Public Land and Resources Law Review

Volume 0 *Case Summaries 2014-2015*

Schaghticoke Tribal Nation v. Kent School Corporation Inc.

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***Schaghticoke Tribal Nation v. Kent School Corporation Inc.*, __Fed. Appx.__, 2014 WL 7011937 (2d Cir. Dec. 15, 2014).**

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ABSTRACT

The United States Court of Appeals for the Second Circuit affirmed dismissal of three consolidated actions of the Schaghticoke Tribal Nation claiming the Schaghticoke had been dispossessed of Indian land without the approval of Congress, a violation of the Nonintercourse Act. The court found the district court correctly deferred under the primary jurisdiction doctrine to the United States Department of Interior's determination that the Schaghticoke did not qualify for tribal status. Additionally, the district court properly relied on the Department of Interior's factual findings in holding the Schaghticoke presented insufficient evidence to establish a prima facie violation of the Nonintercourse Act.

I. INTRODUCTION

The Second Circuit found the lower court appropriately dismissed the Schaghticoke Tribal Nation's ("Schaghticoke") consolidated claims that they had been dispossessed of land in violation of the Nonintercourse Act, 25 U.S.C. § 177.[1] The consolidated actions were stayed in 1999 while the Schaghticoke completed the Department of Interior's ("DOI") federal acknowledgment process.[2] After the DOI's decision to deny the Schaghticoke tribal status was upheld on appeal,[3] the Schaghticoke pursued these consolidated actions.[4] The court affirmed the lower court's reliance on DOI's factual findings in holding that the Schaghticoke did not establish a prima facie case of a violation of the Nonintercourse Act.[5] Specifically, the lower court found the Schaghticoke did not show that it was "united in a community under one leadership or government."[6]

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[1] *Schaghticoke Tribal Nation v. Kent School Corp. Inc.*, 2014 WL 7011937, *1, (2d Cir. Dec. 15, 2014) [hereinafter *STN III*].
[2] *Id*.
[3] *Schaghticoke Tribal Nation v. Kempthorne*, 587 F.3d 132, 134 (2d Cir. 2009) [hereinafter *STN I*].
[4] *STN III*, 2014 WL 7011937, at *1.
[5] *Id*.
[6] *Id*.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Bureau of Indian Affairs Determination

In 2005, the Bureau of Indian Affairs ("BIA") issued a reconsidered final determination[7] declining to recognize Schaghticoke's "tribal existence."[8] Pursuant to the Administrative Procedures Act, Schaghticoke appealed the BIA's decision.[9] The district court upheld BIA's determination that the Schaghticoke failed to satisfy the criteria for "community" and "political influence or authority" necessary under controlling regulations[10] because a substantial portion of the Schaghticoke refused to enroll as tribal members.[11]

On appeal to the Second Circuit, the Schaghticoke argued that the DOI's decision was the product of improper political influence.[12] Despite recognition that Connecticut's governor and attorney general expressed to DOI officials "adamant opposition" and introduced a bill titled the "Schaghticoke Acknowledgment Repeal Act," the Second Circuit affirmed that there was no evidence that the agency was improperly influenced.[13] In addition, the Court affirmed the district court's decision that the DOI had not violated the Vacancies Reform Act, 5 U.S.C. § 3345 ("VRA").[14] The VRA provides that "only the head of [the] Executive agency may perform any function or duty."[15] The Schaghticoke claimed the DOI violated this statutory obligation when the Secretary of the Interior appointed the Assistant Deputy Secretary to conduct the acknowledgment process, instead of the principal deputy. The Second Circuit held that the Secretary of Interior properly appointed the "authorized representative" who ultimately denied acknowledgement of the Schaghticoke's tribal status.[16] The Supreme Court denied certiorari.[17]

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[7] Reconsidered Final Determination To Decline To Acknowledge the Schaghticoke Tribal Nation, 70 Fed. Reg. 60101 (Oct. 14, 2005).
[8] *STN I*, 587 F.3d at 134.
[9] *United States v. 43.47 Acres of Land, More or Less, Situated in the County of Litchfield, Town of Kent*, 896 F. Supp. 2d 151 (D. Conn. 2012) [hereinafter *STN II*].
[10] 25 C.F.R. § 83.7(b)-(c) (2012).
[11] *STN II*, 396 F. Supp. 2d at 155.
[12] *STN I*, 587 F.3d at 134.
[13] *Id*.
[14] *Id* at 135.
[15] *Id*. (citing 5 U.S.C. § 3348 (2012)).
[16] *Id*.
[17] *Schaghticoke Tribal Nation v. Salazar*, 131 S. Ct. 127 (2010).

B. District Court Decision

The Schaghticoke's claimed in the three consolidated actions before the district court that their land had been wrongfully conveyed in violation of the Nonintercourse Act.[18] The lead case, *U.S. v. 43.47 Acres*, is a condemnation action by the federal government under eminent domain to quiet title to two parcels of land totaling 126.99 acres.[19] The two other cases are land claim actions by the Schaghticoke against defendants who have current ownership interests in the land.[20] Relying on DOI's factual findings, the district court held the Schaghticoke had failed to establish a prima facie case under the Nonintercourse Act because the Schaghticoke could not prove it was a tribe under federal common law.[21] Further, the court found the Schaghticoke was collaterally estopped from litigating its status as an Indian tribe under the Nonintercourse Act because the group was bound by DOI's determination denying its tribal existence.[22]

III. ANALYSIS

The Nonintercourse Act states "[n]o purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."[23] Establishing a prima facie case under the Nonintercourse Act requires, as a threshold question, that the Schaghticoke qualify as an Indian tribe.[24] Applying the primary jurisdiction doctrine, the Second Circuit found the district court's reliance on the DOI's factual findings in denying the Schaghticoke tribal status was proper, and that the Shaghticoke therefore could not establish a prima facie violation of the Nonintercourse Act.[25] The primary jurisdiction doctrine is a "judicial doctrine whereby a court tends to favor allowing an agency an initial opportunity to decide an issue in a case in which the court and the agency have concurrent jurisdiction."[26]

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[18] *STN II*, 896 F. Supp. 2d at 154.
[19] *Id*.
[20] *Id*.
[21] *Id*. at 158.
[22] *Id*. at 162.
[23] *Id*. at 154 (citing 25 U.S.C. § 177 (2012)).
[24] *Id*. at 156 (quoting *Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F.3d 51, 56 (2d Cir. 1994)).
[25] *STN III*, 2014 WL 7011937, at *1.
[26] *Id*. (quoting *Black's Law Dictionary* 1310 (Bryan A. Garner ed., 9th ed. 2009)).

To constitute a tribe under the Nonintercourse Act, a group must show under the standard annunciated in *Montoya v. U.S.*, that it is a "community under one leadership or government."[27] In contrast, DOI regulations require a group meet seven criteria to qualify, including that (1) a predominant portion of the petitioning group comprises a distinct community and have existed as a community from historical times until the present; and (2) the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.[28] The court found that the district court properly deferred to DOI's factual findings in holding the Schaghticoke had presented insufficient evidence to satisfy the *Montoya* standard because they were only a distinct community from 1920 to 1967 and after 1996, and lacked "political influence or authority over tribal members."[29] Finally, the court declined to address whether the doctrine of collateral estoppel applies here because it was moot.[30]

IV. CONCLUSION

Although the DOI's criteria in recognizing a tribe is much more strict than the common law standard under the Nonintercourse Act, the Second Circuit held the district court properly deferred to the DOI's factual findings under the primary jurisdiction doctrine in holding that the Schaghticoke Nation was not entitled to tribal status. Thus, the Schaghticoke will continue their quest for federal recognition.[31]

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[27] *Id*. (quoting *Montoya v. U.S.*, 180 U.S. 261, 266 (1901)).
[28] *Id*. (citing 25 C.F.R. § 83.7(b)-(c)).
[29] *Id*. at *2.
[30] *Id*.
[31] See Shaghticoke Tribal Nation's website, *Schaghticoke Tribal Nation,* http://www.schaghticoke.com (accessed Feb. 8, 2015).