BAULES SECHELONG, Appellant

v.

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

Civil Action No. 190

Trial Division of the High Court

Palau District

February 3, 1964

Action to determine ownership of land in Ngerebeched Village, in which clan land was taken by Japanese corporation in 1939, with clan's knowledge and for which compensation was paid to clan's senior male member. On appeal from District Land Title Determination, the Trial Division of the High Court, Chief Justice E. P. Furber, held that where both clan and lineage within it acquiesced in sale to Japanese corporation, although it is now shown that just compensation was not received, transfer to corporation is considered valid.

Modified and affirmed.

1. **Constitutional Law—Jury Trial**

   Provisions of amendments to United States Constitution relating to jury trial in civil and criminal cases do not apply to unincorporated territory.

2. **Trust Territory—Applicable Law**

   Administering authority may apply to Trust Territory such laws of United States as it deems appropriate to local conditions and requirements. (Trusteeship Agreement, Article 3)

3. **Constitutional Law—Jury Trial**

   Any right to jury trial in Trust Territory must depend on some specific action to administering authority.

4. **Constitutional Law—Jury Trial**

   United States Constitutional provisions on subject of jury trial do not of themselves apply to Trust Territory, which has not been incorporated into United States.

5. **Constitutional Law—Jury Trial**
   Since there has been no specific action extending right of jury trial to Trust Territory, and Trust Territory Code provisions appear inconsistent with thought of jury trials, there is at present no right to trial by jury in Trust Territory.

6. **Courts—Continuance**
   Request for continuance of trial in order to seek extraordinary remedies to obtain trial by jury is matter resting in discretion of court and is not matter of right.

7. **Administrative Law—Land Title Determination—Hearing Officer**
   Where District Land Title Officer hears claim, but final decision is made by his successor without further hearing, new trial on claim will be granted.

8. **Administrative Law—Land Title Determination—Hearing Officer**
   Where hearing on claim is made by one District Land Title Officer and decision is made by his successor, succeeding Title Officer should at least give parties opportunity for argument before him before making decision.

9. **Administrative Law—Land Title Determination**
   District Land Title Officer making determination of ownership under authority of law is acting in quasi-judicial capacity. (Office of Land Management Regulation No. 1)

10. **Administrative Law—Land Title Determination—Hearing Officer**
    Where applicable regulation provides specifically for public hearings in connection with determination of land ownership and that after hearing all evidence and making his findings District Land Title Officer shall publish his determination, same Title Officer who decides claim should hear evidence. (Office of Land Management Regulation No. 1)

11. **Administrative Law—Land Title Determination—Hearing Officer**
    Where one District Land Title Officer hears claim in connection with determination of land ownership and his successor makes decision, defect is cured by granting of trial de novo in High Court.

12. **Administrative Law—Land Title Determination—Hearing Officer**
    Where subsequent to Land Title Officer's determination of ownership trial de novo is granted in High Court subject to evidence in Title Officer's file, appellant has suffered no prejudice of which he can justly complain merely because determination was made by successor of Title Officer who held hearing on claim.

13. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
    Land transfers to Japanese corporations 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 not received. (Policy Letter P-1, December 29, 1947)

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Representatives of the Japanese administration announced at two large meetings to which the heads of the lineages of Ngerebeched Village had been invited that they desired to purchase lands of Ngerebeched and indicated at the first of these meetings that they were ready to pay around 1.50 yen per tsubo, to which price no objection was made at the meeting.

2. The then holder of the senior male title within the Ngeribkal Clan was present at at least the first of these meetings at which sale of other land of the clan was specifically discussed.

3. In 1939, subsequent to these meetings, a representative of Nantaku, a Japanese quasi-governmental corporation, persuaded Urebau, who was the senior male member of the Ngeribkal Clan and was in possession of the land in question, to sell it to Nantaku's subsidiary or affiliate Nanden. No physical force or threat of force was used, but there was the clearly implied threat that, if the land was not sold, it would be taken by authority of the government.

4. Urebau received something over 690 yen for the land—at least 90 yen of this being in cash and the remainder in an interest-bearing deposit account represented by a certificate which was accepted by Urebau and was given to Kelebak after Urebau's death.

5. The sale of this land and payment of compensation for it to Urebau were known to the members of Ngeribkal clan, including members of the "Yeb" Lineage within it, who, though they "murmured among themselves about it", raised no objection even though the husband of one member of the "Yeb" Lineage had such influence with the Japa-

nese administration that he was able to save some of the clan's land from purchase, but not this piece.

6. The over 690 yen (apparently computed at roughly 1.50 yen per tsubo) received by Urebau constituted at least substantially adequate compensation.

OPINION

This is an appeal under Office of Land Management Regulation No. 1 from a decision of the District Land Title Officer for the Palau District based on a claim stated in the appellant's original statement of claim as being for the "Ngeribkal family", but it appears clear from the testimony in this court that Ngeribkal is a clan and that the appellant is making claim both on behalf of it and what is sometimes known as the "Yeb" Lineage within it, of which lineage he is the present male head. After argument, the court granted a trial de novo subject to consideration of all evidence in the Title Officer's file without its being reintroduced. When the appellant rested upon completion of his evidence-in-chief at the trial de novo, counsel for the appellees moved for dismissal of the appeal on the ground that the appellant had failed to sustain the burden of proof.

[1] Counsel for the appellant has raised certain procedural questions, particularly in connection with his desire to obtain a trial by jury. The United States Supreme Court and United States Courts of Appeal have repeatedly held that the provisions of the amendments to the United States Constitution relating to jury trial in civil and criminal cases do not apply to territory belonging to the United States which has not been incorporated into it. *Balzac v. Puerto Rico*, 258 U.S. 298, 42 S.Ct. 343 (1922). *American Pacific Dairy Prod. v. Siciliano*, 235 F.2d 74 (1956). *Fournier v. Gonzales*, 269 F.2d 26 (1959).

[2–5] Under the Trusteeship Agreement the United States, as administering authority, "may apply to the Trust Territory, subject to any modifications which the administering authority may consider desirable, such laws of the United States as it may deem appropriate to local conditions and requirements". It therefore appears clear to the court that any right to jury trial in the Trust Territory must depend on some specific action of the administering authority and that United States constitutional provisions on this subject do not of themselves apply to the Trust Territory, which has clearly not been incorporated into the United States. The court is unable to find any such specific action extending the right of jury trial to this area. The Trust Territory Code clearly makes no provision for jury trials and its provisions, particularly those dealing specifically with murder trials, appear inconsistent with the thought of jury trials. The court therefore holds that there is at the present time no right to trial by jury in the Trust Territory.

[6] Counsel for the appellant's request for a continuance to seek extraordinary remedies to obtain a trial by jury, which request was denied by the court, is believed to be a matter resting in the discretion of the court and not a matter of right under the circumstances here disclosed. 12 Am. Jur., Continuances, § 5.

[7–10] Counsel for the appellant has also objected that the hearing on the claim here in question was held by one Title Officer, while the decision was made by his successor—without any further hearing so far as the record discloses. The court considers that this would constitute a valid reason for a new trial and that the succeeding Title Officer should at least have given the parties an opportunity for argument before him before making his decision. This court has already held that a District Land

Title Officer, when making a determination of ownership under Office of Land Management Regulation No. 1, is acting in a quasi-judicial capacity. *Thol Theo v. Trust Territory*, 2 T.T.R. 149. The Regulation specifically provides for public hearings and that "after hearing all of the evidence and making his findings" the District Land Title Officer shall publish his determination. The court therefore believes that in accordance with general principles of public administrative law, the Title Officer who decides should hear. 42 Am. Jur., Public Administrative Law, § 141, note 13. *Morgan v. United States*, 298 U.S. 468, 56 S.Ct. 906.

[11, 12] The court considers, however, that this defect has been cured by the granting of trial de novo in this court subject to the consideration of all the evidence in the Title Officer's file without its being reintroduced and that the appellant has therefore suffered no prejudice of which he can now justly complain, merely because the determination was made by the successor of the Title Officer who held the hearing on the claim.

[13] On the merits, this appeal is governed primarily by the Deputy High Commissioner's Trust Territory Policy Letter P-1 of December 29, 1947. Under the policy announced therein, land transfers to Japanese corporations, since March 27, 1935, are subject to review, but the letter further provides:—

"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."

See also: *Ngirkelau v. Trust Territory*, 2 T.T.R. 72.

The court considers that this sale was as voluntary as any sale can be to a corporation enjoying the powers of eminent domain. As to the power that might have been exerted, the court takes judicial notice that "Nantaku" is the short popular name for the Nanyo Takushoku

Kaisha (South Seas Development Company), that this corporation, though having some private capital as well as government funds invested in it, was controlled and supervised by the government and was very different from an ordinary American business corporation, that "Nanden" is the short popular name for Nanyo Denki Kaisha (South Seas Electric Company), which was a subsidiary or affiliate of Nantaku, and that both of these are of the kind often referred to as "quasi-governmental". (For a brief description of Nantaku's organization, activities, and related corporations, see "Civil Affairs Handbook, West Caroline Islands, OpNav 50 E-7", dated 1 April 1944, issued by the Office of the Chief of Naval Operations, U.S. Navy Department, p. 165.)

On the evidence introduced in this court and the record of that received by the District Land Title Officer, the court holds that both the Ngeribkal Clan and the "Yeb" Lineage within it acquiesced in the sale of the land in question to Nanden and that the appellant has not sustained the burden of proving that those on behalf of whom he claims did not receive just compensation for this land.

As explained in the "Remarks" of the court in the Record of Civil Trial on this appeal, it clearly appeared that there were two errors in the wording of the determination. In accordance with agreement of counsel these two errors are corrected as indicated below.

JUDGMENT

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

1. The Palau District Land Title Officer's Determination of Ownership and Release No. 89, filed September 12, 1960, with the Clerk of Courts for the Palau District in Vol. T-1, p. 131, is hereby modified by striking out the words "Ngeribkang, Arebakez Village" as the name by which the land is known, and substituting therefor the

words "Ngeribkal, Ngerebeched Village", and by striking out the words "The Trust Territory of the Pacific Islands" as owner and one to whom the land is released, and substituting therefor the words "The Alien Property Custodian of the Trust Territory of the Pacific Islands".

2. Subject to the foregoing modifications, the appellees' motion to dismiss the appeal is granted and the above entitled appeal is hereby dismissed without costs.