

NGIRAIBIOCHEL, Appellant

v.

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

Civil Action No. 123

Trial Division of the High Court

Palau District

September 5, 1958

Action to determine title to below high watermark in Koror Municipality. Land was owned by appellant during Japanese Administration and was taken by Japanese Government after declaration that all land below high watermark was government land. On appeal from District Land Title Determination, the Trial Division of the High Court, Associate Justice Philip R. Toomin, held that neither under Japanese law nor under common law are there any rights possessed by party to utilize land between high and low watermarks. **Affirmed.**

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

Decisions of former governments prior to March 27, 1935, relating to land ownership and rights are binding. (Policy Letter P-1, December 29, 1947)

**2. Public Lands—Succeeding Sovereign**

All rights in land acquired by German and Japanese Governments are property of Trust Territory Government. (Policy Letter P-1, December 29, 1947)

**3. 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 subject to review and are considered valid unless former owner establishes sale was not made of free will and just compensation was not received. (Policy Letter P-1, December 29, 1947)

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

Where no claim is made by party that his land was transferred to Japanese Government or that consideration was paid by Japanese Government for tidal lands, Trust Territory administrative policy as to land transfers occurring since March 27, 1935, is not applicable. (Policy Letter P-1, December 29, 1947)

**5. International Law—Sovereignty**

Right to enact laws determinative of boundaries of land lying along shores of open sea is traditional attribute of sovereignty.

**6. Real Property—Shore Lands**

Land along seashore which is covered by ebb and flow of tide waters is real property and is exclusively subject to laws of country within which it is situated.

**7. Real Property—Shore Lands**

Only that country within which land along seashore is situated can prescribe mode by which title thereto passes from one person to another or any interest therein gained or lost.

**8. Former Administrations—Applicable Law**

Under League of Nations Mandate, Japan was free to apply its laws to Palau Islands to same extent as though they had been geographical division of the Japanese Empire.

**9. Former Administrations—Applicable Law**

Laws of Japan were legally applicable to Palau Islands from December 17, 1920, onward, at least until American occupation.

**10. Former Administrations—Official Acts**

Where there is no showing that Japanese proclamation regarding taking of tidal lands in Palau Islands operated in discriminatory fashion upon party's land or imposed unusual burdens on him, it will be upheld as within government's legislative competence.

**11. Trust Territory—Applicable Law**

Common law of England and statutes of Parliament in aid thereof and in force July 3, 1776, as interpreted by American decision, constitute law of Trust Territory except as otherwise provided in Trust Territory Code or by laws of Trust Territory in effect on date of adoption of Code or subsequently. (T.T.C., Sec. 22)

**12. Trust Territory—Applicable Law**

Spanish, German and Japanese laws are no longer in effect in Trust Territory except with respect to certain land laws and excepting also status of local customary law included within any repealed enactments. (T.T.C., Sec. 23)

**13. Trust Territory—Land Law**

Law concerning ownership, use inheritance and transfer of land in effect in Trust Territory on December 1, 1941, remain in effect except as changed by written enactment under authority of Trust Territory Government. (T.T.C., Sec. 24)

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**14. Real Property—Shore Lands**

If Japanese proclamation concerning boundaries of private ownership of land along sea was in effect December 1, 1941, it furnishes rule for determining ownership of lands below high water. (T.T.C., Sec. 24)

**15. Former Administrations—Applicable Law**

If Japanese proclamation concerning boundaries of private ownership of land along sea was not in effect December 1, 1941, ownership of such land must be determined by rules of common law.

**16. Public Lands—Shore Lands**

Under common law, land along sea below high watermark belonged to the crown, and was held in trust for benefit of all the people.

**17. Public Lands—Shore Lands**

Under American view, individual ownership of lands along navigable tidewaters extends only to high watermark.

**18. Public Lands—Shore Lands**

Under American view, state owns, in trust for the people, navigable tidewaters between high and low watermarks within each state's boundaries, and soil under them, as inseparable attribute of state sovereignty.

**19. Former Administrations—Applicable Law**

Nothing in Trust Territory Code regarding exceptions to Japanese rule concerning lands below high watermark indicates legislative intent to make provisions retroactive. (T.T.C., Sec. 32)

**20. Statutes—Construction—Prospective Effect**

Unless legislative intent to make statutory provisions retroactive clearly appears, they are to be given prospective effect only.

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

TOOMIN, *Associate Justice*

OPINION

This is an appeal from a Determination of Ownership by the District Land Title Officer of Palau District, of legal title to part of the land known as Omis, located in Koror Municipality. After due hearing, pursuant to notice, of the claim of appellant to said land, filed in pursuance

of Office of Land Management Regulation No. 1, the Land Officer found legal title to said land to be in the appellee Trust Territory of the Pacific Islands.

By agreement of the parties, the only evidence to be considered by this court upon appeal, consists of the record made at the hearing on appellant's claim in the District Land Title Office, together with all documents filed in support thereof, and the findings of fact and conclusions of the District Land Title Officer in relation thereto. From this record, it appears that there are no controverted issues of fact, but only of law.

It appears from the agreed facts that appellant was the owner of a tract of land described as Lot 1018 in the Japanese Land Register for Koror Municipality, which land was bounded by the open sea. In 1942 appellant sold earth from this land to a Japanese national to be used in filling in the land between the high and low watermarks, and erecting thereon a dwelling for his use. Appellant agreed to convey title to the filled land, which he described as Lot 1018B, upon receipt of the agreed purchase price. Earnest money was paid and the land duly filled in and construction of the dwelling started, but prior to its completion it was destroyed during the bombing of Koror. Subsequently, the purchaser defaulted under the purchase contract, without ever receiving actual conveyance of title.

It appears also that by proclamation on a date not shown in the record, the Japanese Administration had declared all land below high water to be Government land. The claim of appellees to the land below high water is based on this proclamation, as well as under the provisions of new Section 32, Trust Territory Code adopted January 8, 1958, pursuant to Executive Order No. 71. Under this section, covering areas below high watermarks, it is provided as follows:

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*"Sec. 32. Rights in Areas Below High Water Mark.*

That portion of the law established during the Japanese Administration of the area which is now the Trust Territory of the Pacific Islands, that all marine areas below the high water mark belong to the government, is hereby confirmed as part of the law of the Trust Territory, . . . ."

The questions of law thus presented for resolution, are whether the proclamation of the Japanese Administration relative to its ownership of marine areas was valid and binding and deprived appellant of any interest in the subject land, or if not, whether Section 32, Trust Territory Code operated to deprive appellant of his interest therein, and if so, the effective date thereof.

It is argued by appellant that if the proclamation of Japanese Government ownership of marine areas occurred after March 27, 1935, it should not be recognized, because of inconsistency with Trust Territory Policy Letter P-1 of December 29, 1947. In this letter, of which this court will take judicial notice, was expressed the land policy of the Trust Territory Government with respect to the validity of land transfers in the past. So far as the court has been able to ascertain, there has been no published modification or withdrawal of any of the provisions thereof.

[1] Paragraph No. 10 of Policy Letter P-1 provides that decisions of former Governments prior to March 27, 1935, as to land ownership and rights will be considered binding.

[2] Paragraph No. 11 specifies that all rights in land acquired by the German and Japanese Governments will be considered property of Trust Territory Government.

[3] It is provided in Paragraph No. 13 that 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

and will be considered valid, unless the former owner establishes the sale was not made of free will and just compensation was not received.

[4] If this were a case involving transfer of land by coercion and for an inadequate consideration, and to any of the persons mentioned therein, Policy Letter P-1 would have relevance. However, it is not claimed that transfer to the Japanese Government ever occurred, or that any consideration was paid by it for these tidal lands. Hence, the letter does not apply to the situation at bar. It is governed instead by the question as to whether it was within the competence of the Japanese Government to enact laws determinative of the boundaries of land lying along the shores of the open sea surrounding the Palau Islands.

[5-7] That the right to enact such laws has traditionally been an attribute of sovereignty cannot be successfully negated. *United States v. State of California*, 332 U.S. 19, 67 S.Ct. Rep. 1658, 1663. Since the land along the seashore and covered by the ebb and flow of tidewaters is real property, it follows that it is exclusively subject to the laws of the country within which it is situated, and that the laws of that country alone can prescribe the mode by which title thereto passes from one person to another, or any interest therein gained or lost. 11 Am. Jur. 328, Conflict of Laws, § 30.

True enough, the Palau Islands were never legally a part of the Japanese Empire. However, Japan had been confirmed by the League of Nations as mandatory power in charge of these islands under a Class C mandate. The following provisions of Article 2 of the Mandatory Charter define the powers of administration of Class C mandatory powers:

*“Article 2.* The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Empire of Japan, and may apply the laws of the Empire of Japan to the territory, subject to such local modifications as circumstances may require. The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate.”

[8] Thus, by international agreement, Japan was free to apply its laws to the Palau Islands to the same extent as though they had been a geographical division of the Empire. That it did, in fact do so, is shown by the reference to these islands in Japan’s last report (1938) to the League of Nations, in which they are defined as an integral part of the Japanese Empire.

[9] It seems clear, then, that at least until the American occupation, the laws of Japan were legally applicable to these islands, from December 17, 1920, onward, when the legality of her position under mandate was confirmed by the League of Nations.

[10] It follows then, that appellant has no legal warrant to complain of the action taken by the Japanese authorities in promulgating the challenged regulation. There being no showing that it operated in discriminatory fashion on appellant’s land or imposed unusual burdens on him the Court is constrained to uphold the Japanese proclamation as being within its legislative competence.

With respect to the effective date of the Japanese proclamation, neither side has offered evidence. It is likely that it occurred after 1942, since that is the year appellant entered into arrangements for sale of fill to a Japanese national, to be utilized in preparing the low water land as a site for construction of his dwelling. Doubtless, such a deal would not have been made after knowledge of the Government’s action with respect to the fixing of bounda-

ries. However, in the view this court takes of the matter, it is of no particular moment precisely when the proclaimed policy took effect, so long as it, or a regulation of similar substance, was in effect when appellant's claim was filed in the District Land Title Office.

[11-12] Appellant's claim to Lot 1018 was filed September 5, 1956. What was the applicable law in effect in Trust Territory on that date? On examination of Trust Territory Code, it is provided in Section 22 thereof, that the common law of England and the statutes of Parliament in aid thereof and in force July 3, 1776, and as interpreted by American decisions, constitute the law of Trust Territory, except as otherwise provided in Section 24, or by laws of Trust Territory in effect on the date of adoption of the Code, December 22, 1952, or subsequently. By Section 23, the prior Spanish, German and Japanese Laws were all repealed, except with respect to land laws described in the following section, and excepting also the status of local customary law included within any repealed enactments. This second exception has no relevance to the case at bar, since it is not contended there was any local custom in force with respect to the boundary of land between high water and low watermarks.

[13] Section 24 provides that the law concerning the ownership, use, inheritance and transfer of land in effect December 1, 1941, shall remain in effect except as changed by written enactment under the authority of Trust Territory Government.

[14,15] Summing up these provisions and their application to the case at bar, it is concluded (1) the ownership of land is necessarily involved in this dispute, hence Section 24 is operative; (2) if the Japanese proclamation concerning the boundaries of private ownership of land along the sea was in effect December 1, 1941, it furnishes



the rule for determining ownership of the lands below high water; and (3) if the Japanese Proclamation was not in effect December 1, 1941, the ownership of such land must be determined by the rules of the common law.

[16] An examination of the applicable authorities discloses no substantial difference between the Japanese regulation and the rule at common law. Under what has become known as Lord Hale's Doctrine, it was conceived that land along the sea below high watermark belonged to the Crown, and was held in trust for the benefit of all the people.

[17] After the Revolution the American view became established that the several states had succeeded to the right of the Crown in the soil under navigable tidewaters, and that individual ownership extends only to the high watermark. 56 Am. Jur. 864, Waters, § 452 and ffg.

[18] In the first authoritative decision of an American reviewing court, it was held that a state owns in trust for the people, the navigable tidewaters between high and low watermarks within each state's boundaries and the soil under them, as an inseparable attribute of state sovereignty. *Pollard's Lessee v. Hagan*, 3 How. (44 U.S.) 212, See also *Hardin v. Jordan*, 140 U.S. 371, 11 S.Ct. Rep. 808, 811, and *Borax Consolidated v. City of Los Angeles*, 296 U.S. 10, 56 S.Ct. Rep. 23.

Thus it is clear that whichever rule prevails, that adopted by the Japanese by proclamation, or the statutory rule included within Section 22, Trust Territory Code, the result is the same insofar as it bears upon appellant's ownership of lands below high watermark. It follows that the law in effect September 5, 1956, precludes the claim filed by appellant on that date, for a determination of ownership in his favor.

The sole remaining question has to do with the effective date of Executive Order No. 71, providing for adoption of new Section 32 in Chapter 2 of the Code. By this Executive Order, the Administration undertook to confirm the Japanese rule concerning lands below high water, but with certain exceptions relative to fish weirs or traps. By this amendment to the Code, the native rights in fish traps which they possessed under customary law and which had been abolished by the Japanese Administration, were reestablished, and confirmed in the persons or groups who possessed them at the time of abolition.

[19,20] Nothing in the verbiage of Section 32 indicates a legislative intent to make the provisions retroactive. Accordingly, they follow the rule that unless the legislative intent to make the statutory provision retroactive clearly appears, they are to be given prospective effect only. 50 Am. Jur. 494, and ffg.; Statutes, § 478.

However, this result would have no effect on the position of appellant in this litigation, since, as we have seen above, neither under Japanese law nor under the common law were there any rights possessed by him, to utilize the land between high and low water.

It follows then, that the action of the District Land Title Officer of Palau District in determining that title to that part of the land Omis between high and low water, was in the Alien Property Custodian of the Pacific Islands, was correct and should be sustained. Accordingly, all objections thereto are overruled and the same is hereby affirmed.