

**IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

ANTONIO CHARFAUROS MANALISAY,
for himself and the other heirs of Antonia
Charfauros Manalisay, LUIS C. INDALECIO,
for himself and other heirs of Maria Charfauros
Aldan and JESUS CHARFAUROS ARRIOLA,
for himself and other heirs of Rufina Charfauros
Arriola,

Plaintiffs/Appellants,

vs.

MARIANAS PUBLIC LAND CORPORATION,

Defendant/Appellee.

APPEAL NOS. 96-019 & 96-024
(Consolidated)
CIVIL ACTION NO. 93-1197

OPINION

Argued and Submitted January 10, 1997

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BEFORE: VILLAGOMEZ and ATALIG, Justices, and WHITE, Special Judge.

VILLAGOMEZ, Justice:

I.

The plaintiffs, Manalisay, et al. (collectively “Manalisays”) appeal the Superior Court decision which found that they do not own the land identified as T.D. No. 396 in Saligai, Rota. The court also found that there was no taking of the property by the government. The court ruled that the Manalisays are not entitled to any land exchange pursuant to the Public Purpose Land Exchange Authorization Act of 1987 (“Act”), 2 CMC §4141 et. seq.

II.

The Manalisays raise the issue of whether the Superior Court erred in deciding that T.D. No. 396 belonged to Juan Muna Charfauros, instead of his three sisters, Maria Charfauros Aldan (“Maria”), Antonia Charfauros Manalisay (“Antonia”), and Rufina Charfauros Arriola (“Rufina”). This is a question of fact which is reviewable under the clear error standard.¹

The appellee, Marianas Public Land Corporation (“MPLC”), filed a cross-appeal and raises the issue of whether an erroneous title determination issued by the Land Commission, in favor of a private party, can constitute a taking compensable under the Act. This is a question of law which we review de novo.

III.

Vicente D. Charfauros, deceased, owned T.D. No. 396 which contains approximately 12 hectares in Saligai, Rota. He died in 1942, leaving eight children: Antonio, Juan, Pilar, Ana, Dolores, Maria, Antonia and Rufina.

In 1958, Juan claimed as his own property, one hectare of the Saligai property. As a result of that claim, the government issued T.D. No. 396 declaring that Juan owns one hectare of the Saligai property. Subsequently, Juan filed an affidavit with the Land Commission stating that he owned the entire 12 hectares of the Saligai property. He then conveyed the entire Saligai property to his granddaughter, Amanda B. Manglona (“Amanda”), on May 19, 1978. On June 11, 1984, the Land Commission issued a Certificate of Title for T.D. No. 396 in favor of Amanda, containing the entire 12 hectares of the Saligai property.

IV.

The Manalisays contend that before his death, Vicente D. Charfauros performed a partida pursuant to which the Manalisays’ mothers, Maria, Antonia and Rufina, received the Saligai property while the other siblings received lands somewhere else. They argue that the government’s issuance of

¹In re Estate of Ayuyu, No. 94-032 slip op. at 2 (N.M.I. Aug. 12, 1996).

the Certificate of Title in favor of Amanda constituted a taking of private land by the government. Therefore, the Manalisays claim that they are entitled to be compensated through an exchange of the private land that the government took for a separate government land. The MPLC responds that the issuance of the Certificate of Title is an adjudicatory function of the Land Commission, and does not constitute a taking of private land for public purpose.

The Superior Court found that Amanda's title to the land derived not from the Certificate of Title issued by the Land Commission, but from the Deed of Gift that she received from Juan Charfauros. In other words, the government did not take Manalisay's land and then give it to Amanda. The court concluded that there was no compensable taking. The Manalisays timely appealed. We have jurisdiction pursuant to 1 CMC § 3102(a).

V.

At the outset, we note that the Manalisays did not appeal that part of the Superior Court decision which held that no governmental taking occurred. Instead, they appeal the finding that the land was not given to the three sisters through a partida. They contend that such finding is clearly erroneous for three reasons. Upon review of the record on appeal, we are not persuaded that the court's finding of no partida is clearly erroneous. But more important, even if the Manalisays were found to have owned the land, the issuance of the Certificate of Title in favor of Amanda did not constitute a "taking" which would entitle the Manalisays to receive government land pursuant to the Act. In order for the Manalisays to be entitled to government land under the Act, they have to show (1) that the government acquired ownership or took control of the land and (2) that the taking is done for a public purpose.

The Act was enacted pursuant to N.M.I. Const. article XI, section 5(b) which provides in relevant part that "[t]he [Marianas Public Land] Corporation may . . . transfer . . . public lands . . . for land exchanges to accomplish a public purpose as authorized by law." The express purpose of the Act is "to facilitate the accomplishment of certain public purposes by authorizing the Marianas Public Land Corporation to enter into agreements by which the government obtains a freehold interest in private land in exchange for passing a freehold interest in public land to the private owners." 2 CMC § 4142.

The record on appeal does not show either of these two requirements. First, the government did

not gain any possession, title, or control over the Saligai property. It merely determined, based on the record before it, that the land had been conveyed to Amanda, entitling her to receive a certificate of title.

Second, the record does not show any public purpose to be served by the alleged “taking.” The Manalisays have cited Sablan v. Cabrera, No. 93-032 (N.M.I. July 5, 1994)² suggesting that this case and that case are the same. They are not the same. In Sablan, the government gave government land to a first homesteader. After ownership had vested in the first homesteader, the government then gave part of the same land to a second homesteader. That case met both requirements under the Act. First, the government had initial ownership and control over the land. Second, the government gave the land away for a public purpose, to carry out the government homestead program. Thus, the facts of that case are different from the case at hand.

VI.

For the above reasons, we AFFIRM the decision of the Superior Court.

Entered this 30th day of April, 1997.

/s/ Ramon G. Villagomez
RAMON G. VILLAGOMEZ, Associate Justice

/s/ Pedro M. Atalig
PEDRO M. ATALIG, Associate Justice

/s/ Michael A. White
MICHAEL A. WHITE, Special Judge

²See Manalisays Response Brief, No. 96-024, at 5, 8.