In Re Emblen

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Appeal No. : 161 U.S. 52

Appellant : In Re Emblen

Judgement :

In re Emblen - 161 U.S. 52 (1896)
U.S. Supreme Court In re Emblen, 161 U.S. 52 (1896)

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No. 9, Original

Argued December 16, 1895

Decided March 2, 1896

161 U.S. 52

ORIGINAL

SYLLABUS

If, after the Secretary of the Interior has decided a contest as to the right of preemption to public land in favor of one contestant, and has granted a rehearing, but before the rehearing is had, Congress passes an act confirming the entry of that contestant and directing that a patent issue to him, and a patent is issued accordingly, a writ of mandamus will not lie to compel the Secretary to proceed to adjudication of the contest.

In February, 1885, and long before, the land in question, situated in the Denver Land District, Colorado, was a part of the unappropriated public domain, suitable for agricultural purposes and subject to entry and purchase under the preemption and homestead laws. On February 26, 1885, Weed filed in the land office of that district a declaratory statement upon the oath, as required by the preemption laws, alleging his settlement upon the land and his purpose to occupy and cultivate it and to acquire title to it under those laws. On September 19, 1885, the register and receiver of the district received from Weed final proofs of settlement, improvement, and other essential facts, and the government price, and issued to him a cash entry certificate of purchase, entitling him in due course to a patent for the land.

On October 4, 1888, before any patent had been issued, Emblen filed a protest in that office against the issue of a patent to Weed for the land in question, alleging fraud, misrepresentation, and perjury on Weed's part touching his settlement, occupation, and purpose and demanding a hearing thereon, and asking to be allowed all the rights of a contestant under the Act of May 14, 1880, c. 89, 21 Stat. 140. On May 21, 1889, the register and receiver, after hearing evidence and

arguments, dismissed the protest and contest. Emblen appealed to the Commissioner of the General Land Office, who, on February 20, 1890, reversed the decision and held Weed's entry for cancellation. Meanwhile the Town of Yuma had been built upon the land, and Weed and the board of trustees of Yuma petitioned for a rehearing, which was granted by the commissioner.

Shortly afterwards, a new land district was created, with offices at Akron, Colorado. The land being in this district, the rehearing was transferred to the register and receiver thereof. Emblen protested on the ground that the receiver was interested personally in the result of the contest because he claimed ownership of a portion of the land by a conveyance from Weed. The protest was overruled, and, Emblen refusing to appear before the register or to submit to his jurisdiction, an *ex parte* hearing was had and a decision was rendered on November 4, 1890, in favor of Weed dismissing the contest, and was affirmed on successive appeals to the Commissioner of the General Land Office and to the Secretary of the Interior. On August 25, 1893, the Secretary of the Interior granted a petition of Emblen for a rehearing upon newly discovered evidence and expressed the opinion that the proceedings before the register and receiver at Akron were invalid.

Before such rehearing was had, Congress passed the Act of December 29, 1894, c. 15, confirming Weed's entry and directing that a patent issue to him for the land. 28 Stat. 599. In February, 1895, a patent was accordingly issued to Weed, and the Secretary of the Interior, solely by reason of the passage of this act, suspended all proceedings in the contest and declined to authorize or direct any further hearing, trial, or consideration thereof.

The petitioner further alleged that in good faith and in reliance upon the acts of Congress and the regulations of the Land Department, he had spent in this contest years of labor and large sums of money, that he desired that the contest proceed to final adjudication and disposition, and that, should he succeed therein, it was his purpose to claim and to exercise his preference right of entry and purchase of the land as by law authorized and provided.

The prayer of the petition was that the act of Congress be declared unconstitutional and void, that the patent to Weed be likewise declared void because issued without warrant or authority in law, and

"that a writ of mandamus issue, directed to the Secretary of the Interior, requiring him to proceed to the final adjudication and disposition of said contest in

accordance with the general acts of Congress and the rules and regulations of the Land Department in that behalf made and provided. "

Page 161 U. S. 55

MR. JUSTICE GRAY, after stating the case, delivered the opinion of the Court.

This is an attempt to use a writ of mandamus to the Secretary of the Interior as a writ of error to review his acts, and to draw into the jurisdiction of the courts matters which are within the exclusive cognizance of the Land Department.

By section 2273 of the Revised Statutes:

"When two or more persons settle on the same tract of land, the right of preemption shall be in him who made the first settlement, provided such person conforms to the other provision of the law, and all questions as to the right of preemption arising

Page 161 U. S. 56

between different settlers shall be determined by the register and receiver of the district within which the land is situated, and appeals from the decision of district officers, in cases of contest for the right of preemption, shall be made to the Commissioner of the General Land Office, whose decision shall be final, unless appeal therefrom be taken to the Secretary of the Interior."

By the Act of May 14, 1880, c. 89, 2:

"In all cases where any person has contested, paid the land office fees, and procured the cancellation of any preemption, homestead or timber culture entry, he shall be notified by the register of the land office of the district in which such land is situated of such cancellation, and shall be allowed thirty days from date of such notice to enter said lands."

21 Stat. 141.

The contest between Emblen and Weed was conducted in accordance with these statutes. After the last decision of the register and receiver, affirmed by the Commissioner of the General Land Office and by the Secretary of the Interior, in favor of Weed, and after the Secretary of the Interior had granted a petition of Emblen for a rehearing, and before the rehearing had been had, Congress passed an act confirming Weed's entry and directing that a patent issue to him for the land in controversy. The Secretary of the Interior thereupon suspended the pending proceedings, and declined to authorize any further hearing of the contest, and a patent was actually issued to Weed before this petition for a writ of mandamus was filed.

Such being the state of the case, it is quite clear that (even if the act of Congress was unconstitutional, which we do not intimate) the writ of mandamus prayed for should not be granted. The determination of the contest between the claimants of conflicting rights of preemption, as well as the issue of a patent to either, was within the general jurisdiction and authority of the Land Department, and cannot be controlled or restrained by mandamus or injunction. After the patent has once been issued, the original contest is no longer within the jurisdiction of the Land Department. The patent conveys the legal title to the patentee, and cannot be revoked or set

Page 161 U. S. 57

aside except upon judicial proceedings instituted in behalf of the United States. The only remedy of Emblen is by bill in equity to charge Weed with a trust in his favor. All this is clearly settled by previous decisions of this Court, including some of those on which the petitioner most relies. *Johnson v. Towsley,* 13 Wall. 72; *Moore v. Robbins,* 96 U. S. 530 ; *Marquez v. Frisbie,* 101 U. S. 473 ; *Smelting Co. v. Kemp,* 104 U. S. 636 ; *Steel v. Smelting Co.,* 106 U. S. 447 ; *Monroe Cattle Co. v. Becker,* 147 U. S. 47 ; *Turner v. Sawyer,* 150 U. S. 578 , 150 U. S. 586 .

Writ of mandamus denied.