

EBAS NGIRALOIS, The Remed Lineage, and Unknown Owners,
Defendants-Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff-
Appellee

Civil Appeal No. 30

Appellate Division of the High Court

April 30, 1969

Trial Court Opinion-3 T.T.R. 303

Appellate Court Opinion-3 T.T.R. 637

Appeal from judgment awarding damages for condemnation taking of quarry by Trust Territory government. Appellant claimed that government had no power to take by condemnation. The Appellate Division of the High Court, D. Kelly Turner, Associate Justice, held that where the government had been created with full power delegated to it there need not be a specific delegation of the right of eminent domain.

Judgment affirmed.

1. Trusteeship--Administering Authority-Powers

The Government of the Trust Territory has been created with full power delegated to it to execute governmental functions through legislative, administrative and judicial branches.

2. Eminent Domain-Delegation of Power

There need not be a specific delegation of the right of eminent domain where there has been a delegation of full power of government.

3. Eminent Domain-Generally

The power of 'eminent domain is inherent in government; it is implied without being specified.

4. Eminent Domain-Generally

The use of eminent domain powers is only limited to payment of just compensation and that the taking be for a public use.

5. Eminent Domain-Delegation of Power

The full power of legislation included the right of eminent domain and the right to delegate it, and it was effectively delegated by Congress, by statute, to such person or persons and to be exercised in such manner or through such agencies as the President may direct or authorize. (48 U.S.C. § 1681)

6. Eminent Domain-Generally

The two questions in a condemnation case distill down to whether the purpose qualifies as a public purpose and whether there was sufficient legislative authorization.

7. Eminent Domain-Public Use

It is well established that, in considering the application of the Fourteenth Amendment to a case of expropriation of private property, the question of what is a public use is a judicial one.

8. Courts--Generally

It is not within the judicial power to strike down something resting within legislative discretion, even though the court will not hesitate to review the manner in which the authority granted by the legislature has been exercised.

9. Eminent Domain-Generally

The Trust Territory eminent domain statute is not similar to the Federal act, nor need it be as long as it requires that the taking be for a public use and the fair value be paid for the property. (T.T.C., Dh. 20)

10. Eminent Domain-Compensation

Where trial court allowed interest as compensation at the legal rate on the judgment amount from the time of taking, except for the limited interest imposed by statute of three percent on the amount on deposit from the time of the deposit, there was no denial of fair compensation in fact or by statute. (T.T.C., Ch. 20)

11. Trespass-Damages

The normal measure of damages, the value of the land or quarry stone in place, was the proper value when there had not been a tortious taking and entry upon the quarry in question.

12. Appeal and Error-Scope of Review-Facts

In the absence of the transcript of evidence, appellate court is limited to a review of the law and not the facts found. (Rule 32, Rules of Criminal Procedure; Rule 23, Rules of Civil Procedure)

13. Trespass-Damages

Where entry onto quarry was mistakenly wrongful, rather than wilfully **tortious**, owner was not entitled to either punitive damages or to damages measured by the value of the quarried rock after severance.

Counsel for Appellants:

Counsel for Appellee:

FINTON J. PHELAN, JR.

ROBERT A. HEFNER, *Assistant Attorney General* and

JOHN D. MCCOMISH,

District Attorney, On the

Brief

Before TURNER, *Associate Justice*, SHRIVER and CLIFTON, *Temporary Judges*

TURNER, *Associate Justice*

This is an appeal from a judgment awarding damages for the condemnation taking by the Trust Territory government of approximately four acres of coral quarry in Airai Municipality, Babelthaup Island, Palau District.

We limit this opinion to issues relating to the law applicable to eminent domain and the appropriate measure of damages for taking. The several assignments of error challenging the sovereignty of the Trust Territory government, its authority and power, and the jurisdiction of the High Court are not considered in this opinion because the identical propositions have been disposed of in the decision entered this day in *Calvo v. Trust Territory*, 4 T.T.R. 506.

The same comment made in *Calvo* must be repeated here that appellant's citations offered in support of his assignments of error are so broad in scope they do not specify the applicable law nor how the trial court failed to adhere to it. Appellant employs extensive quotations of text and footnotes from *Corpus Juris Secundum*, a set of books not available in the law libraries of the Trust Territory. Appellant presents these general principles of law encompassed

within the subject matter of the issues raised in the hope -we assume- the court will select such items as may support a specific point. The court declines to consider or discuss the applicability of principles of law thus presented.

Unfortunately, the brief of the Trust Territory government is of no help. Appellee's brief mainly consists of quotations from or paraphrase of the trial court's opinion. That opinion and judgment is before this court. We have read it in full. It is most unusual to offer in support of a judgment appealed from the judgment itself. It is analogous to the definition of a rose that:-

"A rose is a rose."

Appellant begins his argument with the proposition that the power of eminent domain, although an attribute of sovereignty, must be specifically delegated to an agency not having sovereignty. Since the Trust Territory government is not sovereign, appellant argues, and because there has been no specific delegation of the right of eminent domain, the Trust Territory government may not exercise the power to take private property for a public use.

[1] The argument is sound except as to the status of the Trust Territory government. If the government were no more than a trustee, or, for example, a public corporation, the authority may be exercised only upon specific legislative delegation. But it has been decided not only in *Calvo* but also in *Alig v. Trust Territory*, 3 T.T.R. 603, that the Government of the Trust Territory has been created with "full power" delegated to it to execute governmental functions through legislative, administrative and judicial branches. Whether this delegation of governmental authority creates sovereignty need not be considered here.

[2-4] There need not be a specific delegation of the right of eminent domain when there has been a delegation of "full power" of government. The power of eminent domain

is inherent in government. It is implied without being specified. Its use is only limited to payment of just compensation and that the taking be for a public use. *Cincinnati v. Louisville and Nashville R. Co.*, 223 U.S. 390, 32 S.Ct. 267. *State of Georgia v. City of Chattanooga*, 264 U.S. 472, 44 S.Ct. 369.

[5] This court affirms the trial court holding in answer to appellant's argument on this issue.

"The court holds that this full power of legislation included the right of eminent domain and the right to delegate it, that it was effectively delegated by the Congress of the United States by 48 U.S.C. Sec. 1681, to such person or persons and to be exercised in such manner or through such agencies as the President of the United States may direct or authorize,"

Having found the inherent power to take private property for public use, we examine whether or not there has been an exercise of the power in accordance with due process of law. Appellant says there was not compliance with due process required by Section 4 of the Trust Territory Code, in that the eminent domain provision of the Code, Chapter 20, is "arbitrary, capricious and beyond the authority of the High Commissioner."

[6] The two tests of a valid exercise of the power of eminent domain were pointed out by Chief Judge Chambers of the United States Court of Appeals for the Ninth Circuit in *Government of Guam v. Francis L. Moylan*, 407 F.2d 567, in which he said : –

"The two questions on the condemnation case distill down to whether the purpose here qualifies as a public purpose and whether there was sufficient legislative authorization."

After citing Federal decisions upholding the public purpose of urban renewal condemnations, Judge Chambers said:-

"We simply cannot distinguish the public purpose of establishing order out of chaos in the New Agana from redevelopment public purposes."

[7] Appellant's complaint is merely that the High Commissioner may find that "any use" is a public use. But the quick answer to that contention is found in *City of Cincinnati v. Vesper*, 281 U.S. 493, 50 S.Ct. 360 at 362:-

"It is well established that, in considering the application of the Fourteenth Amendment to case of expropriation of private property, the question of what is a public use is a judicial one." *Codd v. McGoldrick Lumber Co.*, 279 Pac. 293, 67 A.L.R. 580. *Carmack v. U.S.*, 135 F.2d 196.

[8] Appellant argues that the eminent domain provisions of the Code in their several details, including the amount of interest on money deposited with the court as the estimated value and the requirement that no payment shall be made to the landowner until title passes to the government, are "arbitrary, capricious and beyond any authority granted anywhere." These dire conclusions are applied to standard provisions found in most condemnation statutes and it is not within the judicial power to strike down something resting within legislative discretion-even though the court will not hesitate to review the manner in which the authority granted by the legislature has been exercised.

[9] The Code provides that the money deposited with the court, to permit immediate entry by the government, draws interest at the rate of three percent per annum. This, says the appellant, is an arbitrary denial of just compensation. Appellant also suggests the Trust Territory Code's procedure contains no authority similar to the Federal declaration of taking statute. 40 U.S.C. § 258a. The Trust Territory statute is not similar to the Federal act, nor need it be as long as it requires that the taking be for a public use and the fair value be paid for the prop-

erty. AS to the inadequacy of the three percent interest rate on the money deposited with the court we note the Federal act provides for no interest payment on the money paid into court.

[10] The trial court allowed interest as compensation at the legal rate on the judgment amount from the time of taking, except for the limited interest imposed by statute of three percent on the amount on deposit from the time of the deposit. We find no denial of fair compensation in fact nor by the statute.

There remains to be ascertained whether or not the trial court applied the appropriate measure of damages. Appellant insists that because there was a tortious entry and taking the damages allowed should have been the severed value of the quarried coral.

[11] The trial court found as a fact that the entry was not tortious, that the government agents began quarrying in the honest, although mistaken, belief it was government rather than private property. Accordingly, the normal measure of damages, the value of the land or quarry stone in place was allowed. This is the proper value when there has not been a tortious taking and entry.

[12] We do not consider appellant's claim that the finding was erroneous for the reason we are limited to a review of the law and not the facts found in the absence of the transcript of evidence. Rule 32, Rules of Criminal Procedure, made applicable to civil appeals by Rule 23, Rules of Civil Procedure.

[13] Appellant's argument that the court should have been bound by the Land Title Officer's decision that the government made no claim to the land, overlooks the controlling fact that the entry, under the mistaken belief of right, was in 1962, that the land title decision was July 27, 1964 (two years later) and that the condemnation suit

followed that administrative decision, being filed December 31, 1964. Since the entry was mistakenly wrongful, rather than wilfully tortious, appellant is not entitled to either punitive damages or to damages measured by the value of the quarried rock after severance. In accordance with the applicable principles of law the opinion and judgment on appeal must be affirmed.

JUDGMENT

The judgment appealed from is amply supported by the law, is in accordance with applicable principles of law and is affirmed.

Concurring Opinion by CLIFTON, *Temporary Judge*:

Appellant's counsel in his brief in this case and in *Calvo* has quoted numerous authorities, including citations from *Corpus Juris Secundum*, on the general points as to unconstitutional delegations of powers by the United States Congress, and constitutional requirements of the separation of governmental powers into the legislative, executive and judicial branches. Although, as stated in the foregoing opinion, these citations were made in support of general principles of law, it possibly may be inferred that the specific points to which the citations apply are that Congress under the United States Constitution could not delegate to the President and through him to the Secretary of the Interior the power to make laws affecting the Trust Territory, including not only the laws providing for the exercise of the power of eminent domain but to make *any* laws including those setting up a judicial system, and the point that the Secretary of the Interior in promulgating the laws affecting the Trust Territory was acting in legislative capacity in violation of the constitutional scheme of separation of powers of government. **It** would seem

appropriate here to discuss these points in relation to the judgment in this case and also in support of the opinion in *Calvo*, particularly with the following statement in *Calvo*.

"Further, that the delegation of this authority (the power to govern) by the President of the United States, as authorized by Congress, is within the constitutional power of Congress and the President over foreign affairs."

I have no quarrel with the appellants' counsel's citations of the authorities mentioned insofar as they relate to states of the United States. However, such authorities have no application with relation to the Congressional delegation of power to the President to govern territory which is *not* a part of the United States and they have no application to the question of whether the Secretary of the Interior was exercising a legislative function in relation to the making of laws governing the Trust Territory, which is *not* a state and *not* a part of the United States. The United States Supreme Court in a large number of cases has held that many United States constitutional provisions are not applicable to lands which are not a part of the United States. See: 49 Am. Jur. 330, 331. *Hawaii v. Mankichi*, 190 U.S. 197, 23 S.Ct. 787. *Balzac v. People of Porto Rico*, 258 U.S. 298, 42 S.Ct. 343. *Downes v. Bidwell*, 182 U.S. 244, 21 S.Ct. 770. *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 57 S.Ct. 764. *Hoover and Allison Co. v. Evatt*, 324 U.S. 653, 65 S.Ct. 870. *DeLima v. Bidwell*, 182 U.S. 1, 21 S.Ct. 742. *14 Diamond Rings v. United States*, 183 U.S. 176, 22 S.Ct. 59.

The constitutional provisions cited by appellant are in the same category as those involved in the foregoing citations. They are not applicable in relation to the governing of the Trust Territory.

With relation to the minor question of the allowance of only 3% interest on the money deposited from the date of

deposit which question was alluded to in the above opinion, it may be observed that some authorities hold that where the amount deposited in a condemnation case where immediate possession of the property is required is less than the value established by the judgment, that the compensation should include an amount comparable to the legal rate of interest. See 27 Am. Jur. 2d, Eminent Domain, §§ 297, 302 and 304. However, as the trial judge in this case included interest at the rate of 6% on the amount of damages to the property which was not taken, it would appear as stated in Justice Turner's opinion that there is "no denial of fair compensation in fact." In any event, I cannot agree with appellant's contention that a different holding as to the amount of interest would affect the validity of the condemnation proceedings in this or in any action. The only effect would be to slightly increase the percentage of interest on the money deposited, and as there has been fair compensation regardless of the method of computation, I concur in the result of the judgment.