

BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO OF TAOS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 357-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: February 10, 1971

Appearances:

Darwin P. Kingsley, Jr. and
Richard Schifter, Attorneys
for Plaintiffs.

Howard G. Campbell, with whom was
Mr. Assistant Attorney General
Ramsey Clark, Attorneys for
Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

This case is before the Commission for decision on plaintiff's motion of October 17, 1969 for summary judgment holding defendant liable for interest at the rate of 5% per annum on amounts due plaintiff under the provisions of the Pueblo Lands Act, 43 Stat. 636, "which are unpaid or were paid belatedly." In fact plaintiff is seeking interest on \$76,128.85 paid belatedly under the Pueblo Lands Act, as well as on \$84,707.09 supplementally awarded by Congress under the Act of May 31, 1933, 48 Stat. 108, and on \$297,684.67 (less the value of the Blue Lake use permit) awarded by the Commission to the Taos plaintiff in Docket

No. 357, 15 Ind. Cl. Comm. 666, 687 705, et. seq. (1965).

The Pueblo Lands Act of June 7, 1924 provided for the establishment of a Pueblo Lands Board to adduce evidence and report on lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of any sovereign, or acquired by said Indians as a community by purchase or otherwise, title to which the board should find not to have been extinguished in accordance with the act. A separate report was to be filed for each pueblo.

Section 3 provided that the Attorney General would file suits to quiet title to all lands so reported.

Section 4 provided that all persons claiming title or ownership to lands in such suits (adversely to the pueblo claims) could plead as a defense, adverse possession under color of title and payment of taxes thereon from January 6, 1902 until passage of the act, or adverse possession with claim of ownership but without color of title and payment of taxes thereon from March 16, 1889 to the passage of the act.

Section 5 provided that such pleas, successfully maintained would entitle the claimants to a decree in their favor with the effect of a quitclaim "as against the United States and said Indians."

Section 6 provided that the board would also report for each pueblo: (a) the extent of land and appurtenant water rights within the exterior boundaries of lands granted or confirmed to the pueblo but in possession of non-Indian claimants at the time of such report and which were not claimed for the Indians by any report of the board; (b) whether

or not the United States could have recovered same for the pueblo by reasonable prosecution under the New Mexico statutes of limitation (determined in Pueblo de San Juan v. United States, 47 F. 2d 446 (10th Cir. 1931) to be ten years after entry by adverse claimants) and (c) the value of said lands and water rights and the loss, if any, suffered by the Indians through failure of the United States to seasonably prosecute their rights. The section further provided that the United States would be liable and that the board would award compensation to the pueblo for such loss.

The plaintiff argues that Section 5 of the act, providing that settlers successfully proving possession specified in Section 4 would be entitled to a decree with the effect of a quitclaim, constituted a taking of Indian lands by the United States and a conveyance thereof to non-Indians within the meaning of the Fifth Amendment to the Constitution. A discussion of the plaintiff's claims will illustrate the fallacies of this argument.

Of the \$76,128.85 awarded to the plaintiff by the Pueblo Lands Board for lands lost outside of the non-Indian Town of Taos, \$48,497.00 were awarded under Section 6 of the act apparently without invoking Sections 4 or 5 which plaintiff contends constituted an act of taking. It is thus clear that as to the \$48,497.00, there was no Fifth Amendment taking, under plaintiff's own theory of the case.

In 1930 the board awarded the Pueblo of Taos the additional amount of \$27,631.85 representing the board's determination of the loss to

the pueblo from successful presentation of claims by non-Indians in suits authorized by Section 3 of the act. Such losses reflected the successful pleading of defenses provided by Section 4 of the act. However, as we shall illustrate herein, neither these losses nor any portion of the other principal sums on which the plaintiff is now seeking interest, involved Fifth Amendment takings.

The \$84,707.09 awarded by Congress under the Act of May 31, 1933, 48 Stat. 108, was intended to fulfill what Congress determined was the United States' liability under the Pueblo Lands Act, for the loss to the plaintiff of its pueblo grant lands outside of the Town of Taos. This amount, together with the \$76,128.85 awarded by the Pueblo Lands Board, constituted \$160,835.94, allegedly the value placed on said lands by the Pueblo Lands Board.^{1/}

The \$297,684.67 awarded by the Commission in Docket No. 357, was for the alleged appraised value of the non-Indian Town of Taos established on pueblo grant lands under a conflicting and overlapping Spanish land grant to non-Indians prior to United States sovereignty over the area. As set forth in our order of this date to show cause why the award in Docket No. 357 should not be vacated, it now appears that the United States never had a proprietary interest in the Town of Taos, and that

^{1/} The board apparently determined that the loss to the plaintiff as a result of the defendant's failure to prosecute its rights seasonably was far less than the 1924 value of the land, since the plaintiff had sold portions of its lands (receiving value therefor) and had lost title to other portions at times so remote as to preclude recovery by timely prosecution.

the Pueblo Lands Board was correct in determining that the United States could not have recovered for the Town of Taos and accordingly was not liable for its loss. Clearly there was no taking of the Town of Taos by the defendant and interest will not lie therefor.

The pertinent portion of the Fifth Amendment states: "nor shall private property be taken for public use without just compensation." The provision is clearly a limitation on the Federal Government. In the instant case there was no taking by the United States.

There is a presumption that the United States, in enacting the Pueblo Lands Act and in its transactions thereunder was performing in a role specified by Congress in the act, viz., in its sovereign capacity as guardian of the Pueblo Indians. The plaintiff has not met its burden of overcoming this presumption and showing by competent evidence that, as it maintains, the defendant on the contrary was exercising its powers of eminent domain in a manner inimical to its role as a guardian. In our opinion the Pueblo Lands Act constituted a good faith effort on the part of the government to quiet title in Indian lands and to compensate the Indians fully for losses which in any way might be attributable to prior government inaction, without the plaintiff even being required to show that the government previously and timely had been informed that efforts had been made by the tribes or others to alienate tribal lands. Such good faith effort was a clear manifestation

of the exercise by Congress of its plenary authority as guardian of the Pueblo Indians.^{2/}

The provisions of the Pueblo Lands Act, particularly of Section 6 thereof, are somewhat analogous to those of the Court of Claims special jurisdictional act (44 Stat. 1349, Part II) for trying the Shoshone-Arapaho claims as discussed by the Supreme Court in Shoshone Tribe v. United States, 299 U.S. 476 (1937). In that case the plaintiff unsuccessfully contended that Section 3 of the latter act, which provided that the decree would be in full settlement of all damages, if any, caused by the United States, was an exercise of eminent domain and turned trespass into definitive and lawful taking. The Supreme Court held that the jurisdictional act was not a taking of anything, that the purpose of that act was to give present reparation for an alleged past appropriation and that in drafting the act Congress had no thought of prescribing present expropriation in lieu of present reparation. This reasoning applies with greater force to the Pueblo Lands Act, where, unlike the Shoshone case, the past appropriation was not by the United States for public use, but by third parties for private use.

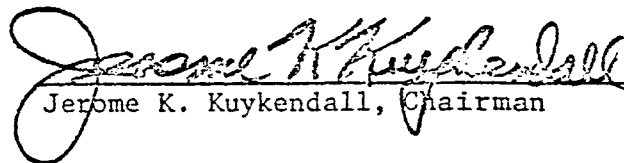
In Pueblo of Pecos v. United States, Dkt. 174, 8 Ind. Cl. Comm. 205^{3/}

^{2/} Cf. Three Confederate Tribes of the Fort Berthold Reservation v. United States, 182 Ct. Cl. 543, 390 F. 2d 686 (1968), wherein the government sale of surplus Indian lands to homesteaders was held not to be a Fifth Amendment taking, but rather a good faith exercise of the legislature's plenary power to administer Indian affairs by commuting their lands to money for their benefit. The decision was delivered on appeal of Dkt. 350-F, 16 Ind. Cl. Comm. 341 (1965).

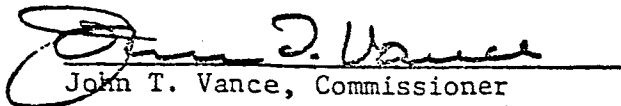
^{3/} Aff'd 152 Ct. Cl. 865, cert. denied, 369 U.S. 821 (1961). The case was decided on the ground that the decision of the Pueblo Lands Board was res judicata.

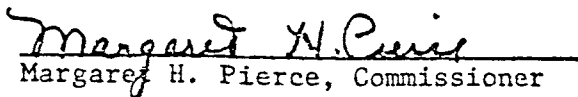
the plaintiffs contended that the Pueblo Lands Board erred in not allowing interest on the award. In that case the Commission held that it was the non-action of the Government that resulted in loss of Pueblo grant lands to others. Our statement there (p. 218), that "Obviously there was no taking of lands of the Pecos Indians under the Fifth Amendment", applies as well to the case at bar.

For the reasons stated herein the plaintiff's motion for summary judgment must be denied, and an appropriate order entered.


Jerome K. Kuykendall, Chairman

Concurring:


John T. Vance, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner

Commissioner Yarborough concurs in the result reached by the Commission.