EDWARD P. DOOLEY

IBLA 76-4 Decided November 14, 1975

Appeal from decision of Alaska State Office, Bureau of Land Management, holding a homesite notice of location (AA-9005) unacceptable for recordation.

Affirmed.

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

Location of a homesite claim without substantial use or occupancy of the land in compliance with the law creates no property interest in the land. Where the claimant under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970), has merely marked the boundaries of the claim prior to a withdrawal of the land, such activity does not constitute occupation or possession of the land and the claim will be defeated by that withdrawal.

2. Alaska: Generally -- Alaska: Homesites -- Alaska: Possessory Rights

A notice of location for a homesite which alleges only acts of occupancy and improvement insufficient to create any interest in the land is properly denied recordation.

APPEARANCES: Edward P. Dooley, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Edward P. Dooley has appealed from a decision of the Alaska State Office, Bureau of Land Management, dated May 13, 1975, holding his notice of location for a 5-acre homesite unacceptable for recordation.

Dooley originally filed his location notice May 7, 1974, claiming occupancy of the lands from March 1, 1974, under the homesite provisions of the Act of May 26, 1934, 84 Stat. 809; 43 U.S.C. § 687(a); 43 CFR 2563. His location notice described by metes and bounds a 5-acre tract within section 28 of unsurveyed T. 9 N., R. 3 E., Steward Meridian. As of the date of filing he claimed no improvements "except staking and flagged corners."

The State Office decision noted that the lands described in the Dooley location were effectively withdrawn March 28, 1974, by Public Land Order 5418 segregating the lands from all forms of appropriation under the public land laws. After concluding that field examinations in June and September, 1974 and January, 1975 confirmed that Dooley had failed to place substantial improvements on the homesite sufficient to establish occupancy and possession of the land prior to the effective date of withdrawal, the State Office held that he had not established a valid existing right prior to the segregation of the withdrawal and held the location notice unacceptable for recordation.

On appeal Mr. Dooley asserts that he did make improvements on the land. He states he built a cabin on the land in the summer of 1974, completing it in August of that year. He contends the cabin was apparently overlooked during the Bureau's field examinations because it is built approximately 200 feet up the mountain from his claim notice and is located in a heavily wooded area.

The record indicates that the cabin was not overlooked. In fact it was inspected very thoroughly inside and out to determine how far construction had developed and whether the structure was habitable. Findings of a field report dated March 5, 1975, conclude:

> The claim was originally examined by * * * helicopter on June 6, 1974. At that time they found no evidence of use. On July 28, 1974, low-level aerial photography was made of the entire Portage area [and] * * * no evidence of clearing or improvements could be found.
>
> The claim was examined again on September 17, 1974, * * . At that time they found evidence of use. The applicant had a tent at the base of the hill and had a cabin under construction on the point of the hill.

> The claim was examined again on January 30, 1975, * * *. A 14'x14' cabin was under construction. The cabin was not completed as far as winter occupancy is concerned. The upper two-thirds of the cabin was made of boards with heavy plastic covering the inner walls. At the present time it could be classed as a summer recreational cabin. It looked as if the cabin had been visited at some time prior to the examination on January 30, [1975] * * *

These findings are substantiated both by appellant's location notice and his own admission that he did not begin to build a cabin until the summer of 1974. However, the construction of a cabin and other occupancy, if any, at this late date did not serve to establish any rights in the land as the land had already been segregated from further appropriation.

[1] The Homesite Act, supra, only authorizes the sale of unreserved public lands in Alaska. The land in question was effectively withdrawn, subject to "valid existing rights," by P.L.O. 5418 (March 28, 1974). The filing of a notice of location without substantial compliance with the law does not create any property interest in land. Allan D. Hodge, 22 IBLA 150 (1975); Elden L. Reese, 21 IBLA 251 (1975); Peter Pan Seafoods, Inc. v. Shimmel, 72 I.D. 242 (1965). Dooley stated, and the facts are clear, that at the time of location he had done no more than mark the boundaries of the claim. The mere marking and posting of the corners of the tract does not constitute occupation or possession. Donald Richard Glittenberg, 15 IBLA 165 (1974). Appellant's alleged activities prior to the withdrawal were not sufficient to establish a "valid existing right" excepted from the withdrawal.

[2] In several recent cases the Board has considered analogous cases. It has held that a notice of location of a trade and manufacturing site, regular on its face, filed for land open to location at the filing, is to be accepted and recorded, and not held in abeyance pending a field examination. Allan D. Hodge, supra; Elden L. Reese, supra. In those two cases, the notice of location had been filed prior to P.L.O. 5418. In Donald J. Thomas, 22 IBLA 210 (1975), it was held that a notice of location of a headquarters site filed prior to P.L.O. 5418 on which the locator alleged he had performed sufficient acts of occupancy and improvement to sustain his claim if true, should have been recorded and the claim then contested, if the results of a later field examination warranted such action.

Here, as we have seen, the notice of location was filed after the effective date of P.L.O. 5418. Thus, in order to be eligible for recordation, Dooley would have had to have established a "valid existing right" prior to March 28, 1974, which would have survived the withdrawal. 43 CFR 2563.1; 43 CFR 2563.2-1(d). Ray W. Ferguson, 22 IBLA 160 (1975). This he could have done by sufficient acts of occupancy and improvement. However, the notice of location stated only "staking and flagged corners." Such acts 1/ do not establish any rights in the land under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970). Therefore the notice of location was defective on its face and was properly refused recordation.

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.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

1/ As to the initiation of a valid homestead settlement claim, see Robert A. Bice, Jr., 22 IBLA 291 (1975).