

Title 10.

Eminent Domain.

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CHAPTER 1.

GENERAL PROVISIONS.

Sec.

1. Purpose.
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3. Definitions.

§ 1. Purpose. — It is the purpose of this title to set up procedures to be followed by the government of the Trust Territory in the exercise of its inherent power to acquire real property by eminent domain. (Code 1966, § 1301; Code 1970, tit. 10, § 1.)

Eminent domain statute not similar to federal act. — The Trust Territory eminent domain statute is not similar to the federal act, nor need it be as long as it requires that the taking be for a public use and the fair value be paid for the property. *Ngiralois v. Trust Territory*, 4 TTR 517 (App. Div. 1969).

No need for specific delegation of eminent domain right. — The government of the Trust Territory has been created with full power delegated to it to execute governmental functions through legislative, administrative and judicial branches, and there need not be a specific delegation of the right of eminent domain where there has been a delegation of full power of government. *Ngiralois v. Trust*

Territory, 4 TTR 517 (App. Div. 1969).

Delegation of eminent domain power. — Power of eminent domain may be delegated to subordinate governments and to privately owned public utility corporations. In re *Ngiralois*, 3 TTR 303 (1967).

Interest as compensation at the legal rate is fair. — Where trial court allowed interest as compensation at the legal rate on the judgment amount from the time of taking, except for the limited interest imposed by statute of three percent on the amount on deposit from the time of the deposit, there was no denial of fair compensation in fact or by statute. *Ngiralois v. Trust Territory*, 4 TTR 517 (App. Div. 1969).

§ 2. Private corporations. — No private corporation except as may be authorized by a district legislature shall have the right of eminent domain in the Trust Territory. (Code 1966, § 1303; Code 1970, tit. 10, § 2; Department of Interior Order No. 2969, § 8(a).)

§ 3. Definitions. — As used in this chapter, the following terms shall have the meanings set forth below:

(1) *Eminent Domain.* "Eminent domain" is the right of the central government or a district legal entity as may be provided for by district law in accordance with the provisions of this order to condemn property for public use

or purposes and to appropriate the ownership and possession of such property for such public use upon paying the owner a just compensation to be ascertained according to the law.

(2) *Public Use.* Public use shall be construed to cover any use determined by the High Commissioner to be a public use. (Code 1966, § 1302; Code 1970, tit. 10, § 3; Department of Interior Order No. 2969, § 8(b).)

Weight accorded High Commissioner's determination. — While court will give great weight to determination of High Commissioner regarding what is a public use for purposes of eminent domain, if he arbitrarily and unreasonably declares what is actually private use to be public use, court may adjudicate matter and determine whether use is in fact public, since question is ultimately a judicial one. In re Ngiralois, 3 TTR 303 (1967).

Good faith requirement. — High Commissioner of the Trust Territory may only declare to be a public use, for purposes of eminent domain, something which he honestly and reasonably believes to be that. In re Ngiralois, 3 TTR 303 (1967).

Limitations of use of eminent domain powers. — The use of eminent domain powers

is only limited to payment of just compensation and that the taking be for a public use. Ngiralois v. Trust Territory, 4 TTR 517 (App. Div. 1969).

Requirement of prima facie showing of public use. — District attorney or Attorney General must make prima facie showing that property desired by government is for public use before court proceeds to hear parties. In re Ngiralois, 3 TTR 303 (1967).

Taking land for coral to be used in airfield construction. — Where government takes land to obtain coral therefrom for construction of government airfield and access road to airfield, taking is for public use. In re Ngiralois, 3 TTR 303 (1967).

CHAPTER 2.

PROCEDURES AND PROCEEDINGS.

Sec.	Sec.
51. Complaint.	56. Final judgment.
52. Failure of parties to appear at proceedings.	57. Immediate possession procedure; generally.
53. Issuance and service of summons.	58. Same; possession after proceedings commenced.
54. Establishment of value of land.	59. Costs of proceedings.
55. Determination of ownership in event of dispute.	

§ 51. Complaint. — A complaint must be brought in the trial division of the high court in the name of and on behalf of the government of the Trust Territory as plaintiff by the Attorney General or the district attorney and must contain:

- (1) The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be called defendants.
- (2) A statement of the right or authority of the plaintiff.
- (3) A description of each parcel of land to be acquired and a statement of what interest in the land is desired by the plaintiff.
- (4) A general statement of the purpose of the taking. (Code 1966, § 1304; Code 1970, tit. 10, § 51.)

Eminent domain power is inherent incident of sovereignty. — In exercising the power of eminent domain the government exercises an inherent power which is necessarily an incident of sovereignty. The full power to execute governmental functions, delegated to the government, must be circumscribed by the governmental needs of the islands and people of the Trust Territory. Presumably it is to be exercised for their benefit. In re Kabua (App. Div., June, 1978).

§ 52. Failure of parties to appear at proceedings. — In the event of the failure of any of the parties specified in section 51 of this chapter to appear in the proceedings, the court shall, nevertheless, proceed to fix the amount of compensation and order that the amount be paid by the government, without interest, to the rightful claimants on demand at any time within seven years from the date of the final judgment. (Code 1966, § 1311; Code 1970, tit. 10, § 52.)

§ 53. Issuance and service of summons. — (1) The clerk of courts shall issue a summons which shall contain the names of the parties, a general description of the whole property, or a reference to the complaint for the description of the land, and a notice to the defendants to appear in the proceedings. When the defendants are known the summons shall be served by delivering to them a copy thereof along with a copy of the complaint. If the defendants, whether known or unknown, cannot be found, then a copy of the summons and complaint shall be posted as follows:

- (a) On the property;
- (b) On the administration building or such other place where public notices are usually posted in the district center;
- (c) At a public place in a village located near the property; and
- (d) By delivering one copy of the summons and complaint to the magistrate of the municipality in which the property is situated.

(2) The service of the summons and the complaints or the posting thereof as provided herein shall be sufficient to give the trial division of the high court jurisdiction to proceed with and finally determine the case. (Code 1966, § 1305; Code 1970, tit. 10, § 53.)

§ 54. Establishment of value of land. — Upon a prima facie showing by the Attorney General or the district attorney that the property desired to be purchased by the government is for public use, the court must hear the parties, and establish a fair value for the land. The court may appoint three assessors to assist in the proceedings and perform such functions as the court may direct. In the event assessors are appointed by the court, they shall take and subscribe an oath before the judge that they will faithfully perform their duties as assessors. (Code 1966, § 1306; Code 1970, tit. 10, § 54.)

Where government enters on land in good faith, landowners cannot claim punitive damages. — Landowners cannot claim punitive damages in condemnation proceedings where government entered on land in mistaken but honest belief that land was government land and without any intention to interfere with any rights it knew any private owners had. In re Ngiralois, 3 TTR 303 (1967).

High Commissioner's determination of land value includes attachments. — High Commissioner's determination of value of land taken in condemnation proceedings constitutes

admission that such amount is average value of land, including things attached to it and coral in it, so far as government is concerned, and no separate allowance will be made for trees and coral severed from land by government when owners fail to produce contrary evidence. In re Ngiralois, 3 TTR 303 (1967).

Value set as of time of taking. — Court will set fair value of land in condemnation proceedings, including trees and coral rock removed from land, as of time government took possession of land, and allow interest from that date. In re Ngiralois, 3 TTR 303 (1967).

§ 55. Determination of ownership in event of dispute. — In the event there is a dispute over the ownership of the property which is the subject of an eminent domain proceeding, the court shall adjudicate and determine the ownership of the property as part of the proceedings. (Code 1966, § 1307; Code 1970, tit. 10, § 55.)

§ 56. Final judgment. — The record of the final judgment in the proceedings shall state the particular land or interest in land which the government has acquired and the compensation to be paid to the defendants and the clerk of courts shall issue a certificate of title in accordance with said judgment. (Code 1966, § 1308; Code 1970, tit. 10, § 56.)

§ 57. Immediate possession procedure; generally. — In the event the government desires to enter into immediate possession of the property, the government shall file a declaration of taking and pay a sum of money which is considered to be the fair value of the property to the clerk of courts. In addition to the requirements set out in section 53 of this chapter, the summons shall state the following:

- (a) That the plaintiff requires immediate possession of the property;
- (b) That a sum of money which is considered to be the fair value of the property has been paid to the clerk of courts, which sum shall draw interest at the rate of three percent per annum from the date of the summons until claimed by the defendant or ordered paid to the defendant by the court.
- (c) That the defendant may at any time claim and receive the money which has been deposited with the clerk of courts upon the execution of a quitclaim deed in favor of the plaintiff.
- (d) Payment to the clerk of courts in accordance with this section shall entitle the government to take immediate possession of the land. (Code 1966, § 1309; Code 1970, tit. 10, § 57.)

Dismissal of action held abuse of discretion. — The court has abused its discretion in granting a dismissal of a condemnation action where the dismissal in effect

leaves the parties where they were before the condemnation proceedings began with the exception that the department of the army is still in possession of the islands in question

with the improvements they have constructed thereon with no right, title or interest to remain, and the money posted with the clerk of courts is still on deposit with no right on the part of the owners of the property to the money. In re Kabua (App. Div., June, 1978).

§ 58. Same; possession after proceedings commenced. — In the event the government determines that it requires immediate possession of the property after eminent domain proceedings have been commenced, but before the rights of the parties and the amount of compensation are determined, a declaration of taking shall be filed in the court and a sum of money which is considered to be the fair value of the land shall be paid to the clerk of courts. A summons shall be issued and served in the same manner as the summons in section 53 of this chapter, which shall refer to the original summons already served on the defendants, and shall otherwise conform to the requirements set out in section 57 of this chapter. (Code 1966, § 1310; Code 1970, tit. 10, § 58.)

Dismissal of action held abuse of discretion. — The court has abused its discretion in granting a dismissal of a condemnation action where the dismissal in effect leaves the parties where they were before the condemnation proceedings began with the exception that the department of the army is still in possession of the islands in question with the improvements they have constructed thereon with no right, title or interest to remain, and the money posted with the clerk of courts is still on deposit with no right on the part of the owners of the property to the money. In re Kabua (App. Div., June, 1978).

§ 59. Costs of proceedings. — The costs in all cases brought under this title shall be paid by the plaintiff. (Code 1966, § 1312; Code 1970, tit. 10, § 59.)