

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

Civil Action No. 104

Trial Division of the High Court

Palau District

July 23, 1959

Action to determine title to land in Koror Municipality which was taken by Japanese Government from plaintiff after compensating him at the rate of one yen per tsubo. Plaintiff contends that compensation was inadequate and that land was taken by force. On appeal from District Land Title Determination, the Trial Division of the High Court, Chief Justice E. P. Furber, held that whether sale was informal taking under power of eminent domain or negotiated sale under threat of taking, plaintiff has not sustained burden of proving he did not receive just compensation for land.

Affirmed.

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

Whether taking of private property in Palau Islands by Japanese Government was negotiated sale under threat of taking or informal taking under Japanese Administration's power of eminent domain, former owner has obligation to use reasonable effort to reduce his damage or loss.

2. Former Administrations—Taking of Private Property by Japanese Government—Compensation

Whether taking of private property in Palau Islands by Japanese Government was negotiated sale under threat of taking or informal taking under Japanese Administration's power of eminent domain, former owner has burden of proving that he did not receive just compensation.

3. Real Property—Crops

In order to determine fair value of growing crop at time of transfer of land, costs and value of labor involved in maturing, harvesting and marketing of crop must be deducted from final price for which it might have been sold.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The transfer of the land in question from the appellant to Nantaku (South Seas Development Company), a

Japanese quasi-governmental corporation, was negotiated under threat by the representative of Nantaku that the land would be taken by force if the appellant did not consent to the transfer.

2. When the representative of Nantaku threatened to take the land by force, the appellant acquiesced in giving up possession in 1939 and accepted five hundred (500) yen in payment for the land without raising any question about the price or about his crop of tapioca growing on the land, although he made it very clear that he did not want to sell the land at all.

3. Though the representative of Nantaku discussed this transfer with the appellant on at least four different occasions, the appellant made no effort to harvest any of his crop before giving up possession, or to delay delivery of possession until the crop had been harvested, or to get permission to harvest any of it later.

4. The five hundred (500) yen received by the appellant at the rate of one yen per tsubo, constituted at least substantially adequate compensation.

CONCLUSIONS OF LAW

1. This is an appeal from a title determination by the District Land Title Officer for the Palau District in favor of the Trust Territory and against the appellant. At the pre-trial conference it clearly appeared that whatever interest the Trust Territory may have had in the land in question had been vested in its Alien Property Custodian and the title determination was accordingly modified to reflect this.

2. The appellant claims he never sold the land and that it was taken from him by force, but it appears from his own testimony that the Japanese clearly viewed the transfer as a negotiated sale to avoid a taking through government action. The appellees contend that even if this was

a forced sale, it was a valid one since the appellant received just compensation. They also claimed at the pre-trial conference 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, but they have not pressed that point vigorously, and in view of the position which this court takes on the question of compensation, it becomes unnecessary to consider this second point raised by the appellees.

[1, 2] 3. It makes no difference in the result of this appeal whether the transfer of the land in question from Ngirkelau to Nantaku is considered as a negotiated sale under the threat of taking or as an informal taking under the Japanese Administration's power of eminent domain. On either theory the appellant had an obligation to use reasonable effort to reduce his damage or loss, and the burden of proving that he did not receive just compensation is on the appellant. 19 Am. Jur., Equity, §§ 33, 35-37, 387 and 480. 18 Am. Jur., Eminent Domain, §§ 262 and 342. *Salii Ngirakelau v. Trust Territory of the Pacific Islands*, Palau District Civil Action No. 70.

[3] 4. The appellant has placed stress on the amount for which he now believes he could have sold at retail by the basketful, the tapioca crop he had growing on the land if he had remained in possession until the crop had matured and been harvested. In that connection it should be noted, however, that in order to determine the fair value of the growing crop at the time of the transfer, all the costs and value of the labor involved in maturing, harvesting and marketing the crop would have to be deducted from the final price for which it might have been sold. 15 Am. Jur., Crops, § 72. The labor involved in retailing it by the basketful would have been substantial and it appears most unlikely that he could have sold the whole

crop as a unit for any such price as he has named. This transfer was in 1939 when general conditions on Koror still appear to have been reasonably orderly and the appellant was not suddenly run off of his land. Yet, the appellant showed no interest whatever in trying to salvage anything from his growing crop at the time or to recover anything for it. The inference is strong that he considered his tapioca of little consequence and that he was correct in thinking of it then, in accordance with what appears to have been the general Palauan view at that time, as a quick-growing crop, easy to raise for subsistence purposes, but having little cash possibilities or value.

5. On the evidence introduced in this court and the record of that filed with or received by the District Land Office, the court holds that the appellant has not sustained the burden of proving that he did not receive just compensation for the land in question.

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. 55, dated March 5, 1957, filed March 8, 1957, with the Clerk of Courts for the Palau District in this Volume T-1, page 90, covering the land known as Ereong, located in Koror Municipality, Palau District, as modified by order of this court entered June 25, 1958, substituting the Alien Property Custodian of the Trust Territory of the Pacific Islands as owner and the one to whom release and immediate possession is granted in place of the Trust Territory of the Pacific Islands itself, is hereby affirmed.

2. No costs are assessed against any party.