

KNUTE P. LIND

IBLA 75-399

Decided June 27, 1975

Appeal from decision of Alaska State Office holding homesite notice of location AA-8197 unacceptable for recordation and canceling claim.

Affirmed.

1. Alaska: Generally -- Alaska: Homesites -- Alaska: Possessory Rights -- Withdrawals and Reservations: Generally

A claimant's occupancy of a homesite prior to a withdrawal does not establish a "valid existing right," excepted by the withdrawal, under the Act of April 29, 1950, where claimant did not file his notice of location within 90 days after occupancy, nor did he file a notice of location or purchase application prior to the withdrawal.

2. Administrative Practice -- Alaska: Generally -- Alaska: Headquarters Sites -- Equitable Adjudication: Generally

Equitable adjudication authority is not appropriate and may not be applied to permit filing of a homesite notice of location after the land has been withdrawn.

APPEARANCES: Knute P. Lind, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Knute P. Lind appeals from a March 1, 1975, decision of the Alaska State Office, Bureau of Land Management, holding unacceptable for recordation his notice of location AA-8197 for a homesite and canceling his claim.

Appellant filed his notice of location on October 24, 1972, pursuant to the act of May 26, 1934, 43 U.S.C. § 687a (1970), for lot 1, U.S. Survey 2450, containing 4.02 acres. This land had been withdrawn from all forms of appropriation under the public land laws by Public Land Order 5184, 37 F.R. 5588, effective March 16, 1972. Appellant claimed that he had occupied this land since January 22, 1968.

In its decision the State Office cited the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970) and 43 CFR 2563.2-1. The State Office pointed out that appellant claimed occupancy from January 22, 1968, which is more than 90 days prior to his filing of notice of location. Thus he may only be given credit for occupancy of the homesite from October 24, 1972, his date of filing in the land office. Under section 5 of the Act of April 29, 1950, supra, occupancy of a homesite claim prior to the filing of a notice of location of settlement will not be considered as meeting the occupancy requirements of the law. Charlotte Lorraine (Pontz) Furgione, 8 IBLA 432 (1972).

The Act of May 26, 1934, supra, as it amended the Act of May 14, 1898, 30 Stat. 413, authorizes the sale of a homesite not to exceed 5 acres of vacant, unappropriated nonmineral land. The State Office found that the lands encompassed by Mr. Lind's notice of location were not open to settlement on the date he filed, because the lands were withdrawn from all forms of appropriation by Public Land Order 5184, 37 F.R. 5588 (1972).

On appeal, Lind asserts that he purchased the house and occupied it continuously from January 22, 1968, until the present. He said that he was unaware that there was a deadline for filing his claim.

[1] This appeal presents two issues: First, where a settler has not filed a notice of location prior to a withdrawal, is occupancy recognized as a valid existing right protected from a withdrawal? Second, where a settler alleges that he was unaware of the time limitation for filing a notice of location, is the regulation permitting equitable adjudication applicable?

The Act of April 29, 1950, 64 Stat. 94-95, as amended, 43 U.S.C. § 687a-1 (1970), requires a person who initiates a homesite claim to file a notice describing the claim within ninety days from the date of the initiation of the claim. The statute further provides:

Unless such notice is filed in the proper district land office within the time prescribed the claimant shall not be given credit for the occupancy maintained in the claim prior to the filing of (1) a notice of the claim in the proper district land office, or (2) an application to purchase, whichever is earlier. Application to purchase claims, along with the required proof or showing, must be filed within five years after the filing of the notice of claim under this section.

The Board recently rendered a decision dealing with similar issues in Rene P. Lamoureux, 20 IBLA 243 (1975). In that case the settler had occupied land for a headquarters site prior to a withdrawal, but had not filed his notice of location until after the withdrawal. The filing date was more than 90 days after initiation of the claim. The Board held:

If the requirements of this Act are not met by the filing of a notice or application to purchase within 90 days from initiation of occupancy or prior to the withdrawal, the occupancy of the settler cannot be recognized as a valid existing right protected from the withdrawal. Gary Lee Slay, 18 IBLA 345 (1975); Ralph Edmund Marshall, 14 IBLA 233 (1974); Kennecott Copper Corp., 8 IBLA 21, 79 I.D. 636 (1972).

[2] Equitable adjudication of suspended entries is permitted under 43 U.S.C. § 1161-63 (1970) and 43 CFR 1871.1-1 where there has been substantial compliance with the law and where the error or informality is satisfactorily explained as being the result of ignorance, mistake or some obstacle over which the party had no control, there being no lawful adverse claim. Richard Lee Farrens, 7 IBLA 133 (1972).

In Lamoureux, the Board held that a case is not ripe for equitable adjudication until a purchase application is filed and

a case is ready to be patented but for the mistakes or errors for which the equitable relief is sought. See also James C. Forsling, 56 I.D. 281 (1938). Appellant herein has not filed a purchase application.

Appellant's late-filed notice of location cannot be accepted. As held in Lamoureux, a notice of location is not the equivalent of a purchase application. It is a mere notice that the person has gone upon the land. The equitable adjudication authority, therefore, is not appropriate and may not be applied to permit the filing of such a notice after land has been withdrawn. See James C. Forsling, supra.

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.

Joseph W. Goss
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

