IN THE MĀORI LAND COURT OF NEW ZEALAND
TE WAIPOUNAMU DISTRICT

A20090008864

UNDER	Section 131, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Lot 1 DP 2811 - Determine Status of Land
BETWEEN	DEPUTY REGISTRAR Applicant

Hearing: 14 September 2009, 137 South Island MB 41-46
(Heard at Christchurch)
3 November 2009, 138 South Island MB 20-25
(Heard at Invercargill)
5 November 2009, 138 South Island MB 20-25
(Heard at Christchurch)
7 December 2009, 139 South Island MB
(Heard at Christchurch)

Judgment: 05 July 2013

RESERVED JUDGMENT OF CHIEF JUDGE W W ISAAC

Introduction

[1] This application was filed by the Deputy Registrar on 28 May 2009 pursuant to s 131 of Te Ture Whenua Māori Act 1993 ("the Act") to determine the status of Lot 1 DP 2811 ("Lot 1"). The application was filed in response to correspondence received from the estate of the late Mrs Pamela Davis, who was identified as having interests in this block, and to also dispel confusion about the status of Lot 1.

[2] The application first came before the Court in September 2009. Judge Coxhead adjourned the application in order for the parties to obtain the views of other family members.

[3] The application then came before me on 7 December 2009, where I reserved my decision in order to carry out further research on the history of the block. This research has now been completed and my decision follows.

Background

[4] Lot 1 is a 0.2552 hectare block, located on Stewart Island. It was partitioned in 1929 from the larger Paterson Block 1 Section 72 ("Paterson Block").

[5] The Paterson Block was granted to Henry West on 20 November 1877 pursuant to the Special Contracts Confirmation Act 1877. This Act confirmed the granting of Crown lands on Stewart Island to 35 settlers, and Henry West was one of them.

[6] Henry West mortgaged the Paterson Block on 7 September 1888 but in 1895 he defaulted on the mortgage and the land was subsequently transferred to a loan company.

[7] On 11 July 1895 the loan company sold the land to John Bragg. Evidence before the Māori Land Court in relation to other applications describes John Bragg as a 'half caste Māori'.[1]

[1] 77 South Island MB 128 (77 SI 128).

[8] John Bragg subdivided the land on 25 June 1927 creating Lot 1, which he then transferred to his son Robert Bragg. This transfer remained unregistered until two years later when on 11 June 1929 it was amended and then registered in the Land Registry Office at Invercargill on 19 June 1929. The certificate of title was issued that same day. [2]

[9] No title was issued for the balance of the parent block (the Paterson Block) until 17 July 1970. A status order was issued on 18 January 1995 declaring it to be Māori Freehold land and the Rakiura Māori Land Incorporated Society ("RMLIS") was appointed trustee.[3]

[10] The Paterson block was vested in the RMLIS in response to a newspaper advertisement placed by the Southland District Council in 1994, who wanted to exercise their powers under s 147 of the Rating Act 1988 and sell the land, which was part of the estate of John Bragg. The minutes from the Māori Land Court hearing on 26 October 1994 record statements from members of the RMLIS who believed John Bragg was a half caste Māori and he was gifted the land pursuant to the " Landless Natives Act".

[11] This was all speculation and there was no evidence to support the statements made. What we do know is that John Bragg bought this land from a loan company on 11 July 1895.

[12] On 4 August 1943 the Native Land Court made succession orders pursuant to Rule 51 of the Native Land Act 1931, vesting Lot 1 in "the persons entitled upon the death of Robert Bragg", being his 8 children. Of those 8 children only Lilian Bragg survives.

[13] It is important to note that although it may seem unusual that succession orders to general land were made by the Māori Land Court, s 27(2) of the Native Land Act 1931 gives the Māori Land Court the jurisdiction to make succession orders with respect to any land held by Māori, irrespective of the status of land. These powers have been retained by s 111 of TTWMA.

[14] It was following the death of another of Robert Bragg's children, Pamela Davis, in 2009 that the Court was made aware of the uncertainty regarding the status of the land and the present application was subsequently filed.

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[2] Memorandum of Transfer 59924, dated 11 June 1929.
[3] Above n 1.

Law

[15] The present application was filed pursuant to s 131of TTWMA, which provides:

> **131 Court may determine status of land**
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> (1) The Maori Land Court shall have jurisdiction to determine and declare, by a status order, the particular status of any parcel of land, whether or not that matter may involve a question of law.
>
> (2) Without limiting the classes of person who may apply to the court for the exercise of its jurisdiction, the District Land Registrar for the Land District in which any land is situated may apply to the court for the exercise of its jurisdiction under this section in respect of that land.
>
> (3) Nothing in subsection (1) shall limit or affect the jurisdiction of the High Court to determine any question relating to the particular status of any land.

[16] It is also necessary to look to the legislation in force at the time John Bragg came into possession of the land. This was the Native Land Act 1894.

> Land is defined as 'Land in the colony (other than Native Land) owned or held by Natives, or by Natives and Europeans jointly, under any class of title, and includes any estate, right or interest therein'
>
> 'Native Land' is defined as "land in the colony owned by Natives under their customs and usages, the title whereto has not been determined by the Court or other duly-constituted authority as aforesaid.

[17] The Native Land Act 1909 further defined the different categories of land.

> 'European land' is "any land which has been alienated from the Crown for a subsisting estate in fee simple, other than Native land".
>
> 'Customary land' is "land which, being vested in the Crown, is held by the Natives or the descendants of Natives under the customs or usages of the Māori people".
>
> 'Native land' is defined as "customary land or Native freehold land".
>
> 'Native freehold land' is defined as "land which, or any undivided share in which, is owned by a Native for a beneficial estate in fee-simple, whether legal or equitable: Provided that, except where otherwise expressly provided by this Act –

> (a) European land shall not be deemed to become or to have become Native land within the meaning of this Act, but shall continue to be European land, although it, or an undivided share therein, becomes or has become, whether before or after the commencement of this Act, vested in any manner whatever in a Native for an estate in fee-simple:
>
> (b) Crown land, the fee-simple whereof is or has been, whether before or after the commencement of this Act, purchased from the Crown by a Native for a pecuniary consideration shall be deemed to be, and at all times thereafter to remain, European land, and not Native land; but an exchange of land, whether with or without a payment of money by way of equality of exchange, shall not be deemed to constitute a purchase for a pecuniary consideration.

[18] The original root of title in New Zealand was a Crown grant, the purpose of which was extinguishment of customary title in order to create a fee simple title.[4]

[19] The effect of a Crown grant and the resulting nature of the fee simple title it creates is dependent on the circumstances surrounding the grant. In *Lot 300 – Parish of Waioeka* the Māori Appellate Court found that a Crown grant returning confiscated land to Māori ownership created the foundation of a Māori freehold title.[5] This position had already been established in *Faulkner v Tauranga District Council*[6] another decision which considered the status of confiscated lands returned to Māori ownership.

[20] The Māori Appellate Court in *Whaanga – Mahia Township Sections 90 and 91*[7] considered a situation where land was purchased from the Crown by a Māori and conveyed to him pursuant to a Crown grant. That Court concluded that it was undoubtedly general land and this position was upheld by the High Court.[8]

Discussion

[21] The purpose of the Special Contracts Confirmation Act 1887 was to legalise the transfer of land to settlers on Stewart Island and at the same time it confirmed the extinguishment of any Māori customary rights that may have remained. This implies Henry

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[4] *Laws of New Zealand* Land Law: The Place of Land Law in New Zealand (online ed) at [7].
[5] *Maori Land Court - Lot 300, Parish of Waioeka* (2010) 2010 Maori Appellate Court MB 12 (2010 APPEAL 12) at [52].
[6] *Faulkner v Tauranga District Council* [1996] 1 NZLR 357.
[7] *Whaanga – Mahia Township Sections 90 and 91* (2000) 34 Tairāwhiti Appellate Court MB 12 – 31 (34 APGS 12-31).
[8] *Whaanga v District Land Registrar* HC Napier CP 12/97, 18 June 2001.

West was a Pākehā settler on Stewart Island who obtained his fee simple title to the Paterson Block pursuant to a Crown grant.

[22] The Native Land Act 1894 was in force when John Bragg came into possession of the land and only defined two categories of land – 'native land', and in Henry West's case, land held under a Crown grant. Although the land was sold to John Bragg, a half caste Māori, the land he bought was not Native land and in accordance with the 1894 Act, 'land' could be owned or held by Māori under any class of title. Similarly, pursuant to the Native Land Act 1909 European land remained as European land even though if it was vested in a Māori. This position is further supported by the decision of the Māori Appellate Court in *Whaanga*.

[23] There is no evidence of any status order being made which converted this land to Māori freehold land from the time the Crown grant was issued to Henry West in 1888, which further supports the position that this land remains general land. Conversely, there is a status order made in 1995 declaring the Paterson Block (the parent block) to be Māori freehold land. This supports the position that the Paterson Block from which Lot 1 was subdivided was, at the time of subdivision, general land. Therefore, as no status order was made in respect of Lot 1, it remains general land.

[24] Also, as previously mentioned, while it is unusual that the succession to the land in 1943 was carried out by the Native Land Court, the Court had the jurisdiction to deal with any land owned by Māori with the same rights and powers accorded to it in relation to Native Freehold land. This does not mean it was Māori freehold land.

[25] Having regard to the above discussion I confirm that Lot 1 DP 2811 is general land.

A copy of this decision is to go to all parties.

Dated at Wellington this day of 2013.

W W Isaac
CHIEF JUDGE