NGODRII SANTOS, Appellant

v.

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

Civil Action No. 76

Trial Division of the High Court

Palau District

September 4, 1958

Action to determine ownership of land in Koror Municipality, in which land belonging to plaintiff was taken by Japanese Government in 1927 without consent and without payment of compensation. On appeal from District Land Title Determination, the Trial Division of the High Court, Associate Justice Philip R. Toomin, held that since prosecution of plaintiff's claim under Japanese Government was restrained by coming of war, there was inadequate time for recourse to courts of prior administration, and therefore land should be returned to plaintiff.

Reversed.

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

   There is no adequate legal or equitable basis in general for redress of wrongs committed by prior sovereign against its own subjects such as is cognizable in court of equity.

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

   While it is duty of nation receiving cession of land to respect all rights of property as recognized by nation making cession, it is no part of its duty to right the wrong which grantor nation may have committed upon every individual.

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

   Exception to doctrine regarding righting of ancient wrongs of prior sovereign is when wrongs of grantor nation 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—Taking of Private Property by Japanese Government—Limitations**

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

5. **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)

6. **Trust Territory—Land Law—Limitations**
   Limitations for actions for recovery of land in Trust Territory is twenty years. (T.T.C., Sec. 316)

7. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
   Where party's claim for return of land was existing cause of action at time further action in Japanese courts was stopped on account of war, claim was existing cause of action on December 7, 1941.

8. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
   Prosecution of claims for return of land or payment of compensation in Japanese courts was effectively restrained by coming of war.

9. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
   No adequate machinery was set up by Trust Territory Government for filing of claims against government for return of land or payment of compensation until January 11, 1951.

10. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
    Where claim for return of land was existing cause of action on December 7, 1941, and claim was filed with District Land Title Officer on February 23, 1954, it was filed in apt time. (Office of Land Management Regulation No. 1)

11. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
    Where no final decision on party's claim for return of land or payment of compensation was received from Japanese courts up to coming of war, adequate time has not been permitted for recourse to courts.

12. **Eminent Domain—Generally**
    Property may not be taken for public use without just compensation. (T.T.C., Sec. 4)

13. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
    Land transfers from non-Japanese private owners to Japanese Government, corporations, or nationals since March 27, 1935, are considered valid unless sale was not made of free will and just compensation not received. (Policy Letter P-1, December 29, 1947)

14. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
    Where taking of property by Japanese Government was in suspense at date of declaration of war, it was not a taking prior to March 27, 1935.

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

Where taking of property by Japanese Government was not by free will of owner and just compensation not received, title to property ought to be returned to former owner where taking is construed to have occurred since March 27, 1935. (Policy Letter P-1, December 29, 1947)

Assessor:	JUDGE PABLO RINGANG
Interpreter:	ANTHONY H. POLLOI
Counsel for Appellant:	ROSCOE L. EDWARDS, ESQ.
Counsel for Appellee:	ALFRED J. GERGELY, ESQ.

TOOMIN, *Associate Justice*

OPINION

This is an appeal from a Determination of Ownership made by the District Land Title Officer of Palau District and filed with the Clerk of Courts of that District. The matter arose with the filing of claim by appellant for a Determination of Ownership in himself as sole owner by right of inheritance, of a tract of land located in Koror Municipality in said District. After hearing pursuant to Office of Land Management Regulation No. 1, the Title Officer determined the matter of title adversely to appellant, and instead released the land to appellee Trust Territory of the Pacific Islands.

By agreement of the parties, the record made on hearing of appellant's said claim in the District Land Title Office, has been received in evidence on this appeal, including both the testimony and exhibits offered by appellant, and the findings of fact and conclusions of the title officer. No other evidence was offered by the parties on this appeal. From an examination of said record as supplemented by the understandings and agreements contained in a certain Memorandum of Pre-Trial Conference and Order in Relation Thereto, entered and filed in this proceeding, the

following appear as the relevant and material facts to be considered by the court on this appeal:

Involved in this proceeding is title to the land Emaimeloi located in Koror Municipality, Palau District, containing approximately 8,000 sq. ft. Before Japanese times it was the property of appellant's adoptive mother, who gave it to him in 1919 when she left the clan to remarry. In 1927 the Japanese Government seized the land for the purpose of erecting on it a government building. They did this without the consent of appellant and without the payment of any compensation. Appellant attempted many times through action in the High Court to get the land returned or some compensation paid, but without success. The last attempt occurred in 1941, but no final decision was received prior to World War II.

Upon conclusion of the hearing, the Title Officer came to the following conclusions as shown by the hearing record:

"Title to this Tract was passed from his adoptive mother to Ngodrii in 1919. It is a known fact in Koror that the Japanese seized the land in 1927 for Government purposes. Ngodrii went to the High Court many times until 1941 attempting to get return of the land. The land was taken for Government use by eminent domain or similar action."

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 sub-

jects, 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 this 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 of 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. 36. *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.

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.

[4, 5] 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.

[6] 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.

[7–10] 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 existing cause of action on December 7, 1941; (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

February 23, 1954, was filed in apt time under Office of Land Management Regulation No. 1.

[11] 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.

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. It is also conceded in the findings of the District Land Title Officer that the land taken from appellant was rightfully his. As shown by appellant's claim, it has been leased out by Trust Territory Government since 1950.

[12, 13] 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."

[14] 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.

[15] 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 Emaimelei 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 Emaimelei be and the same is hereby confirmed in appellant, Ngodrii Santos, 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 the appellant the rights hereby confirmed in him.