CATHOLIC MISSION, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS and its ALIEN PROPERTY CUSTODIAN, Appellees

Civil Actions Nos. 14 and 15

Trial Division of the High Court

Yap District

October 26, 1961

Action to determine ownership of land in Welog Municipality, in which plaintiff seeks to recover pieces of land taken by Japanese Administration in 1926 and 1939. On appeal from District Land Title Determination, the Trial Division of the High Court, Chief Justice E. P. Furber, held that transfer occurring in 1926 was act of Japanese Administration which must be accepted by courts of this administration; as to pieces of land confiscated in 1939, policy of Trust Territory, that lands transferred to Japanese Government after 1935 are considered valid until owner establishes transfer was involuntary and inadequate compensation was received, applies.

Modified.

1. **Administrative Law—Land Title Determination—Irregularities**

   By requesting determination on merits of land dispute and subjecting themselves to court's jurisdiction, parties waive any objections they might have to irregularities in proceedings before District Land Title Officer.

2. **Administrative Law—Land Title Determination—Evidence**

   Where land sketch attached to "Determination of Ownership and Release" from Land Title Officer, is ambiguous, it is of no legal force or effect as against party.

3. **Eminent Domain—"Taking"**

   Where Japanese Government took possession of land in 1926, erected structures thereon and interfered with any other use of any small intervening portions not actively used by it, entire area is considered to have been in possession of Japanese Government since 1926.

4. **Former Administrations—Official Acts**

   Where Japanese Government confiscated and took possession of piece of land in 1926, whether such taking was legal or illegal under law in effect at the time, it must be recognized as act of Japanese Administration.

5. **Former Administrations—Japanese Mandate**

   Japanese Government administering territory under mandate of League of Nations was in same position as sovereign which has been accorded recognition.

6. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
Where transfer of land to Japanese Government occurred in 1926, and therefore many years before termination of Japanese Administration, there was ample time to seek redress through judiciary or other authorities of that administration.

7. **Former Administrations—Official Acts**
Transfer of land to Japanese Government in 1926 must be accepted by courts of present administration without examining merits just as confiscations by foreign government of property within its power are binding upon government which recognizes government effecting such confiscation.

8. **Former Administrations—Redress of Prior Wrongs**
It is no part of duty of nation receiving cession of territory to right wrongs which grantor nations may have theretofore committed unless wrong occurred so near time of cession that there was no reasonable opportunity to apply to courts or other authorities of that nation for redress.

9. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
Court is bound by Trust Territory policy that where land was taken by Japanese Government after March 27, 1935, taking is valid unless former owner establishes sale was not made of free will and just compensation not received. (Policy Letter P-1, December 29, 1947)

10. **Public Lands—Succeeding Sovereign**
Any interest previously owned or held by Japanese Government in any land or other property in Trust Territory is vested in Alien Property Custodian. (Vesting Order, September 27, 1951; Interim Regulations 4-48, 6-48, 3-50)

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The Japanese Government took physical possession under claim of ownership, at least as early as 1926, of all of the lands in dispute in these actions claimed by the Catholic Mission, except a triangular piece of lowland around and including the Spanish well and the land to the southwest of the top of the slope inclining to the southwest from a ridge extending from the southwest portion of the area used for a Japanese school and running south-

west of two or more concrete buildings erected by the Japanese, to the lagoon.

2. The Japanese Government took possession of the land southwest of the top of the slope above-mentioned about 1939.

3. The Japanese Government took possession of the triangular piece around and including the Spanish well during or immediately before World War II.

4. All of the above takings were made without payment of any compensation whatever and without the consent of the appellant.

OPINION

These are two appeals heard together from Determinations of Ownership and Release Nos. 3 and 5 respectively, by the Yap District Land Title Officer under Office of Land Management Regulation No. 1.

[1] It clearly appears that the proceedings before the Title Officer were started in an unusual manner, on the basis of written claims presented by the Government, not by the appellant, and without the public notice of time within which to file claims called for by Section 4(a) of Office of Land Management Regulation No. 1. It is considered, however, that the parties, by proceeding to trial in this court and requesting a determination on the merits, have subjected themselves to the jurisdiction of the court and have waived any objections there might otherwise be to any irregularities in the initiation of the proceedings.

[2] The sketch attached to and referred to in Determination of Ownership and Release No. 5 bears the notation "YTC Area and Mission Land not included", although the sketch clearly does include the area now claimed by the Mission. This creates such an ambiguity as to the exact area intended to be covered that the court holds that any land shown on the sketch which was actually owned

by the Mission must be considered excluded by the terms of the determination and that it therefore is of no legal force or effect as against the appellant.

[3] The evidence shows conclusively that the Japanese Government took possession of the major portion of the upland parts of the lands in question at least by 1926, and claimed ownership and retained the possession until World War II. They built a number of permanent structures thereon and, while there is some indication that each area actively used around these different structures may not in every instance have abutted directly upon another such piece, the pieces so actively used so nearly covered the total area, with the exceptions noted in the first finding of fact, and so effectively interfered with any other use of any small intervening portions of the upland there may have been which were not actively used by the Japanese Government, that it is believed the entire area in dispute, with the exceptions noted in the first finding of fact, must be considered to have been taken possession of and was as a practical matter and must be considered as a matter of law to have been, in the possession of the Japanese Government at least from 1926 until World War II.

[4–7] Counsel for the appellant has argued, however, that this possession was illegal and contrary to the representations of the Japanese Government to the League of Nations. Whether this possession was legal or illegal under the law in effect at the time, the taking and holding of this much of the land in question, must be recognized as an act of the Japanese Administration. The court considers that the Japanese Government, in its administration under the mandate of the League of Nations, was, for these purposes, in the same position as a sovereign which had been accorded recognition. The taking of possession was with regard to land clearly within the territorial jur-

isdiction of the Japanese Government many years before the termination of its administration, so that, if there was anything wrong about it, there was ample time to seek redress either through the judicial or other authorities of that administration. It must, therefore, be accepted by the courts of the present administration without examination of its merits, just as confiscations by a foreign government of property within its power are binding upon the courts of another government which has formally recognized the government which effected the confiscation. 30 Am. Jur., International Law, §§ 48 and 49.

[8] This court has repeatedly recognized the doctrine laid down in the case of *Cessna v. United States*, 169 U.S. 165, 18 S.Ct. 314, that it is no part of the duty of a nation receiving a cession of territory to right the wrongs which the grantor nation may have theretofore committed, unless the dispossession and wrong of the grantor nation occurred so near the time of the cession that there was no reasonable time to apply to the courts or other authorities of that nation for redress. See: *Wasisang v. Trust Territory*, 1 T.T.R. 14. *Kumtak Jatios v. Levi*, 1 T.T.R. 578. *Itpik Martin v. Trust Territory*, 1 T.T.R. 481. See also: 30 Am. Jur., International Law, § 47.

[9] The situation with regard to the land southwest of the top of the slope referred to in the first finding of fact, and the triangular piece around and including the Spanish well, however, is entirely different. The area southwest of the top of the slope was shown to have been taken possession of in 1939, and it is not clear that any possession of the area around the Spanish well was taken until the war itself. It is not necessary to go into the question of whether there was still barely time to appeal to the courts after the taking in 1939, because the administrative branch of the Government of the Trust Territory,

by the Deputy High Commissioner's Trust Territory Policy Letter P-1 of December 29, 1947, has established a policy of which the court has frequently taken judicial notice and which it considers binding on it, at least until such time as it is rescinded or modified. Paragraph 13 of that letter reads as follows:—

"13. 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."

In accordance with that policy these two pieces of land excepted in the first finding of fact belong to the appellant.

[10] The court takes notice that by Vesting Order issued on September 27, 1951, under Interim Regulation No. 4-48, as amended by Interim Regulations Nos. 6-48 and 3-50, any interest previously owned or held by the Japanese Government in any land or other property in the Trust Territory was vested in the Area Property Custodian, whose title has been changed to Alien Property Custodian and that, therefore, so much of the land now in question as was taken possession of by the Japanese Government in or before 1926, is now vested in the Alien Property Custodian of the Trust Territory, rather than the Trust Territory itself.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. The District Land Title Officer for the Yap District's Determination of Ownership and Release No. 3, dated November 21, 1956, and filed with the Clerk of Courts for the Yap District on December 6, 1956, is set aside.

2. As between the parties and all persons claiming under them, the lands known as Unenbach, Ugeram, and Alau, which together formed a part of the "Estate of Santa Cristina", located in Colonia, Weloy Municipality, Yap District, and are together shown roughly upon the attached sketch, excluding the areas outlined in red thereon (concerning which excluded areas the appellees have made no claim), are owned as follows:—

a. The Alien Property Custodian of the Trust Territory of the Pacific Islands owns all of said lands Unenbach, Ugeram, and Alau, with the following exceptions:—

(1) a triangular piece of lowland around and including the Spanish well, and

(2) the land to the southwest of the top of the slope inclining to the southwest from a ridge extending from the southwest portion of the area formerly used for a Japanese school, and running southwest of two or more concrete buildings erected by the Japanese, to the lagoon.

b. The lands excepted in the foregoing sub-paragraph are owned by the Catholic Mission, or its successor in interest.

3. If there is disagreement between the parties as to the exact location of any of the boundary lines of the lands in dispute after three months from this date, any party may, by motion in this action, request a further determination as to the location of any of said boundary lines.

4. The District Land Title Officer for the Yap District's Determination of Ownership and Release No. 5, dated November 21, 1956, and filed with the Clerk of Courts for the Yap District on December 6, 1956, is hereby modified to exclude all of the above-mentioned lands and is further modified by substituting the words "Alien Property Custodian of the Trust Territory of the Pacific Islands" for the words "Trust Territory of the Pacific Islands".

5. This judgment shall not affect any rights of way there may be over any of the lands in question.

6. No costs are assessed against any party.