Louisiana Law Review

Volume 13 | Number 1
November 1952

Mineral Rights - Mineral Reservations In Sales of Land to the United States

A. B. Atkins Jr.

Notes

Mineral Rights—Mineral Reservations in Sales of Land to the United States

In 1936 the United States purchased a large tract of land from the Bodcaw Lumber Company for the purpose of establishing the Kisatchie National Forest. The sale was made subject to a prior conveyance of the mineral rights in such land to the Good Pine Oil Corporation. In 1940 the Louisiana Legislature declared that when the United States acquired land subject to prior sales of the oil, gas, or other mineral rights, the rights previously sold or reserved in the sale were to be imprescriptible.[1] After the normal ten-year prescriptive period had run, the United States sought a declaratory judgment recognizing it as owner of the mineral rights. If Act 315 of 1940 were applicable, the title to these mineral rights had vested in the Nebo Oil Company, the assignee of Good Pine. The United States District Court for the Western District of Louisiana held that the act was constitutional and applicable to the facts at hand.[2] The decision was affirmed by the Fifth Circuit Court of Appeals. *United States v. Nebo Oil Corporation*, 190 F. 2d 1003 (5th Cir. 1950).

The case marks the first instance in which the courts have passed upon the constitutionality of Act 315.[3] The decision affords an opportunity to examine the act itself, the policy of which seems to be out of harmony with the previously announced land

1. La. Act 315 of 1940, now La. R.S. 1950, 9:5806. It provides: "When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm, or corporation, and by the act of acquisition, verdict, or judgment, oil, gas, or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas, or other minerals or royalties, still in force and effect, the rights so reserved or previously sold shall be imprescribable." This act repealed and superseded Acts 68 and 151 of 1938. See notes 25, 26, 27, infra.

2. United States v. Nebo Oil Co., Inc., 90 F. Supp. 73 (W.D. La. 1950).

3. The constitutionality of Act 315 was questioned in Whitney National Bank of New Orleans v. Little Creek Oil Co., 212 La. 949, 33 So. 2d 693 (1947). However, the principal issue before the Supreme Court involved Nebo's title to the mineral rights and the constitutional question was successfully evaded. The court held that the unconstitutionality of the act could be raised only by an interested party, the United States. Since the United States could not be made a party to the suit, the court had no jurisdiction to pass on that issue.

policy of the state.[4] This note proposes to consider both the constitutional issues and the statute itself.

I. Constitutionality of Act 315 of 1940

In the *Nebo* case it was argued that Act 315, through its retrospective operation, impaired the obligations of a contract and divested rights which had vested in the United States.[5] It is submitted that the court was correct in holding that there was no violation of the contract clause. The Supreme Court of the United States has specifically declared that statutes of limitations do not become a part of any contract. In *Campbell v. Holt*[6] the court said: "We certainly do not understand that a right to defeat a just debt by the statute of limitations is a vested right, so as to be beyond legislative power in a proper case. The statutes of limitations, as often asserted and especially by this court, are founded in public needs and policy—are arbitrary enactments by the law-making power."[7] It is well established that a prescription statute is remedial in nature and can have retrospective effect.[8] In the instant case the government had no vested right to be protected, only the mere expectancy that the minerals would revert to the land by prescription.

The government also urged that Act 315 was repugnant to the clause of the Constitution which empowers Congress to make necessary rules regarding the territory and other property of the United States.[9] While the jurisprudence on this clause is not well developed, it seems clear that state action which interferes with the purposes for which land was acquired by the government is unconstitutional. The drilling of oil wells on a military reservation or the mining of sulphur in a national park could be such

4. Act 315 makes a permanent separation between the land estate and the mineral rights. It has been the public policy in Louisiana to keep the minerals as closely allied to the land estate as possible in order to keep them in the flow of commerce. Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207 (1922).

5. U.S. Const. Art. I, § 10.

6. 115 U.S. 620 (1885).

7. Id. at 628.

8. State v. Alden Mills, 202 La. 416, 12 So. 2d 204 (1943); Shreveport Long Leaf Lumber Co. v. Wilson, 195 La. 812, 197 So. 566 (1940); Dowie v. Becker, 149 La. 160, 88 So. 777 (1921); Barrow v. Wilson, 39 La. Ann. 403, 2 So. 809 (1887); Taglialavore v. Ellerbe, 149 So. 296 (La. App. 1933).

9. U.S. Const. Art. IV, § 3, cl. 2, provides: "The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

10. James v. Dravo Contracting Co., 302 U.S. 134 (1937); Fort Leavenworth Railroad v. Lowe, 114 U.S. 525 (1885).

instances.[11] In the instant case, however, the lands were purchased under the authority of the Weeks Act,[12] which specifically condones the reservation of mineral interests in such lands by the seller.[13] The court was obviously correct in upholding the act against this line of attack.

It was also contended by the government that Act 315 violated the equal protection clause of the Fourteenth Amendment.[14] Both federal courts disposed of this argument by holding that the United States was not a "person" within the terms of the Fourteenth Amendment. No former case was found in which this question was decided, but "it has many times been held that the United States or a state is a 'person' within the meaning of *statutory* provisions applying only to persons."[15] (Italics supplied.) Even had the court held that the United States was a "person" entitled to the protection of the clause, it would have had to be shown that there was an unreasonable and arbitrary classification.[16] The language of Act 315 makes it clear that the intent of the Legislature was to place the United States in a different class from other landowners in the State by depriving it of the prescriptive provisions of the Louisiana Civil Code.[17] Whether this was unreasonable did not, of course, have to be decided.

II. A Question of Public Policy

One of the cardinal principles of Louisiana mineral law is the "non-ownership" theory of mineral rights. In the main, the non-ownership theory is grounded upon the simple civilian concept that there are but two separate kinds of interests in land—

11. Note that Act 315 is not limited to land acquired for forest purposes. See Note 1 supra.

12. 36 Stat. 961 (1911), 16 U.S.C. §§ 480, 500, 513-519, 521, 552, 563 (1911).

13. 16 U.S.C. § 518 (1911).

14. U.S. Const. Amend. XIV: "No State shall deny to any person within its jurisdiction the equal protection of the laws."

15. Helvering, Comm. of Internal Revenue v. Stockholms Enskilda Bank, 293 U.S. 84, 91 (1934). In Cotton v. United States, 52 U.S. 229, 231 (1850), the court remarked that "it would present a strange anomaly, indeed, if, having the power to make contracts and hold property as other persons, natural and artificial, [the United States] were not entitled to the same remedies for their protection."

16. Goesaert v. Cleary, 335 U.S. 464 (1948). Although the principal application of the equal protection clause has been in the field of racial discrimination (see, for example, Yick Wo v. Hopkins, 118 U.S. 356 [1886]), the present tendency seems to be to extend its scope to other areas of discrimination. See Skinner v. Oklahoma, 316 U.S. 535 (1942).

17. Arts. 789, 3546, La. Civil Code of 1870.

full ownership and servitudes.[18] One of the best statements of the Louisiana law on the subject is found in the opinion of the Louisiana Supreme Court in the celebrated case of *Wemple v. Nabors Oil and Gas Company*.[19] So firmly fixed is this concept that only in one other area has there been a successful attempt to create separate estates in realty, that establishing the separate estate in timber.[20]

Act 315 of 1940 in effect states that a mineral servitude reserved by a landowner in a sale of land to the federal government will not be extinguished by ten years non-user, nor shall it be governed by the other codal provisions relative to prescription. It has been the policy of our Supreme Court that if an owner of a servitude fails to take advantage of it and use it for a period of ten years, the law will consider it abandoned, and the servitude will be extinguished.[21] This is consistent with the general policy that elements of commerce should not be tied up for long periods of time. Act 315 creates either a *separate mineral estate* or a *perpetual servitude*. Both are foreign to prior concepts of Louisiana mineral law.[22]

Louisiana's prescription laws are the legal expression of public policy. If the Legislature decides to change the general land policy of the state, the legality of such legislation cannot be questioned as long as no state or federal constitutional provision is infringed. The wisdom of such changes, however, is subject to inquiry.

The justification for this relaxation of the general policy lies in the desire to enable the federal government more easily to acquire land for various governmental projects.[23] Prior to World

18. See Daggett, Mineral Rights, 3-4 (rev. ed. 1949).

19. 154 La. 483, 486, 97 So. 666, 667 (1923). Justice St. Paul, speaking for the majority, had this to say about a separate mineral estate: "It is quite certain that nowhere does our statutory law provide for such an estate; and it is equally certain that never in our jurisprudence has any such estate been recognized. . . . On the contrary, our civil law, coming to us through Roman, Spanish, and French sources, recognizes but two kinds of estates in lands, the one corporeal and termed ownership, being the dominion over the soil and all that lies directly above and below it; and the other incorporeal and termed servitude being a charge imposed upon land for the utility of other lands or persons. And accordingly this court has always resisted every attempt to introduce into this state any system of land tenures and estates in land inconsistent with these simple but fundamental principles."

20. La. R.S. 1950, 9:1103.

21. Bodcaw Lumber Co. v. Magnolia Petroleum Co., 167 La. 847, 120 So. 389 (1929).

22. See Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207 (1922); Rives v. Gulf Refining Co., 133 La. 178, 62 So. 623 (1913).

23. See the discussion in United States v. Nebo Oil Co., Inc., 90 F. Supp.

War II the federal government bought large tracts of land in Louisiana as well as in other states. The principal value of much of this land was in the possibility of mineral production. Understandably, the landowners were unwilling to sell their land cheaply unless they could reserve the mineral rights for longer than ten years. Counsel representing the government were then of the opinion that the Louisiana law of prescription did not apply to the federal government.[24] Relying on this advice, the contracting parties made stipulations for mineral reservations of longer than ten years in many of the sales of land to the United States. To facilitate these purchases the Louisiana Legislature passed Acts 68[25] and 151[26] of 1938, which reflected the position taken by the federal authorities that the prescription of mineral servitudes would not operate in favor of the United States. These acts were repealed and superseded two years later by Act 315 of 1940.[27]

In 1950 the Legislature passed an act[28] providing a forty year prescription for non-user of mineral reservations in deeds of land sold to the state for the establishment of the Anacoco-Prairie State Game and Fish Reserve. Again the purpose was undoubtedly to encourage the inexpensive acquisition of land for a public project. However, the act does seem to relax established principles of public policy.

III. Conclusion

The court probably came to the correct conclusion in holding

73, 90 (W.D. La. 1950). It is doubtful if a less expensive purchase could be made when, as in the *Nebo* case, the mineral rights were sold before the sale of the land to the government.

24. See transcript in Whitney National Bank of New Orleans v. Little Creek Oil Co., 212 La. 949, 33 So. 2d 693 (1947). The district court in the *Nebo* case found that the government did not intend to purchase any mineral interest whatsoever. 90 F. Supp. 73, 89.

25. La. Act 68 of 1938 makes imprescriptible mineral rights reserved in a sale of land to the United States, the State of Louisiana or any subdivisions thereof, when the land is situated within any spillway or floodway.

26. La. Act 151 of 1938 provides that "when real estate is acquired by the United States of America, the State of Louisiana, or any of its subdivisions, . . . for use in any public work, and the act of acquisition contains a reservation of oil, gas, or other minerals or royalties, prescription shall not run against such reservation."

27. It should be noted that two important changes were made with the enactment of Act 315. First, the application of Act 315 is limited to sales to the federal government, whereas Acts 68 and 151 applied to sales made not only to the federal government but also to the state and all of its political subdivisions. Second, where the 1938 acts applied only to reservations made in the conveyance, Act 315 applies as well to reservations by prior conveyances.

28. La. Act 169 of 1950.

Act 315 of 1940 constitutional. With deference to the wisdom of the Legislature, it is suggested that there may be well-grounded fear that the door has been opened for other such relaxations. If our civilian concepts of non-ownership of mineral rights are to be retained, then the Legislature should be very hesitant to adopt such measures as Act 315 of 1940.

A. B. Atkins, Jr.