

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES
Washington, D.C.

_____ :
In the Matter of the Claim of :

LESTER POPIN, a/k/a LECO POPOV,
681 Vanderbilt Avenue,
Brooklyn, New York. :

Docket No. Y-337

Decision No. 1462

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949 :

ok
11-3-54

_____ :
PROPOSED DECISION OF THE COMMISSION

OPC
92W
Nov 3, 1954

This is a claim for \$25,956 by Lester Popin, also known as Leco Popov, a citizen of the United States since his naturalization in the United States on June 23, 1925, and is for the taking by the Government of Yugoslavia of a house, barn, storage building, corn crib, and farmlands of about 20 yutars, located in or near the village of Radojevo, formerly known as Klarija, Yugoslavia.

Claimant and the Government of Yugoslavia have both filed certified extracts from the Land Register of the County Court of Zrenjanin (Docket No. 2320, Cadastral District of Radojevo), from which it appears that claimant was the record owner of 6 parcels of land with a total area of 20 yutars with structures on several of the parcels, when they were taken by the Government of Yugoslavia on December 23, 1947, pursuant to a decree dated December 23, 1947 by the District Agrarian Court in Zrenjanin under the provisions of the Second Agrarian Reform Act of March 18, 1946 (Official Gazette No. 24 of March 22, 1946). By this decree, title to the land was entered in the name of the "Land Fund." The Yugoslav Government, however, denies that claimant was the owner of the property when it was taken, asserting that in 1946 he had sold the property through his brother and agent, Ziva Popov.

In support of its position, the Government of Yugoslavia has filed, among other documents, the following: A copy of a Power of Attorney from claimant to his brother Ziva Popov; a copy of a Contract of Sale for the property upon which the claim is based; a copy of a statement of Ziva Popov and a copy of a statement of the Public Prosecutor of Zrenjanin.

Claimant, by the Power of Attorney, dated April 12, 1946, authorized his brother, Ziva Popov, to represent him in all matters relating to real property in Klarija, Banat, Yugoslavia, including the property upon which this claim is based.

The contract of sale, dated August 16, 1946, contains the following pertinent provisions:

"Ziva Popov, as holder of a power of attorney from Leca Popov, under this contract sells the real property recorded within the territory of the town of Klarija, registration No. 2320, A.I. 17, topogr. No. 3939/a/2, one part with an area of 20 yokes together with buildings located on the land, in perpetuity and irrevocably, to Vojislav Sima Rankov, of Klarija, for the agreed price of 9 (nine) carloads of wheat, this to be paid over a period of five years, the first instalment of 180 metric centners of wheat payable by the purchaser on Sept. 15, 1947, the second instalment of 180 metric centners of wheat payable by the purchaser on Sept. 15, 1948, the third instalment of 180 metric centners of wheat payable by the purchaser on Sept. 15, 1949, the fourth instalment of 180 metric centners of wheat payable on Sept. 15, 1950, and the fifth instalment of 180 metric centners of wheat payable on Sept. 15, 1951, all without interest. The land is to be parceled in such a way that all 20 yokes are on the side of the farm."

II

"Vojislav Sima Rankov under this contract purchases the land described in Art. I, above, for the above-mentioned purchase price and on the terms stipulated, and undertakes to comply with the afore-mentioned terms.

III

"The seller by this contract gives permission to the purchaser to have the above-described land recorded in the land register in his name, without further agreement or consent

on the former's part. -----."

IV

"The purchaser shall enter at once into possession of the purchased land and assumes payment of taxes and all other governmental charges beginning Jan. 1, 1947. Up to Jan. 1, 1947, all charges which encumber the land shall be paid by the seller."

V

"The seller has the right to register the sold land at his own expense, but should the next instalment of wheat not be paid, the cost of canceling the registration shall be paid by the purchaser."

VI

"This contract has been prepared in three identical copies. Costs relative to concluding this contract shall be paid by the purchaser. The contract shall take effect when the District Court approves and certifies it."

The statement of Ziva Popov, dated July 11, 1951, reads as follows:

"I have a brother by the name of Leca Popov who for some years now has lived in the United States. I, too, was in the United States, but returned to this country in 1936. My brother Leca Popov gave me authority in a general power of attorney dated April 26, 1946 and issued by the Consulate General of the FFRY under No. 1029/1946, empowering me without any restriction to dispose of any real estate recorded in his name in the land register at the District Court of Zrenjanin, with an area of roughly 54 statute yokes. Acting under this general power of attorney I sold all the land, that is to say, all the property to various purchasers with whom I concluded contracts of purchase and sale which are entered in the land register folios, concerning which I have even the rulings of the District Court in Zrenjanin. Among others, I of course sold the land recorded in the land-register folio of Radojevo, No. 2320, with an area of 20 statute yokes, namely to S. Vojeslav Rankov as purchaser, with whom I made a contract of purchase and sale in Srpska Crnja on August 16, 1946. Vojeslav Rankov, as purchaser, still owes me four installments of the purchase price - each installment being 18,000 kilograms of wheat. Vojeslav Rankov had the use of this land until the autumn of 1948 when he brought this land into a farm workers' cooperative.

Aside from this, my brother Leca Popov has no other possessions, and we will have the contract with Vojeslav Rankov recorded in the land register as soon as he pays me the installments still owing and procures approval for the transfer of the land. I made a gift to my brother Leca Popov of 10 statute yokes of orchard which I owned in the United States."

The statement by the Public Prosecutor of Zrenjanin, dated July 12, 1951, reads as follows:

"In 1946, Voja Rankov, of Radojevo, did in fact purchase from Leca Popov 20 yokes of land ex land-register Folio No. 2320 through Leca's brother Ziva, who held a general power of attorney. Voja Rankov bought this land for 9 carloads of wheat, to be furnished in installments over a period of five years, 18,000 kilograms each year. This purchase was covered by a contract of purchase and sale, a certified copy of which is attached. This contract was not executed, inasmuch as Ziva Popov brought suit against Voja Rankov, the purchaser, in an effort to cancel the contract. This action was tried in the District Court of Crnja, under Docket No. 28/46, and subsequently was brought in the District Court of Zrenjanin under Docket No. 254/46, but on Oct. 24, 1947, Ziva Popov withdrew the suit and his charges seeking to annul the contract. The suit was thus settled in this manner and the contract of purchase and sale continued in force and binding on both parties. In the meantime Voja Rankov was arrested and sentenced to five years' imprisonment and is at present serving this sentence. For this reason he was unable, even after the suit had been terminated, to file this contract with the court for approval and for recording in the land register. In 1948, with Voja's consent, his family joined the Farm Workers Cooperative (SRZ - Seljacka Radnicka Zadruga) "First of October" in Radojevo, bringing into it all its landed property and implements, including also these 20 yokes. This land is today still in the above-mentioned Cooperative where it is being worked, and Voja Rankov, or rather, his family continue to be members of this cooperative. Furthermore, this land has not been allotted to anyone, and the conveyance recorded in the land register to the Land Fund was accomplished as a matter of progressive routine, since the District Commission at Crnja at the time did not know of this purchase, or sale. Similarly, none of the other pieces of land which Leca's brother Ziva sold to the other purchasers from Hetin have been allocated, but possession of them is being enjoyed by the owners who purchased them.

"We also enclose an authenticated copy of the power of attorney drawn up in favor of Ziva Popov by his brother Leca Popov before the New York notary public Stefan Klinger, on the basis of which Ziva Popov executed the sale. There is further being sent to a statement by Maca Rankov, sister of the purchaser, Voja Rankov, as well as a report by the Local People's Committee in Radojevo, from which it may be seen that Voja Rankov did buy this land and that it is now part of the Farm Workers Cooperative (SRZ) "First of October." "

It appears from the foregoing evidence that the land has since 1947 been recorded in the name of the "Land Fund"; that neither the grantor nor the grantee ever obtained the approval of the appropriate local authorities for the sale of the land and that the land has since 1947 been placed in a workers' cooperative. Thus, it appears that neither the grantor nor the grantee have ever been and are not now in a position to perform the contract. In the circumstances, we are unable to agree with the Government of Yugoslavia that a sale was consummated. We note in passing that the position of the Government of Yugoslavia appears somewhat inconsistent with its position in many claims before us, that title to real property does not pass until the transfer has been recorded in the appropriate land register. Considering all of the circumstances, we are of the opinion that it would be improper for this Commission to find that a transfer of the land had been effected when there are so many factors indicating that it was not and that it never could be. Accordingly, an award will be made for the value of the entire property. Any rights which the grantee may have with respect to the recovery of part of the purchase price is a matter which will be left to the parties.

Claimant alleges that he purchased the property in June 1935 for 280,000 dinars. He has filed no corroborating evidence of value. An investigator for this Commission made an on-the-spot investigation of the property on April 23, 1954 and reported that there were no farm buildings on the property; that he was informed that there had been a house, barn, storage building, and corn crib on the property at one time, but that these structures were destroyed in 1949; that at the time of their destruction, the structures were said to have been about 60 years old and only in fair condition. The Commission's investigator appraised

the structures at 47,180 dinars on the basis of descriptions obtained by him, and the land at 232,565 dinars, on the basis of 1938 values.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of the property recorded under Docket No. 2320 was 279,745 dinars as of the year 1938.*

According to the above-mentioned extract, the property recorded under Docket No. 2320 was encumbered by a mortgage dated July 25, 1939, in favor of Jugoslavensko Hofner-Shranz Klajton Shutlevort A.G. in Belgrade, in the face amount of 70,000 dinars and 2382 dinars for costs. No evidence has been filed indicating that the mortgage has been satisfied. In the circumstances, we are of the opinion that a deduction for the mortgage must be made. In arriving at this decision we have not failed to consider that the claimant may be obligated to satisfy the debt for which the mortgage was given as security. However, the likelihood that the claimant herein, or that any claimant whose Yugoslav property was mortgaged, will be called upon to do so seems sufficiently remote as to be practically non-existent. A suit on the mortgage may be barred by time limitations; the mortgagee, if a Yugoslav financial institution, has either been nationalized or liquidated; the mortgagor and the mortgagee may not know the whereabouts of each other; the mortgagor and mortgagee may reside in different countries with the result that suit or payment may be impracticable; any recovery by the mortgagee from the mortgagor may be limited to 10% of the debt because of the pre-war debt devaluation law of October 27, 1945 (Law on Settlement of Pre-War Obligations, as amended, OFFICIAL GAZETTE No. 88, November 13, 1945; OFFICIAL GAZETTE No. 66, August 16, 1946); or, finally, the mortgagee, if a citizen of the United States, may look to this Commission for compensation for the loss of his security.

The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act to apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law, justice and equity, in that order. The Agreement contains no specific provision regarding mortgages. We have found no applicable decisions of arbitral tribunals, international or domestic, having responsibility for the determination of claims which were satisfied by the payment of a lump-sum. (Because of the comparatively recent acceptance of lump-sums in settlement of large blocks of international claims, it is doubted that there are reported decisions directly in point.)

It is our view that justice and equity to all claimants require a deduction for mortgages under the circumstances involved in the claims before us, whether the property was taken before or after the above-mentioned Yugoslav debt settlement law became effective. The lump-sum of \$17,000,000 has been provided for the satisfaction of all claims. As the claims filed aggregate many times that amount, the fund may be insufficient to pay all claims allowed in full. In these circumstances we believe we are obligated to limit our awards to actual proven losses and not to make awards for contingent losses which may never materialize. We also believe that when many claimants have to share in a fund which may prove inadequate, one claimant should not receive a windfall or be enriched at the expense of other claimants. That would be the case if a claimant who was awarded the full value of his property made no payment on the mortgage, or satisfied the mortgage debt by payment of only 10% of the mortgage pursuant to the Yugoslavia debt settlement law. Accordingly, we hold that, in the absence of evidence that a mortgage of record

has been satisfied, a deduction for the mortgage must be made in order to reflect the actual amount of claimant's loss. We find that the proper amount to deduct for the mortgage, in this claim, is 72,382 dinars and that amount will therefore be deducted.

The Commission finds that the net value of the property taken by the Government of Yugoslavia was 207,363 dinars (232,565 dinars less 72,382), which converted into United States dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon evaluations of the year 1938, equals \$4,712.80.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Lester Popin, claimant, in the amount of \$4,712.80 with interest thereon at 6% per annum from December 23, 1947, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$186.70.

Dated at Washington, D. C.

NOV 4 1954

* For the Commission's reasons for use of 1938 valuations, use of exchange rate of 44 to 1, and the allowance of interest, see attached copy of its decision in the claim of Joseph Senser.

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D. C.

In the Matter of the Claim of

LESTER POPIN, a/k/a LECO POPOV,
681 Vanderbilt Avenue
Brooklyn, New York

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949

Docket No. Y-337

Decision No. 1462

approved
HE
12-14-54

FINAL DECISION

Thirty days having elapsed since the claimant(s) herein and the Government of Yugoslavia were notified of the Commission's Proposed Decision on the above claim, and the claimant(s) having filed no objections thereto, and a brief filed by the Government of Yugoslavia having received due consideration, such Proposed Decision is hereby adopted as the Commission's Final Decision on the claim.

Done at Washington, D. C.

DEC 15 1954

JMM