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IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 12, OriginalSTATE OF HAWAII, *Plaintiff*

v.

DAVID E. BELL, *Defendant*

**MOTION FOR LEAVE TO FILE COMPLAINT
AND
COMPLAINT**

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of Hawaii*

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April, 1962

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DAVID E. BELL, *Defendant*

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Hawaii, in its Sovereign capacity, hereby moves the Court for leave to file its Complaint, submitted herewith, against David E. Bell. The object of this Motion and the facts on which it is based

are set forth in the accompanying Brief in Support of Motion for Leave to File Complaint.

Respectfully submitted,

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COMPLAINT

The State of Hawaii, by its Attorney General, Shiro Kashiwa, brings this suit in equity against defendant, David E. Bell, and for its cause of action states:

I.

The jurisdiction of this Court is invoked under Article III, Section 2, Clauses 1 and 2 of the Constitution of the United States. Its jurisdiction is invoked by plaintiff in its sovereign capacity to restrain and prevent defendant, purporting to act under authority granted by the compact under which Hawaii became a State, from frustrating and vitiating one of the provisions of that compact.

II.

The defendant, David E. Bell, is a citizen of the State of Massachusetts and holds appointment as Director

of the Bureau of the Budget, an agency of the executive branch of the Government of the United States.

III.

The Hawaii Statehood Act, Public Law 86-3, 73 Stat. 4, 48 U.S.C. (Supp. II 1960) pages 1257-61,¹ provided that Hawaii was declared to be a State of the United States and admitted into the Union (Section 1) upon adoption by the qualified electors of Hawaii of a compact of statehood consisting of three stated propositions: (1) that Hawaii should be admitted into the Union as a State; (2) that the boundaries of the State should be as defined and limited in the Statehood Act; and (3) that “[a]ll provisions” of the Statehood Act reserving rights and powers to the United States and “those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Hawaii are consented to fully by said State and its people” (Section 7(b)).

IV.

The provisions of the Statehood Act “prescribing the terms or conditions of the grants of lands or other property” included the following:

Section 5(c), which provides that “[a]ny lands and other properties” that were “set aside pursuant to law for the use of the United States under any . . . Act of Congress” should “remain the property of the United States.”²

Section 5(e), which provides that, within five years from the date of admission, each Federal agency hold-

¹ Exhibit A to this Complaint. (App., p. 1). The Exhibits to the Complaint are printed in the separately-bound Appendix to Complaint.

² Emphasis supplied here and throughout the Complaint.

ing “*any* land or property” retained by the United States pursuant to Section 5(c) is to “report to the President the facts regarding its continued need for *such* land or property, and if the President determines that *the* land or property is no longer needed by the United States it shall be conveyed to the State of Hawaii.”

Section 5(g), which refers to two terms used in the Act. The terms are: (a) “lands and other properties” and (b) “public lands and other public property.” As to these terms, the section provides that “the term ‘lands and other properties’ *includes* public lands and other public property, and the term ‘public lands and other public property’ *means, and is limited to,* the lands and properties that were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved July 7, 1898 (30 Stat. 750),³ or that have been acquired in exchange for lands or properties so ceded.”

V.

As an amendment to Executive Order No. 10530, dated May 10, 1954, 19 Fed. Reg. 2709,⁴ Executive Order No. 10889, dated October 5, 1960, 25 Fed. Reg. 9633,⁵ delegated the duties and authority under Section 5(e) of the Statehood Act to the Director of the Bureau of the Budget. Executive Order No. 10960, dated August 21, 1961, 26 Fed. Reg. 7823,⁶ provided that the authority delegated to the Director of the Bureau of the

³ Exhibit B to this Complaint. (App., p. 20).

⁴ Exhibit C to this Complaint. (App., p. 22).

⁵ Exhibit D to this Complaint. (App., p. 23).

⁶ Exhibit E to this Complaint. (App., p. 24).

Budget included the authority to receive the reports required by Section 5(e), to determine that "land or property" was no longer needed by the United States and to convey to the State "the land or property . . . no longer needed".

VI.

On November 14, 1960, the defendant's predecessor issued Bureau of the Budget Circular No. A-52, 25 Fed. Reg. 12633, to the heads of all Executive Departments and Establishments.⁷ Budget Circular No. A-52 was for the purpose of establishing uniform policies and coordination within the executive branch of procedures for the reports to be submitted by Federal agencies pursuant to Section 5(e) of the Statehood Act. Paragraph 3 of Budget Circular No. A-52 promulgated tentative definitions of the land and property subject to the reporting, evaluation and conveyance procedures under Section 5(e) of the Act. Unlawfully and without statutory authority, paragraph 3 redefined and limited the "land or property" subject to these procedures to include only lands acquired by the Territory of Hawaii and set aside for Federal use; lands or interests in lands acquired by the cession under the Joint Resolution of July 7, 1898, *supra*; and lands acquired in exchange for the latter. Unlawfully and without statutory authority, paragraph 3 excluded from the reporting, evaluation and conveyance procedures of Section 5(e) lands or property acquired directly by the United States by purchase, condemnation, gift or otherwise. Unlawfully and without statutory authority, defendant's predecessor tentatively ordered all executive departments of the Government of the

⁷ Exhibit F to this Complaint. (App., p. 25).

United States to refuse: to furnish reports; to determine Federal need for; and, if not needed, to convey the land and property described in the preceding sentence to the State of Hawaii, as ordered by Congress and agreed to by the people of Hawaii as a condition to the statehood compact.

VII.

On August 22, 1961, defendant issued Bureau of the Budget Transmittal Memorandum No. 1 to Circular No. A-52 to the heads of all Executive Departments and Establishments⁸ by which defendant unlawfully and without statutory authority confirmed and made permanent the unlawful tentative provisions and definitions of paragraph 3 of Bureau of the Budget Circular No. A-52. In Transmittal Memorandum No. 1 defendant recited that the Attorney General of the United States had issued an opinion, dated June 12, 1961.⁹ Defendant further stated that "The effect of that opinion is to limit the scope of section 5(e) of the Statehood Act to the land and property defined in paragraph 3 of Circular No. A-52." Defendant directed that all other Federal surplus land and properties in Hawaii, not covered by the unlawful definition of paragraph 3 of Circular No. A-52, should be disposed of as otherwise authorized by law.

VIII.

The Attorney General, prior to the issuance of his opinion, dated June 12, 1961, had before him four opinions. Two, representing the views of the Department of Defense and the General Services Administration,

⁸ Exhibit G to this Complaint. (App., p. 33).

⁹ Exhibit H to this Complaint. (App., p. 35).

supported the narrow definition ultimately adopted by the defendant in Transmittal Memorandum No. 1. The opinion of the Associate Solicitor of the Department of Interior for Territories, Wildlife and Parks, transmitted to defendant's predecessor under cover of June 30, 1960,¹⁰ and the Memorandum of the Attorney General of Hawaii to defendant's predecessor, transmitted under cover of October 18, 1960,¹¹ supported the view that Section 5(e) of the Statehood Act extended to "any" land or property.

IX.

Four specific parcels of land totaling two hundred and three acres, more or less, with property improvements—popularly known as "John Rodgers Housing", "Halawa Housing", "Manana Housing", and "Red Hill Housing" areas, consisting of four low-income public housing projects in the general vicinity of Pearl Harbor, Honolulu, Hawaii—are no longer needed by the Department of the Navy, the Federal agency having control over the lands and properties. That Department had so advised defendant on March 28, 1961, further advising him that it had communicated with the Air Force and the Army regarding the four parcels and that "no defense requirement has materialized."¹²

X.

On information and belief, the four specific parcels mentioned in Paragraph IX hereof are, accordingly, no longer needed by the United States. It is likely

¹⁰ Exhibit I to this Complaint. (App., p. 59).

¹¹ Exhibit J to this Complaint. (App., p. 71).

¹² Exhibit K to this Complaint. (App., pp. 106, 107, 109, 110).

that there is other land and property to which the United States has title which would be found to be no longer needed by the United States, and would be conveyed to the State of Hawaii pursuant to Section 5(e), if the defendant ceased and desisted from his erroneous construction thereof, but which will not be processed or conveyed under Section 5(e) unless that erroneous construction is abandoned.

XI.

The lands and properties of three of the housing areas referred to in Paragraph IX hereof were originally acquired, constructed, withheld, reserved and set aside under act of Congress for defense purposes and the fourth area was similarly acquired and set aside for defense housing. All were so withheld, reserved and set aside pursuant to law for the use of the United States under Acts of Congress on the date Hawaii was admitted into the Union. The lands upon which the four low-income housing properties were constructed were acquired and set aside for the use of the United States at various times between 1940 and 1945 by the process of condemnation. The procedure for acquisition by the Department of Navy by condemnation of the land area which includes the present John Rodgers Housing area is set forth in the excerpts from the Petition for Condemnation and other papers appended hereto¹³ and is representative of the processes of condemnation pursuant to Act of Congress invoked in the acquisition of the land areas which now include the four housing areas. The lands of the housing areas were acquired at a total cost of less than \$200,000.

¹³ Exhibit L to this Complaint. (App., p. 111).

XII.

For more than ten years the tracts of land, and property improvements thereon, of the four low-income housing areas have been administered, maintained and operated by an agency of the government of Hawaii, the Hawaii Housing Authority. Pursuant to the present license from the Department of the Navy, the Authority collects the rents, maintains and manages the properties and pays over the net income to the Department of the Navy. The four properties constitute a large portion of the public housing facilities in the State. There are few other such public housing facilities on Oahu, and none in which the 1687 families, more or less, now occupying John Rodgers Housing, Halawa Housing, Manana Housing and Red Hill Housing areas could be relocated. Their sale or disposition to private interests would cause serious damage to the State's public program of low-income housing, require the State to expend substantial public moneys to replace the units and create serious hardship for the low-income residents of the four areas.

XIII.

By Transmittal Memorandum No. 1 to Budget Circular A-52, in conflict with his statutory authority and responsibility, defendant has failed and refused to request or receive, and ordered all executive officers and departments of the Government of the United States holding land in Hawaii to refuse to submit, reports of their need for land and property directly acquired and set aside for the use of the United States through the process of purchase, condemnation, or gift; has failed and refused to make the statutory determination of whether such land and property are needed by the United States, and, if not needed, to convey the lands and properties to the State of Hawaii, pursuant to

Section 5(e) of the Hawaii Statehood Act; and has directed agencies of the Government of the United States holding land and property subject to Section 5(e) to dispose of those lands "as otherwise authorized by law" and without regard to Section 5(e).

XIV.

The lands and properties of the four public low-income housing areas now may be declared surplus to Federal need and disposed of by sale to private interests.

XV.

The action of the defendant in issuing Transmittal Memorandum No. 1, excluding from the mandatory reporting, evaluation and conveyance procedures of Section 5(e) of the Hawaii Statehood Act all property held by the United States and acquired directly by purchase, condemnation, gift or otherwise, was unlawful and in conflict with and beyond his statutory authority and responsibility, and has caused and will continue to cause irreparable injury to the State of Hawaii, for which there is no adequate remedy at law.

WHEREFORE, plaintiff prays that a decree be entered ordering and adjudging:

1. That the defendant cease and desist from frustrating and violating the terms of the compact by which Hawaii became a State, by:

(a) refusing to request or receive reports of need from executive departments in respect of any land or property in Hawaii retained by the United States, including land or property acquired directly by the United States by purchase, condemnation, gift or otherwise;

(b) ordering any executive department not to submit any such report; or

(c) refusing to make the statutory determination, as to any such land or property, whether it is needed by the United States, or refusing, if not needed, to convey the same to the State of Hawaii;

2. That the defendant cease and desist from applying, through paragraph 3 of Bureau of the Budget Circular No. A-52 or otherwise, any definition of the phrase "land or property" not broad enough to include all land or property in Hawaii acquired by purchase, condemnation, gift or otherwise, pursuant to law, for the use of the United States and retained by the United States on the date Hawaii was admitted into the Union;

3. That the defendant cease and desist from refusing to cancel, set aside and revoke Bureau of the Budget Transmittal Memorandum No. 1 to Circular No. A-52;

4. That the defendant request and receive reports of need from Federal agencies having control over all land and property retained by the United States in Hawaii, including land or property acquired directly by the United States by purchase, condemnation, gift or otherwise; determine whether such land or property is no longer needed by the United States; and, if no longer needed, convey such land to the State of Hawaii;

5. That the reporting, evaluation and conveyance procedures of Section 5(e) of the Hawaii Statehood Act are not limited to the classes of land and property presently set forth in paragraph 3 of Budget Circular No. A-52;

6. That Section 5(e) of the Hawaii Statehood Act extends to land and property in Hawaii acquired by the United States and set aside as of August 21, 1959, pursuant to law for the use of the United States under any (1) Act of Congress, (2) Executive order, (3) proclamation of the President, or (4) proclamation of

the Governor of Hawaii, without regard to whether such land and property was acquired by purchase, condemnation, gift or otherwise, subsequent to the Joint Resolution of Annexation of July 7, 1898; and

7. That the State of Hawaii has a right to have the statutory determination, under Section 5(e) of the Hawaii Statehood Act, of continuing Federal need therefor determined without regard to the manner of acquisition of "any land or property" of the United States retained in Hawaii.

Plaintiff further prays for such other and further relief as is equitable and appropriate.

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