

1961

Walter W. Jacobson, Sandra Williams and Brent T. Lynch v. State Land Board of the State of Utah. C. R. Henderson, M. v. Hatch, Walter G. Mann, Edward W. Clyde and C W. Thomson, As Members of the Salt Lake Board of the State of Utah : Brief of Appellant

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Recommended Citation

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IN THE SUPREME COURT of the STATE OF UTAH

WALTER W. JACOBSON, SANDRA WILLIAMS and BRENT T. LYNCH,
Plaintiffs and Appellants,

—vs.—

STATE LAND BOARD OF THE STATE OF UTAH, C. R. HENDERSON, M. V. HATCH, WALTER G. MANN, EDWARD W. CLYDE and C. W. THOMSON, as members of the State Land Board of the State of Utah; FRANK J. ALLEN, Director of the State Land Board of the State of Utah; ALBERT C. MASSA, LESLIE B. TOMLEY, BEN K. LERER, HARRY EDISON, LOUIS B. MAYER, UPHEAVAL DOME OIL CORPORATION, BENJAMIN H. SWIG, ARWIN E. ORMSBY, ROOSEVELT - LEE - MAGEE, LTD., EDWARD L. HEUCK, RANDOLPH A. HEARST, H. C. McAULEY, VIRGINIA C. WOLDEN, RALPH LOWE, FORREST B. MILLER, PETRO-ATLAS CORPORATION, SHELL OIL COMPANY, a corporation, ALTA LINDQUIST, C. S. WATTS, BERNARD C. McGUIRE, FRANCIS M. RAYMOND, EL PASO NATURAL GAS PRODUCTS COMPANY, a corporation, and W. G. LASRICH,

Defendants and Respondents.

Case
No. 9401

STATEMENT OF FACTS

The above action was commenced by plaintiffs to require the State Land Board, its commissioners and director to take over the management and control of leasing of lands as provided by the laws of the State of Utah. A description of the lands is set forth in the complaint (R. 1-6).

The case was submitted to the District Court on a stipulation of facts (R. 46).

It is admitted that title to some of the lands described in the complaint vested in the state prior to the renewal of the Federal leases covering said lands (R. 69, 87). In fact, the District Court in its finding No. 9 stated that with four of the Federal leases title to the lands vested in the State prior to the request for the five year extension being made to the Bureau of Land Management

Under the stipulation of facts plaintiffs filed in the State Land Office certain applications for minerals, being the oil and gas leases set out in Exhibit I attached to the stipulation (R. 54-55).

It is further admitted that at the time of filing the respective applications by plaintiffs, each plaintiff was a citizen of the United States, qualified to file applications for oil and gas leases with the State of Utah and to take oil and gas leases from the State of Utah. It is further stipulated that the applications filed by plaintiffs for oil and gas leases from the State of Utah were on the form and in the manner prescribed by the State Land Board of Utah (R. 47).

The applications of plaintiffs were refused by the State Land Board for the reason that the applications covered land in conflict with U.S. Oil and Gas Leases, even though title to the land had passed to the State of Utah under the provisions of Public Law No. 340, passed April 22, 1954 and Public Law No. 699, passed July 11, 1956. The State Land Board took this position upon the

advice of the Attorney General of the State of Utah as shown by Exhibit 2 attached to the stipulation (R. 56-67 inc.) and the minutes of the meeting of the Utah State Land Board of January 6, 1958 and January 7, 1958 (Ex. 2, R. 68).

The parties defendant, other than the State Land Board, its commissioners and director, were parties named in the leases issued by the United States Government covering the lands described in the complaint prior to title passing to the State of Utah (R. 48).

The lessees of the United States Government leases requested the five year extension of such leases from the United States Government and not the State of Utah after title to the lands had passed to the State of Utah (R. 49).

The Bureau of Land Management has accepted rentals from the lessees with the exception of those rentals that were paid to the State of Utah after the bureau had rendered a decision advising the lessees that title had vested in the State and directed the lessees to pay the rental to the State of Utah. The Bureau of Land Management has either accounted to and paid to the State or recognized its obligation to account to and paid the State the proportion of the rentals which accrued after the vesting of title in the State. The payment was made in proportion to the relative acreage the Government and the State owned (R. 49). With the exception of lands that had been withdrawn pursuant to executive orders, the only reason given for the refusal to grant State leases

is based upon the opinion of the Attorney General of the State of Utah dated December 4, 1957 (R. 56 58 inc. 1)

The District Court entered its order and decree denying the relief prayed for in the complaint, dismissing plaintiffs' complaint and giving the respective defendants judgment for their costs incurred.

STATEMENT OF POINTS

POINT I

THE UNITED STATES IS NOT AN INDISPENSABLE PARTY.

POINT II

THE STATE BECAME THE OWNER OF THE PROPERTY WHEN THE SURVEYS WERE MADE AND ACCEPTED BY THE GOVERNMENT.

POINT III

AFTER THE STATE BECAME THE OWNER OF THE PROPERTY, IT WAS THE DUTY OF THE LAND BOARD TO TAKE COMPLETE CONTROL OF THE LEASING OF THE LANDS AT THE EXPIRATION OF THE ORIGINAL TERM OF THE FEDERAL LEASES.

ARGUMENT

POINT I

THE UNITED STATES IS NOT AN INDISPENSABLE PARTY.

This is an action for a writ to require the State Land Board, its commissioners and director to take charge of, manage and lease lands over which the State of Utah had title. The action does not try title nor the rights of any of the parties interested in the respective leases. The lessees under the Federal leases were made parties in

accordance with the principle set forth in the cases of *Harris v. Barker*, 80 Utah 21, 12 P. 2d 577 (July, 1932) which states as follows:

“Technically the only necessary parties to mandamus proceedings are the plaintiff who asserts the right to have the act done and the defendant upon whom rests the duty of performance. However, the practice is usual and proper to bring in all parties or other persons who are liable to be affected by the judgment, in order that they may have opportunity to be heard in their own behalf. 5 Bancroft, Code Practice & Remedies, 5168; 18 R.C.L. 330.”

and *Hilton Bros. Motor Co. vs. District Court*, 82 Utah 372, 25 P. 2d 595 (Oct. 1933).

The Court in discussing indispensable or necessary parties in the case of *Stone v. Salt Lake City*, 11 Utah 2d 196, 356 P. 2d 631 (Nov. 1960) stated:

“In considering whether the granting of the motion to dismiss the Church from the second cause of action was proper, it is to be borne in mind that one should be regarded as a necessary party to a law suit if he has rights or interests involved in the subject matter in such a way that his presence is essential to a full, fair and equitable determination of his rights and those of other parties to the suit.”

In the case of *Spring v. Ohio Oil Co.*, 108 F. 2d 560 (5 Cir. 1940), the Court held:

“In an action between private individuals asserting claims to the same land, under titles derived from the state, the state is not a necessary

party. *Roxana Petroleum Corp. v. Colquitt*, D.C. 34 F. 2d 470, affirmed, 5 Cir., 49 F. 2d 1025."

In the case of *South Kamas Irr. Co. v. Provo River Water Users' Assn.*, 10 Utah 2d 225, 350 P. 2d 851 (Apr. 1960) the Court held:

"If a useful purpose will be served by litigation between two parties, the fact that it would be more effective if an additional party could be joined does not mean that the third party is indispensable. Here, however, this suit can have no direct effect as between the parties without joining the United States. The judgment which plaintiffs seek against the defendant could not be enforced against it without enforcing it against the United States, for it cannot use the tunnel without the enforced consent of the United States."

In the case of *Utilities Production Corporation v. Carter Oil Co.*, 72 F. 2d 655 (10 Cir. Aug. 1934) it is stated:

"While there is some lack of uniformity in nomenclature, the rules as to parties are well settled. A party is 'indispensable' if a decree cannot be entered without injuriously affecting his rights, or leaving the controversy in a situation inconsistent with equity and good conscience. An indispensable party should either be joined or the case dismissed."

The District Court in this action could have passed upon the question of the duty of the Land Board, its commissioners and director to take charge of, manage and lease lands over which the State of Utah had become

vested with title without in any way affecting any interest of the United States.

POINT II

THE STATE BECAME THE OWNER OF THE PROPERTY WHEN THE SURVEYS WERE MADE AND ACCEPTED BY THE GOVERNMENT.

Under the Enabling Act of July 16, 1894, 28 Stat. 167 Congress granted to the State of Utah in aid of common schools Sections 2, 16, 32 and 36 in each township of the public domain.

In the case of *U. S. v. Sweet*, 245 U. S. 563 38 S. Ct. 193, 62 L. Ed 473, the Supreme Court of the United States held that the lands granted did not extend to lands which were known to be mineral in character at the time title would have otherwise vested in the State of Utah The Act of January 25, 1927, as amended by the Act of May 2, 1932, 43 U.S.C.A. 870-871 extended the grant of school sections to States to include lands mineral in character, however lands covered by leases, permits or applications therefor were excluded. *U. S. Code Congressional Administrative News*, 84th Congress, 1956, pages 3111-3113.

What is known as the First Dawson Bill, 43 U.S.C.A. Sections 870-871, extended the grant of school sections to States to embrace lands, mineral in character, even though the same might be covered by mineral leases, and provided that the State should become the lessor of that portion covered by the grant. This act was passed April 22, 1954 and provided that an outstanding lease on a numbered mineral section shall not prevent the grant of the section to the State and that any numbered mineral

section which would have passed to the State, except for the presence of an outstanding lease, shall be granted to that State. There seems to be no question but that Congress intended by this act to include both mineral and non-mineral land. *U. S. Code Congressional Administrative News*, supra. To clarify this situation, Congress on July 11, 1956, amended the act, which act is known as the Second Dawson Act, so as to do away with any misunderstanding and expressly provided that title to the state attach to non-mineral lands as well as mineral lands. *43 U.S. Code Annotated*, 870-871.

Under the stipulation of facts, there is no question but that four of the parcels of land set forth in plaintiffs' complaint title passed to the State under the Act of July 11, 1956 before any application was made for an extension of these leases and after the primary five year term had expired. These leases are U-07312 (R. 82), U-05660 and U-05661 (R. 86), U-06730 (R. 86A). In this connection, a letter addressed to the plaintiff Sandra Williams dated January 20, 1958 states:

"Sandra Williams
817 Newhouse Building
Salt Lake City, Utah

Dear Madam:

* * * *

Title to the above passed to the State of Utah under the provisions of Public Law 340, April 22, 1954 and Public Law 699, July 11, 1956.

The Attorney General of the State of Utah in an opinion dated Dec. 4, 1957, ruled that the

five year extension of time granted by the United States on these leases is valid and should be recognized by the State of Utah. This action was taken by the State Land Board and your applications were rejected as noted above.

The rental payments which you submitted with your applications will be refunded in the near future.

Yours very truly,

Frank J. Allen

DIRECTOR''

Where we may have some question of dispute as to whether non-mineral land passed to the State of Utah before the Act of July 11, 1956, there is no question in regard to the last four mentioned parcels. By the Act, the State not only became the lessor in place of the Government, but also became owner of said property.

POINT III

AFTER THE STATE BECAME THE OWNER OF THE PROPERTY, IT WAS THE DUTY OF THE LAND BOARD TO TAKE COMPLETE CONTROL OF THE LEASING OF THE LANDS AT THE EXPIRATION OF THE ORIGINAL TERM OF THE FEDERAL LEASES.

It became the duty of the Land Board, its members and director to take charge of the supervision, management, leasing and control of all lands to which title had vested in the State of Utah.

Article XX of the *Constitution of Utah* provides:

“All lands of the State that have been, or may

hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise from any person or corporation, or that may otherwise be acquired, are hereby accepted, and declared to be the public lands of the State; and shall be held in trust for the people to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired."

65-1-14, *Utah Code Annotated* 1953, as amended, provides:

"The state land board shall have the direction, management and control of all lands heretofore or hereafter granted to this state by the United States government, or others, * * *."

65-1-24, *Utah Code Annotated* 1953, as amended, provides:

"The board shall cause all public lands now owned by the state, or lands the title to which may hereafter be vested in the state, to be classified and registered and thereafter sold or leased. * * *"

Section 17 of the Mineral Leasing Act, as amended, 30 *U.S.C.A.* 226-1 (a), provides:

Upon the expiration of the initial five-year term of any noncompetitive lease maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereof shall be entitled to a single extension of the lease, *unless then otherwise provided by law*, for such lands covered by it as are not on the expiration date of the lease withdrawn from leasing under this section No withdrawal shall be effec-

tive within the meaning of this section until ninety days after notice thereof shall be sent by registered mail, to each lessee to be affected by such withdrawal. (*Italics ours*).

The Dawson Acts heretofore referred to vested title in the State of Utah prior to the request for the extension of the four leases heretofore mentioned.

After title passed to the State, Section 17 of the Mineral Leasing Act would not control. The controlling provision would be 30 *U.S.C.A.*, Section 189, which provides as follows:

“The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes thereof. Nothing in said sections shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States. Feb. 25, 1920, c. 85, Sec. 32, 41 Stat. 450.”

The provision just quoted covers Section 226 authorizing the extension of leases unless otherwise provided by law, and as stated in Section 189 it has been otherwise provided by law in relation to the rights of states.

By the letter addressed to Sandra Williams, dated

January 20, 1958, heretofore referred to, it is apparent that the Land Board did not exercise its discretion and judgment in denying her applications listed in said letter. It merely stated that the five year extension of time granted by the United States is valid and should be recognized by the State of Utah. In other words, it held that it had no jurisdiction to question the renewals.

This Court has held that mandamus proceedings are the proper proceedings to compel an inferior court, commission or board to exercise jurisdiction when such court, commission or board has erroneously failed to act for want of jurisdiction. In the case of *Herzog v. Bramel*, 82 Utah 216, 23 P. 2d 345 (June, 1933), the Court stated:

“When an inferior court or tribunal, having jurisdiction, erroneously rules it is without jurisdiction, and for such reason refuses to hear or proceed with a cause and dismisses it, mandamus is the proper remedy to compel the court to reinstate the cause, assume jurisdiction, and proceed with it. We have held that several times. *Harris v. Barker*, Judge (Utah) 12 P. (2d) 577; *Richards v. District Court of Weber County*, 71 Utah, 473, 267 P. 779; *Hale v. Barker*, Judge, 70 Utah, 284, 259 P. 928; *Hanson v. Iverson*, Judge, 61 Utah, 172, 211 P. 682; *Ketchum Coal Co. v. District Court of Carbon County*, 48 Utah, 342, 159 P. 737, 4 A. L. R. 619; *Silver City Merc. Co. v. District Court of Utah County*, 57 Utah, 365, 195 P. 194; *State v. Hart*, Judge, 19 Utah, 438, 57 P. 415. That, too, is the rule in other jurisdictions. *Floyd v. Sixth Judicial Dist.*, 36 Nev. 349, 135 P. 922, 923, 4 A. L. R. 646, where numerous authorities are referred to, and where it is said that:

‘While it may be said that in cases of this character the lower court had jurisdiction to grant or deny a motion to dismiss, nevertheless that court could not refuse to hear a matter upon its merits when it was regularly before it for that purpose, nor could it divest itself of jurisdiction by an erroneous order any more than it could assume jurisdiction by arbitrarily saying that it had the right to proceed.’ ”

CONCLUSION

In conclusion we respectfully submit that the District Court erred in making its Finding of Fact No. 13, which stated in substance that the State Land Board of Utah has not refused to exercise jurisdiction as to those of the subject lands, title to which has been acquired by the State. The trial court erred in making its Conclusions of Law 2 to 12 inclusive, and its Decree denying the writ prayed for, or any other or affirmative relief, dismissing plaintiffs’ complaint and entering judgment against the plaintiffs for costs incurred by the respective defendants. The judgment appealed from should be reversed and the lower court instructed to proceed as prayed.

Respectfully submitted,

GUSTIN, RICHARDS & MATTSSON
Attorneys for Plaintiffs and Appellants