TAMAEL, Appellant

v.

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

Civil Action No. 109

Trial Division of the High Court

Palau District

September 25, 1958

Action to determine title to land in Ngerchelong Municipality, in which plaintiff claims as representative of clan which formerly owned land taken by Japanese Government in 1924 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 adequate time for recourse to courts for redress of wrongs was not available to plaintiff and clan prior to change of sovereignty and that taking was therefore in suspense and does not constitute a taking prior to cut-off date set by administration. Reversed.

1. **Former Administrations—Redress of Prior Wrongs**
   Where question for determination by court involves righting of ancient wrongs of prior power, answer is found in domain of international law and not in principles of equity jurisprudence.

2. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
   Where party's claim for return of property taken by Japanese Govern-

ment was existing cause of action on December 1, 1941, it is considered to have accrued on May 28, 1951. (T.T.C., Sec. 324)

3. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
   Where prosecution of party's claim for return of property taken by Japanese Government was effectively stayed because of coming of World War II, and no machinery was set up for filing of such claims until January 11, 1951, party's claim is timely filed under applicable Land Management Regulation. (Land Management Regulation No. 1)

4. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
   Where Japanese courts determined clan's claim for return of property taken by government in 1939, and within two years any other effective action that might have been taken was barred by coming of war, adequate time for recourse to courts or elsewhere for redress of wrongs was not available to clan prior to change of sovereignty.

5. **Former Administrations—Taking of Private Property by Japanese Government—Compensation**
   Where land was taken by Japanese Government by coercion and without payment of compensation, action was no better than forfeiture of property.

6. **Eminent Domain—Taking**
   Forfeiture of private property comes under interdict of Trust Territory Bill of Rights as taking of property for public use without just compensation. (T.T.C., Sec. 4)

7. **Former Administrations—Redress of Private Wrongs**
   No jurisdiction is conferred on courts of Trust Territory to award redress of wrongs where Trust Territory Government had no part in commission thereof.

8. **Former Administrations—Recognition of Established Rights**
   Matters of recognition by subsequent sovereign of equitable rights outstanding but undisposed of under prior sovereign are not within purview of judicial branch except as recognized by legislative branch.

9. **Trust Territory—Suits Against**
   There can be no action for return by government of property in its possession or claimed by it without its consent.

10. **International Law—Sovereignty—Sovereign Immunity**
    Implicit in sovereignty of nations is right to determine how, when, and under what circumstances they may be sued.

11. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
    Established Trust Territory administrative policy with respect to return of lands taken by Japanese Government from native owners is binding on courts until rescinded or modified. (Policy Letter P-1, December 29, 1947)

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

Land transfers from non-Japanese owners to Japanese Government, corporations or nationals since March 27, 1935, are considered valid unless former owner establishes sale was not made of free will and just compensation not received. (Policy Letter P-1, December 29, 1941)

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

Reasonable cut-off date for origination of claims involving transfers of land to Japanese Government is entirely matter of legislative prerogative.

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

Where taking of private property by Japanese Government occurred prior to March 27, 1935, but taking was protested and subjected to judicial interposition, and final adjudication occurred so shortly before closing of courts to further action as to have given party inadequate time for redress of wrongs, taking is held to have been in suspense and does not constitute taking prior to cut-off date.

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

Even if taking of private property by Japanese Government represents a taking prior to cut-off date set by Trust Territory policy, claim arising before that date is not necessarily barred. (Office of Land Management Regulation No. 1)

16. Public Lands—Determination of Ownership

Where lands were formerly or are used, occupied or controlled by United States Government or Trust Territory Government, District Land Title Officer may determine ownership of lands and effect their return to party found to be owner. (Office of Land Management Regulation No. 1)

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

If private property taken by Japanese Government is not returnable under provisions of administrative policy regarding transfers to Japanese Government from native owners, then claim for its return may still fall into one of categories of Office of Land Management Regulation No. 1, and land may be returnable thereunder.

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 of certain lands made by the District Land Title Officer of Palau District, and filed with the Clerk of Courts of said district. The proceedings arose through the filing of claim on the part of appellant for a finding of ownership in him, as clan representative of certain lands located in Palau District. After a hearing pursuant to Office of Land Management Regulation No. 1, the Land Title Officer decided the claim adversely to appellant, and released the land in question to the appellees.

The record made at the hearing of said claim, including the testimony and exhibits offered and received on behalf of appellant, and the finding of fact and conclusions of the Land Title Officer, have been received in evidence on this appeal, by agreement of the parties. No other evidence has been offered for consideration by the court on this appeal.

From an examination of the record so made, and of the understandings and agreements of the parties 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 this court on appeal:

The land involved in this proceeding known as Iyeb is located in Ngerchelong Municipality, Babelthuap Island, Palau District, and contains approximately 540,000 square feet. Prior to the Japanese Administration it was owned by the clan Blaechur, of which appellant is the chief, and for whose benefit he makes this claim.

In 1924, the land was taken by the Japanese Government pursuant to its policy of seizing lands not in actual use. No consent was obtained from the clan, and no compensation was paid. The clan did not know of the taking until the year 1937, at which time they protested. During the period from 1924 through 1937, the clan used the land for production of food but did not live on the land. When attempts to secure return of the land by administrative action failed, the clan filed suit at Koror in 1939, but were unsuccessful.

Appellees admit the truth of the foregoing recitals, but contend that too great an interval of time has passed since the taking of the property to warrant the court in reviewing the circumstances thereof at this time.

Accordingly there is here presented for determination the question of whether a successor power is required to right ancient wrongs perpetrated upon its subjects by a prior power, and whether the courts of the successor are warranted in awarding relief against such wrongs.

[1] The answers to these questions will be found, if at all, in the domain of international law, and not in the well-recognized principles of equity jurisprudence. For here is involved an attempt to recover from one sovereign, property which has passed to it from its predecessor which obtained it wrongfully (according to the law of the successor, but not necessarily so under the law of the predecessor) from the claimant.

While such situations are not legion, there are sufficient well-considered expressions in cases originating in the field of international law, to enable this court to find what appears to be the proper path. They have been discussed at length in a case decided September 4, 1958, *Ngodrii Santos v. Trust Territory, et al.*, 1 T.T.R. 463, in which the facts closely parallel those in the case at bar. The discussion in that case, the legal authorities there cited

and followed, and the legal principles there recognized, are adopted here as the law in this case.

[2, 3] Here, as in that case, this court has come to the following conclusions:

(a) The claim of appellant for return of the subject property, was an existing cause of action on December 1, 1941, hence under Section 324, Trust Territory Code is considered to have accrued on May 28, 1951.

(b) The prosecution of this claim was effectively stayed because of the coming of World War II.

(c) No machinery was set up for the filing of such claims until January 11, 1951, when the first land management regulation was promulgated.

(d) The claim of appellant was timely filed under said regulation.

[4] Under the admitted facts, the claim of appellant for return of the clan's land was determined by the Japanese courts in 1939. Within two years thereafter, the coming of the war closed the door to any other effective action which might have been taken. Considering the fact that there is here involved no transfer of land, but rather a forfeiture, it is considered that other action could have been taken, but that insufficient time was available for the purpose. It is, therefore, the conclusion of this court that adequate time for recourse to the courts or elsewhere for redress of wrongs was not available to appellant and the clan prior to the change of sovereignty, and that therefore, the rule of *Wasisang v. Trust Territory*, 1 T.T.R. 14, and the cases following it, is not here applicable. There being no bar, then, to the consideration of appellant's claim because of the passage of time, we pass to a consideration of the claim on its merits.

[5, 6] As to the merits of appellant's claim there seems to be no question. The clan's land was taken by

coercion and without payment of compensation, under the Japanese Government's view that all land not in actual use by someone, belonged to the Government. This was no better than forfeiture of property, and had it occurred after the change of government, would have come under the interdict of Section 4 of the Bill of Rights, (Chapter 1, T.T.C.) as a taking of private property for public use without just compensation.

[7, 8] However, though the taking would have created a cause of action under the laws of Trust Territory, this is not sufficient to confer jurisdiction on a court to award redress of wrongs, where Trust Territory Government had no part in the commission thereof. What is here involved is a situation similar to the one found in *Cessna v. United States, et al.*, 169 U.S. 165, 18 S.Ct. Rep. 314, where the question under consideration was the matter of recognition by the subsequent sovereign of equitable rights outstanding but undisposed of under the prior sovereign. The court there held that such matters are not within the purview of the judicial branch, except as they have been recognized by the legislative branch, and legislation adopted expressing the will of Congress as to the time, manner and condition of enforcement.

[9, 10] Moreover, no matter how meritorious a claim may be presented by a given state of facts warranting action for return by the government of property in its possession, or claimed by it, there can be no action against the government without its consent. This is because of the doctrine that implicit in the sovereignty of nations, is the right to determine how, when and under what circumstances they may be sued. 40 Am. Jur. 301, States, Territories and Dependencies, §§ 91–96. *Beers v. Arkansas*, 20 How. (U.S.) 527, 15 L.Ed. 991. *Minnesota v. United States*, 305 U.S. 382, 595 S.Ct. 292. 54 Am. Jur. 633, United States, § 127 and cases there cited.

[11] The policy with respect to the return of lands taken by the Japanese Government from native owners, was considered by the government established in Trust Territory by the Department of the Navy, within a matter of months after civil administration was instituted. On December 29, 1947, the Office of the Deputy High Commissioner issued to the District Administrators, Trust Territory Policy Letter P-1, relating to land policy. This letter purported to state the rules to be followed by the District Administrators in returning lands to native owners, of which they had been wrongfully deprived by the prior administration. The court has taken judicial notice of Policy Letter P-1 and considers it to be an authoritative exposition of Trust Territory Government Policy, binding on the courts, at least until such time as it is rescinded or modified. 11 Am. Jur. 814, Constitutional Law, § 139, note 12 and cases there cited. *Peterson v. Widule*, 157 Wisc. 641, 147 N.W. 966, Ann. Cases 1916B, 104.

[12] Under this letter the following rules were promulgated with respect to the validity of land transfers made in the past:

"10. Decisions by former government as to land ownership and rights, prior to the effective date of Japan's resignation from the League of Nations, on March 27, 1935, will be considered binding.

11. Rights in lands acquired by the German or Japanese governments will be deemed to be property belonging to the Government of the Trust Territory.

12. Land transfers from the public domain to Japanese corporations or Japanese nationals since March 27, 1935, will be considered invalid.

13. Land Transfers from non-Japanese private owners to the Japanese government, Japanese corporations, or Japanese nations 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] From the quotations above, it appears that the Administration has considered March 27, 1935, to be a reasonable cut-off date for the origination of claims. As stated above and as this court holds, this is entirely a matter of legislative prerogative, consisting of the legislature's considered judgment as to the proper drawing of lines. However, it will be noted, that nowhere has the legislative definition touched on the status of claims originating prior to March 27, 1935, but pending and undisposed of down to the end of the Japanese period. Is it reasonable to assume that if the existence of such claims had been called to the attention of the draftsman of Policy Letter P-1, they would have been accorded less favorable treatment than claims originating subsequent to March 27, 1935, but finally adjudicated and disposed of shortly thereafter.

[14] This court thinks not, and accordingly is constrained to hold, that where the taking, though prior to March 27, 1935, was protested and subjected to judicial interposition, and although final adjudication occurred, it was received so shortly before the closing of courts to further action as not to have given the party adequate time for redress of wrongs, such taking will be considered to have been in suspense, and not to constitute a taking prior to the cut-off date.

[15] But even if it be considered that the case at bar represents taking prior to the cut-off date, hence is outside the favorable provisions of Policy Letter P-1, nevertheless the court is of the opinion that the claim is not barred, but is available pursuant to the provisions of Office of Land Management Regulation No. 1.

[16] The purpose of said Regulation is stated in Section 1 thereof, as being the providing of procedures whereby may be determined the ownership of lands now or formerly used, occupied or controlled by the United States Government, or any of its agencies, or the Government of the Trust Territory of the Pacific Islands, and to effect return of those lands no longer needed to the owners.

Section 2 empowers the District Land Title Officer to determine the ownership of such lands, and Section 3 to release them to the party found to be the owner.

[17] Obviously the lands claimed by appellant fall naturally into the class of those "used", "occupied", or "controlled", by either the United States Government or that of Trust Territory, as otherwise there would have been no jurisdiction in the District Land Title Office to have passed on the claim of appellant, nor to have released the lands in question to appellees. Neither Office of Land Management Regulation No. 1, nor Section 926 of Trust Territory Code, on which it is based, have any time limit for the origination of claims as a condition to return of lands controlled, used or occupied by either government. It would, therefore, appear that if appellant's land is not returnable under the provisions of Policy Letter P-1, as construed by this court hereinabove, the claim for its return falls into one of the categories contained in Office of Land Management Regulation No. 1, and the land is returnable thereunder.

It is accordingly the opinion of this court, that in line with the reasoning hereinabove contained, the legal title to the land in question, ought, in equity and good conscience, be returned to appellant for the use of his clan.

JUDGMENT

It is, therefore, the judgment of this court that the Determination of Ownership made and filed with the Clerk

of Courts of Palau District by the District Land Title Officer of said district, relative to the land Iyeb located in said District, was erroneously made, and that same be and hereby is, reversed and held for naught.

It is further adjudged that title to the land Iyeb be and the same is hereby confirmed in appellant as representative of the Blaechur Clan, free and clear of any right, title or interest therein on the part of appellees, or any other person in privity with them.