UDUI ESEBEI, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, and JOSEPH C. PUTNAM, its Alien Property Custodian, Appellees

Civil Action No. 15

Trial Division of the High Court

Palau District

September 6, 1958

Action to determine ownership of land in Ngaraard Municipality, in which land belonging to plaintiff's family was taken by Japanese Government in 1917 without payment of compensation or approval of landowners. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that since plaintiff had no adequate recourse to courts of Japanese Administration, and taking was not by free will and was without just compensation, land should be returned to plaintiff.

Reversed.

1. **Former Administrations—Recognition of Established Rights**

   It is duty of nation receiving cession of land to respect all rights of property as those rights were recognized by nation making cession.

2. **Former Administrations—Redress of Prior Wrongs**

   It is no part of duty of nation receiving cession of land to right the wrong which grantor may have committed upon every individual.

3. **Former Administrations—Redress of Prior Wrongs—Exception to Applicable Doctrine**

   Exception to doctrine regarding the righting of ancient wrongs of grantor nation applies when wrongs occurred so recently before cession that individual may not have had time to appeal to courts or authorities of that nation for redress.

4. **Former Administrations—Redress of Prior Wrongs—Exception to Applicable Doctrine**

   Unless there was inadequate time for individual to have recourse to courts of grantor nation to right alleged wrong, where matter was pending at time courts were closed because of war, there is no adequate basis for assumption of jurisdiction by Trust Territory courts.

5. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**

   Action filed by party in High Court of Japanese Government was existing cause of action at time further action was stopped on account of war.

6. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**

   For purpose of determining impact of limitations, any cause of action existing on May 28, 1951, is considered to have accrued on that date. (T.T.C., Sec. 324)

7. Trust Territory—Land Law—Limitations

Period of twenty years is limitation of actions for recovery of land. (T.T.C., Sec. 316)

8. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Where action filed by party in High Court of Japanese Government was stopped on account of war, and Trust Territory law provides that cause of action existing on May 28, 1951, is considered to have accrued on that date, party's claim was existing cause of action on December 7, 1941, and also on May 28, 1951. (T.T.C., Sec. 324)

9. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Where prosecution of party's claim was effectively restrained by coming of war, and no adequate machinery was set up by Trust Territory Government for filing of appellant's claims until January 11, 1951, party's claim filed with Land Title Officer on January 4, 1956, was filed in apt time. (Land and Claims Regulation No. 1; Office of Land Management Regulation No. 1)

10. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Where no final decision was received from Japanese courts on party's claim up to coming of war, adequate time has not been permitted within meaning of general principle regarding ancient wrongs of grantor nation.

11. Eminent Domain—Generally

Private property may not be taken for public use without consent or payment of just compensation. (T.T.C., Sec. 4)

12. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Land transfers from non-Japanese private owners to Japanese Government, corporations and nationals since March 27, 1935, are subject to review, and are valid unless former owner establishes sale was not made of free will and just compensation not received. (Policy Letter P-1, December 29, 1947)

13. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Where taking of land was instituted prior to March 27, 1935, but taking was not unchallenged and was under rigorous attack while such claims were being processed, and taking was in suspense at date of declaration of war, it was not a taking prior to March 27, 1935.

14. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Where taking of party's land occurred since March 27, 1935, and was not by free will and was without just compensation or payment, title will be returned to him.

Assessor:	JUDGE CHARLY GIBBONS
Interpreter:	ANTHONY H. POLLOI
Counsel for Appellant:	ROSCOE L. EDWARDS, ESQ., ROMAN TMETUCHL
Counsel for Appellee:	ALFRED J. GERGELY, ESQ.

TOOMIN, *Associate Justice*

OPINION

Involved in this proceeding is an appeal from a Determination of Ownership made by the District Land Title Officer of Palau District with respect to certain land located in that district. The matter arose originally with the filing of suit by appellant July 9, 1952, against the District Property Custodian of Palau District, seeking an adjudication that the land Ngerengchong located in Ngaraard Municipality, Palau District belonged to appellant, and was not part of the public domain. After issue was joined, hearing of the cause was postponed to permit appellant's claim to be handled administratively.

Accordingly, on January 4, 1956, appellant filed his claim with the District Land Office under Office of Land Management Regulation No. 1, and a hearing was duly held pursuant thereto. This hearing resulted in a determination adverse to appellant, and a release of the land to appellee Trust Territory of the Pacific Islands, from which the instant appeal is prosecuted.

By order of court, appellant was granted a limited trial *de novo* at which any material evidence might be introduced by either party and considered by the court, together with the record of the hearing before the Land Title Officer, and the sworn statements attached thereto. At the trial had pursuant to court order, the testimony of certain witnesses on behalf of appellant was duly taken. Upon consideration of this testimony, and of the record of hearing had before the District Land Title Officer, supplemented by the admissions of the parties and the un-

derstandings contained in a certain Memorandum of Pre-Trial Conference made and filed in these proceedings, the court finds the following to be the material and relevant facts in this case:

The land known as Ngerengchong containing approximately 49.13 acres, with dimensions and boundaries shown on map attached to appellant's claim filed with the land Office, is located in Ngaraard Municipality, Babelthuap Island. In Japanese times it was the property of the Ibedechang Clan of which appellant's father was the chief. The use-rights during his lifetime were given appellant in 1922. The land was planted with coconut trees mainly, and one taro patch. It has been occupied continuously by appellant and his family since 1919. In addition to some 1500 trees planted by him, and the taro patch, appellant built his home and raised cows, pigs and goats on the land.

In 1917 the Japanese Navy leased some small areas of the property, and in 1925 included all of the land in a survey of government land, except the portion within a line 180 feet from the seashore, which they told appellant he could keep. The rest of the land was taken by the government, upon the theory that all land not under cultivation belonged to the government. No consideration was paid for the land so taken, and this was done without approval of the landowners.

Appellant attempted to obtain return of the land in three court actions, the first time in 1927 and the last in December, 1941. In the first two hearings appellant was unsuccessful. The last hearing was never completed, and no decision was announced by the court.

Appellant rented 12½ acres of the land from the government during several months of 1941 or 1942, under protest. He remained in possession of all the land up to the date of surrender, and has continued to do so ever since.

In resisting release of the land to appellant, appellees take the position that the seizure of this land occurred too long ago for the matter to be reviewed by the court at this time. They concede, however, that the land was taken by eminent domain, without consent and without payment of compensation, and that attempts of appellant to obtain return of the land by court action continued until the start

of the war, without final action. Accordingly, there is here presented for decision the question whether there is any legal or equitable basis upon which courts of a successor sovereign power are warranted in redressing wrongs perpetrated by its predecessor against the predecessor's subjects, but where final action questioning the wrong, had not occurred prior to the change of sovereignty.

[1, 2] Upon the question as to whether there is any adequate legal or equitable basis in general, for redress of wrongs committed by the prior sovereign against its own subjects, such as is cognizable in a court of equity, the view has been authoritatively adopted that there is not. The general rule is stated to the effect that while it is the duty of a nation receiving a cession of land to respect all rights of property as those rights were recognized by the nation making the cession, it is no part of its duty to right the wrong which the grantor nation may have therefore committed upon every individual. 30 Am. Jur. 207, International Law, § 47.

Among the authorities relied on for this doctrine is the well-considered opinion of Justice Brewer in *Cessna v. United States*, 169 U.S. 165, 18 S.Ct. Rep. 314, involving validity of a claim to land ceded to the United States as the result of the war with Mexico. The case concerned the recognition of an equitable claim of a land grantee to the benefits flowing from a Government grant, but where final action validating the grant had not been taken by the Mexican authorities prior to the cession of Texas to the United States.

In discussing the principle applicable to such situation, the learned Justice said as follows:

"It is the duty of a nation receiving a cession of Territory to respect all rights of property as those rights were recognized by the nation making the cession, but it is no part of its duty to right the wrong which the grantor nation may have theretofore

committed upon every individual. There may be an exception when the dispossession and wrong of the grantor nation were so recently before the cession that the individual may not have had time to appeal to the courts or authorities of that nation for redress. In such a case, perhaps the duty will rest upon the grantee nation; but such possible exception has no application to the present case, and in no manner abridges the general rule that among the burdens assumed by the nation receiving the cession is not the obligation to right wrongs which have for many years theretofore been persisted in by the grantor nation."

The principle of *Cessna v. United States*, supra, has been adopted in Trust Territory. The precise question considered in that case relative to the righting of ancient wrongs and the propriety and consideration by the courts of the successor power of claims originating against the prior power, has been passed on in a number of cases decided by the Trial and Appellate Divisions of this court. *Wasisang v. Trust Territory*, 1 T.T.R. 14. *Levi v. Kumtak*, 1 T.T.R. 36. *Kumtak v. Levi*, 1 T.T.R. 578. *Aneten v. Olaf*, 1 T.T.R. 606. *Cabrera v. Trust Territory*, Saipan Court of Appeals, Civil Action No. 2.

[3] It should be noted, however, that in *Cessna v. United States*, supra, it was stated that there may be an exception to the doctrine, when the wrongs of the grantor nation may have occurred so recently before the cession that the individual may not have had time to appeal to the courts or authorities of that nation for redress. This exception is recognized as being of general validity in the treatment accorded the subject in 30 Am. Jur. 207, International Law, § 47, and also by specific reference to it, in *Wasisang v. Trust Territory*, supra.

[4] We are, therefore, led to the proposition which arises in this case, whether it will be considered that adequate time has not been permitted for recourse to the courts, where the matter was still pending at the time the

courts were closed because of the coming of war. For unless this proposition is answered in the affirmative, there appears to be no adequate basis for assumption of jurisdiction by this court in this and similar cases.

[5, 6] It is likely that an appropriate answer can be found in the limitations sections of the Trust Territory Code. Obviously, the action filed by appellant in the High Court of the Japanese Government was an existing cause of action at the time further action stopped on account of war. Section 324, Trust Territory Code provides that for the purpose of determining the impact of limitations, any cause of action existing on May 28, 1951, shall be considered to have accrued on that date.

[7] Section 316, Trust Territory Code provides a period of 20 years as the limitation of actions for the recovery of land, which is the classification in which the case at bar falls. Whether this was greater or lesser than the period prescribed by Japanese regulations is not of consequence since no question is raised that action was not filed by appellant in the Japanese courts within apt time under Japanese law.

The court will take judicial notice of the fact that during the war, the Japanese Courts in Trust Territory were closed to the processing of claims such as are here involved. Nor were they opened for transaction of business in the Trust Territory, until the adoption of Interim Regulations by the Department of the Navy on July 18, 1947. However, no adequate machinery was set up for the processing of land claims until the promulgation of Land and Claims Regulation No. 1, on January 11, 1951.

[8, 9] Accordingly, it seems reasonable under all the circumstances of this case, that the following conclusions be drawn: (a) The claim of appellant for return of his land or payment of compensation for same was an exist-

ing cause of action on December 7, 1941, and also on May 28, 1951; (b) Its prosecution was effectively restrained by the coming of the war; (c) No adequate machinery was set up by Trust Territory Government for the filing of such claims against the Government until January 11, 1951; (d) The claim of appellant filed with the Land District Title Officer under date of January 4, 1956, was filed in apt time under Office of Land Management Regulation No. 1.

[10] Since no final decision was received from the Japanese Courts up to the coming of the war, it is the opinion of this court in the light of that fact, and of the conclusions drawn hereinabove, that adequate time has not been permitted for recourse to the courts within the meaning of the general principle above quoted. There being then, no bar to consideration of appellant's claim because of the passage of time, we pass to a consideration of the merits of the claim.

[11, 12] As regards the merits of the claim, the admitted facts furnish a ready answer. It is conceded the land was taken without consent or payment of just compensation. Chapter I of Trust Territory Code, Section 4, provides that private property shall not be taken for public use without just compensation. Under Policy Letter P-1 of December 29, 1947, issued by the then Deputy High Commissioner, is stated the land policy of Trust Territory Government, which is the latest public expression thereof known to this court. In Item 13 of said letter is stated the policy of the Government with respect to land transfers from non-Japanese private owners, as follows:

"Land transfers from non-Japanese private owners to the Japanese Government, Japanese corporations, or Japanese nationals since March 27, 1935, will be subject to review. Such transfers will be considered valid unless the former owner (or heirs) establishes that the sale was not made of free will and the just compensation

was not received. In such cases, title will be returned to former owner upon his paying in to the Trust Territory Government the amount received by him."

[13] True, the taking of the land at bar was instituted prior to March 27, 1935. But as seen above, it was not unchallenged and was under vigorous attack down to the last date such claims were being processed. Under these circumstances, it will be construed that the taking was in suspense at the date of the declaration of war, and was not a taking prior to March 27, 1935.

[14] Since no money was received by appellant, none need be returned as a condition to transfer of title. And since the taking was not by free will and was without just compensation or payment, it fulfills the condition stated in Paragraph 13 of Policy Letter P-1, relative to return of property. The court therefore holds, that in line with the reasoning appearing hereinabove, the title to appellant's property, in good conscience and equity, and in accordance with the spirit of Policy Letter P-1, ought to be returned to him.

JUDGMENT

It is the judgment of this court that the Determination of Ownership of the Land Ngerengchong filed with the Clerk of Courts of Palau District by the District Land Title Officer of Palau District in favor of Trust Territory of the Pacific Islands, be and the same is hereby reversed and held for naught.

It is further ordered that title to the land Ngerengchong be and the same is hereby confirmed in appellant, Udui Esebeie, for the benefit of the Ibedechang Clan, free and clear of any right or claim or interest therein, on the part of any other party to this cause, and that this court retain jurisdiction for the purpose of securing to appellant the rights hereby confirmed in him.