

KINGSANG KENGSIRO, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, and
its ALIEN PROPERTY CUSTODIAN, Appellees

Civil Action No. 113

Trial Division of the High Court

Palau District

July 23, 1959

Action to obtain return of land which was taken by Japanese Government in 1941 and for which fair compensation was not received. On appeal from District Land Title Determination, the Trial Division of the High Court, Chief Justice E. P. Furber, held that where former owner establishes he did not receive just compensation for property, he is as matter of equity entitled either to have land returned to him or to be paid for remainder of fair value of land at time it was taken.

Modified.

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

As matter of equity, former owner of land taken by Japanese Government in 1941 for which just compensation was not received is entitled to have his land returned to him upon making return to government for fair value of partial compensation which he received, or to be paid now for remainder of fair value of land at time it was taken.

2. Administrative Law—Generally

Administrative policy letter announcing Trust Territory Government's willingness to return land taken by Japanese Government in cases where fair compensation was not received by former owner does not purport to be enactment of law. (Policy Letter P-1, December 29, 1947)

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

Administrative policy with regard to return of lands taken by Japanese Government for which fair compensation was not paid to former owner does not constitute basis for order in nature of specific performance. (Policy Letter P-1, December 29, 1947)

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

Where matters concerning relationship between yen values in 1941 and dollar values at present time have not been fully adjusted by parties in action where relationship is relevant, court will allow further opportunity to be heard thereon before making specific ruling as to party's claim for return of land taken by Japanese Government.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The payment which the appellant admittedly received for the land in 1941 amounted to only approximately two-thirds of the fair value of the land taken, and did not constitute just compensation.

2. Owing to an error in the computation of the area of the land, the appellant did not even receive full compensation at the rate which the Japanese Government reportedly purported to pay. He received approximately 17 percent less than that.

CONCLUSIONS OF LAW

1. This is an appeal from a determination by the District Land Title Officer for the Palau District in favor of the Alien Property Custodian of the Trust Territory of the Pacific Islands and against the appellant. The sole issue of fact was whether the payment received by the appellant in 1941 constituted just compensation. No issue was raised but what the land had been preemptorily taken by the Japanese Government for military purposes, presumably under its right of eminent domain.

2. The appellees, in addition to claiming the consideration paid for the land constituted fair compensation, also claimed that too great an interval of time had passed since the taking for the matter to be subject to review by the court at this time. This issue is controlled by the principles discussed at some length in the opinion of this court in the case of *Salii Ngiraikelau v. Trust Territory*, Palau District Civil Action No. 70. For the reasons there stated the court holds that the claim involved in this appeal was presented within the proper time and is entitled to be considered on the merits.

[1] 3. The appellees have called attention to the fact that in the Ngiraikelau case compensation which was figured out at the rate of 43 yen per tsubo was held to be adequate compensation for certain land taken in 1942, and that the compensation paid in the present case figures out 66 and a fraction yen per tsubo. The land in the Ngiraikelau case, however, was of an entirely different type and less advantageously situated than the land now under consideration. The specific evidence discussed in the opinion in that case cannot fairly be lifted out of it and considered as if presented in this one. This appeal involves what has been shown to be, from the Palauan point of view, first-class agricultural land, situated on a good road, near a main dock. On all the evidence and such matters concerning general conditions in the Palau Islands as the court is entitled to take judicial notice of, the court holds that the plaintiff has sustained the burden of establishing that he did not receive just compensation and is, as a matter of equity, entitled either to have his land returned to him upon making fair return to the Government, through its Alien Property Custodian, for the fair value of the partial compensation which he admittedly received, or to be paid now for the remainder of the fair value of his land at the time it was taken.

[2-4] 4. Under the then Deputy High Commissioner's Trust Territory Policy Letter No. P-1, dated December 29, 1947, the Trust Territory Government announced a policy under which it was willing to return land in such cases. The appellant has asked that the court order a return of the land on that basis. While this Trust Territory Policy Letter is recognized as an authoritative statement of administrative policy of which the courts must take due notice, and which has been relied upon by the courts as an aid in determining what view should be adopted as to certain questions of international law, this letter does not

purport to be an enactment of law. Insofar as it offers more generous treatment than the law requires, the court doubts whether it would constitute a proper basis for an order in nature of one for specific performance. Furthermore, on a strictly legal basis there are many matters concerning the relations between yen values in 1941 and dollar values at the present time on which the court believes the parties should be given further opportunity to be heard before any order is made by the court as to the exact adjustments which need be made between them. It is to be hoped, however, that on the basis of the findings and conclusions above and the policy indicated in Policy Letter No. P-1, the parties will now be able to arrive at a settlement. The court, therefore, defers any specific ruling at this time on the appellant's request for an immediate order as to the disposition of the land.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. The District Land Title Officer for the Palau District's Determination of Ownership and Release No. 71, dated July 3, 1957, filed July 11, 1957, with the Clerk of Courts for the Palau District in his Volume T-1, page 98, is hereby modified to show that the ownership of the Alien Property Custodian, Trust Territory of the Pacific Islands, is subject to appellant Kingsang Kengsiro's equitable right to either have the land described in said Determination of Ownership and Release returned to him upon his making fair return for the partial compensation he has received, or to be paid reasonably promptly the balance of its fair value at the time of taking.

2. If the parties are unable within the next six months to work out an equitable settlement as to the disposition of the land in accordance with this judgment, either party may, by motion filed in this action, request further con-

sideration and order of the court as to the disposition of the land and the adjustments to be made in connection therewith.

3. No costs are assessed against any party.