as to the status of the Walters' small tract application, explaining that he had recently purchased from Frieda Walters "the two room cabin located on the property," and explaining that she had given him a file of correspondence dating back to the 1930's regarding the attempts by her husband, Carl Walters, to secure title to the land. ^{4/} By letter dated August 28, 1950, the General Land Office responded, informing Mannatt that: "As no lease issued to Carl J. Walters you cannot acquire any interest in the land by the purchase of the cabin." It also suggested that Walters withdraw his application and Mannatt file an application in his own name. Pursuant to the recommendation of that letter, Frieda Walters withdrew application Sac 033274, and on December 11, 1950, Mannatt filed a small tract lease application for the lands in sec. 26. On January 22, 1954, BLM rejected that application on the basis that the lands had been withdrawn by the 1929 Executive order. Mannatt appealed, and by decision dated November 14, 1957, the Director, BLM, affirmed the rejection of the application and informed Mannatt that his occupancy of the claimed lands must be deemed a trespass.

^{4/} The record shows that during the 1930's Carl Walters filed an application with the Federal Power Commission (FPC) seeking to have the N\ N\ sec. 26 restored to entry for homestead purposes. On Jan. 30, 1934, the FPC notified Walters that it had no objection to restoration of the lands and that it had so notified the Secretary of the Interior. There is no evidence in the record that those lands were restored to entry by the Secretary of the Interior.

Subsequently, BLM contacted Mannatt and recommended that he remove his improvements from the land. However, BLM took no official action until May 5, 1987, when it issued a letter and trespass notice informing Mannatt to remove his improvements within 60 days. Thereafter, on June 15, 1987, the subject color-of-title applications were filed.

To satisfy the requirements for receipt of a class I color-of-title patent, an applicant must show the land has been held for at least 20 years in good faith and in peaceful adverse possession based on an instrument which, on its face, purports to convey title to the claimed land. See 43 U.S.C. | 1068 (1982); 43 CFR 2540.0-5(b); Alvin E. & Mary R. Leukuma, 103 IBLA 302, 305 (1988). The applicant must also provide evidence that valuable improvements have been placed upon the land or that some part of the land has been reduced to cultivation. Grant F. & Jessie Fern Woodward, 87 IBLA 118, 119 (1985). The obligation of proving a valid color-of-title claim is upon the claimant and failure to carry this burden with respect to any one of the elements is fatal to the application. Id.; Middle Rio Grande Conservancy District, 86 IBLA 41, 42 (1985).

[1] Appellant has failed to satisfy a number of the class I color of title requirements, each of which, independently, supports the rejection of his applications. First, appellant's claim is not based on a document purporting to convey title to the land in question. Appellant's possession dates from a June 9, 1950, bill of sale establishing that he purchased a cabin located on part of the claimed land. Appellant has produced no instrument purporting to convey title to that land or any other land, nor does he allege that such a document exists. In fact, his correspondence with BLM in 1950 conclusively establishes that he did not purchase that land. A successful color-of-title application must be based upon a document which, on its face, purports to convey the claimed land to the applicant or the applicant's predecessors. Loyla C. Waskul, 102 IBLA 241, 243 (1988). There is no such document in the case record; therefore, the applications were properly rejected.

[2] Second, appellant has failed to show the requisite good faith. Pursuant to 43 CFR 2540.0-5(b), "A claim is not held in good faith where held with knowledge that the land is owned by the United States." An applicant who believes or has reason to believe that title to land is in the United States at the time when the applicant acquires possession of the land has not established good faith. Good faith requires that a claimant and his predecessors honestly believed they were invested with title. William T. Bertagnole, 87 IBLA 34, 45 (1985).

It is beyond question that appellant knew that he did not hold title to the claimed land. The record reveals that beginning in 1950 appellant filed and diligently pursued an application whereby he sought to lease from the United States a portion of the land he now claims. An attempt to acquire a lease or title pursuant to any of the various public land laws constitutes acknowledgement of Federal ownership, thereby negating good faith. Felix F. Vigil, 84 IBLA 182 (1984) (applicant held grazing lease); Earl Hummel, 44 IBLA 110 (1979) (applicant had previously filed a homestead

application); Nora Beatrice Kelley Howerton, 71 I.D. 429 (1964) (applicant's predecessor had filed a color-of-title application); see Day v. Hickel, 481 F.2d 473, 476 (9th Cir. 1973). Mannatt's 1950 application for a lease constitutes acknowledgment of Federal ownership of the land described in that application, which precludes appellant's establishment of good faith possession. 5/

In addition, the record further indicates that appellant lacked an honest belief that he owned any of the land. He has produced no document which suggests any of the claimed land was conveyed to him; the bill of sale dated June 9, 1950, clearly transfers only a cabin and not title to any land. Also, his letter to BLM shortly after purchase of the cabin reveals that he knew he had not purchased any land.

[3] We also find that appellant cannot establish peaceful adverse possession of the claimed lands. Pursuant to 43 CFR 2540.0-5(b), "A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes." Where the applicant's chain of title originated at a time when the land was withdrawn or reserved, a color-of-title application is properly rejected. Arizona Real Estate Exchange, Inc., 94 IBLA 1, 6 (1986); Grant F. & Jessie Fern Woodward, *supra*. Moreover, mere occupancy of public lands and the placing of improvements thereon, without some colorable claim of right of possession, give rise to no vested rights against the United States. See United States v. Osterland, 505 F. Supp. 165 (D. Colo. 1981); Lillian Barlow, 58 IBLA 385, 388 (1981).

In this case, appellant has no chain of title to the land claimed. All he has is a bill of sale for a cabin and an extended period of occupation of that cabin and surrounding lands. There is no evidence that appellant or other previous occupants of the cabin ever occupied the claimed lands at a time when they were open to entry or under any claim of title to the land. The lands were withdrawn from settlement, location, sale, or entry as a power site reserve in 1912, and were also withdrawn in 1929 in aid of legislation, which was enacted by Congress in 1931. All of the occupation of the land cited by appellant occurred during periods when the land was not open to any type of entry under the public land laws.

Appellant maintains that because occupants of the land have been paying taxes on and attempting to gain title to the land for many years, BLM's decision should be reversed. We find these arguments to be without merit. Payment of taxes is relevant only in a class II color-of-title application. 6/ Appellant's allegation that occupants of the claimed lands

5/ Likewise, it is clear that appellant's predecessors, Carl Walters and Harry Heaton, also lacked good faith as both attempted to acquire title to certain parts of the claimed lands.

6/ Appellant did not apply for a class II color-of-title claim, nor would he be eligible, as class II requires "that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his

have been seeking title to the land from the United States for many years is adequate reason to deny the color-of-title application, as explained supra, since that fact clearly establishes a lack of good faith.

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.

Bruce R. Harris
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

fn. 6 (continued)
ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901."
43 U.S.C. | 1068 (1982); 43 CFR 2540.0-5(b).