

ESTANISLAUS RIVERA, Plaintiff
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS and
its ALIEN PROPERTY CUSTODIAN, Defendants

Civil Action No. 408
Trial Division of the High Court
Palau District

November 8, 1968

Motion to dismiss plaintiff's complaint and quash purported service of summons. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that where plaintiff had an opportunity to have his claims to certain lands determined and such determination was made or not taken advantage of, the court would not later create or establish procedures where claims could be asserted again.

Motion granted.

1. Trust Territory-Suits Against

Although the Trust Territory Code now allows the maintenance of actions against the Trust Territory and its agents for claims arising after the effective date of Public Law No. 3-21, enacted in 1967, there is no longer any provision of law allowing actions arising from claims originating during the Japanese administration.

2. Judgments-Stare Decisis

A judge sitting in the Trial Division of the High Court is bound to follow decisions of the Appellate Division under the well-known doctrine of stare decisis.

3. Eminent Domain-Generally

Section 4 of the Bill of Rights which provides that private property shall not be taken for public use without just compensation, should be given only prospective and not retrospective effect.

4. Former Administrations-Redress of Prior Wrongs-Exception to Applicable Doctrine

The present Government of the Trust Territory is not required as a matter of right to correct wrongs which the former government may have permitted, except in those cases where the wrong occurred so near the time of the change of administration that there was no opportunity for it to be corrected through the courts or other administration of the former administration.

5. Former Administrations-Taking of Private Property by Japanese Government-Limitations

Land transfers from non-Japanese private owners to Japanese Government, corporations or nationals since March 27, 1935, are subject to

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review, but 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 and in such cases title will be returned to the former owner upon his paying in to the Trust Territory Government the amount received by him. (Policy Letter P-1, December 29, 1947)

6. Administrative Law-Land Title Determination-Appeal

Under the provisions of Office of Management Regulation No.1, an appeal was provided to the Trial Division of the High Court, which could set aside, modify or amend the determination of the District Land Title Officer. (Office of Land Management Regulation No.1)

7. Administrative Law-Land Title Determination

Where plaintiff filed a claim which was decided against him and an appeal denied regarding one parcel of land and where he did not take advantage of the opportunity to present claim as to another parcel of land, court would not create or establish some procedure where the claims to such lands could again be asserted against the Government of the Trust Territory or its Alien Property Custodian.

8. Trust Territory-Suits Against

Where plaintiff brought Government and the Alien Property Custodian into court without their consent, there was no basis for denying such defendants their rights to set up their immunity from the particular suit in question.

CLIFTON, *Temporary Judge*

Plaintiff in this action filed on June 5, 1958, brought on behalf of his clan, asks that the clan's title be quieted as to two parcels of land as against the Trust Territory and its Alien Property Custodian.

As to one parcel, he avers that one parcel was declared to be alien property in 1954 on the ground that no claim was filed within the time allowed by the Office of Land Management in accordance with its Regulation No. 1.

As to the other parcel he avers that this was the subject of a land claim proceeding at the instance of plaintiff's brother Hosei now deceased; that Hosei filed a land claim for it on July 28, 1954, and after a public hearing on March 7, 1955, it was determined that the premises claimed were sold to the Nantaku Company, a Japanese corpora-

tion; based on such determination the land was released to the Alien Property Custodian of the Trust Territory on November 30, 1956. He further avers that the plaintiff in this action appealed the decision of the Land Title Officer to the Trial Division of the High Court in the Palau District, asserting the insanity of plaintiff's brother and seeking substitution and appointment of a temporary guardian for said civil action. After several continuances the Trial Division of the High Court on October 25, 1960, dismissed the plaintiff's appeal after a hearing on October 17, 1960. He states that the dismissal for want of jurisdiction, on motion of the Government, was based on plaintiff's failure to prove the insanity of the plaintiff's brother, and that the court did not consider the present plaintiff entitled to any relief provided by law.

Finally, the plaintiff avers that any sale of the premises to the Nantaku Company during the Japanese period, was conditioned upon the payment of the total purchase price and failure to make full and complete payment invalidated the sale of the premises. In his oral argument, plaintiff's counsel stated that the sale took place in 1937.

The defendant Trust Territory and its Alien Property Custodian appeared specially and for the limited purpose of making a motion and moved to dismiss plaintiff's complaint and quash the purported service of summons upon the following grounds:-

1. The defendant was immune from suit at the time the alleged cause of the action occurred, and the court is without jurisdiction to hear this case.

2. The questions at issue have been previously litigated by the parties in Palau Civil Action No. 134, and therefore this action is *res judicata*.

[1] As to the first ground, this case comes squarely under the ruling in the case of *Alig v. Trust Territory*, 3 T.T.R. 603, in which the Appellate Division of the High

Court affirmed the action of Associate Justice Kinnare granting a motion similar to the one in this case in a suit against the Trust Territory to quiet title to land. The Appellate Division in a lengthy opinion held that although the Trust Territory Code now allows the maintenance of actions against the Trust Territory and its agents for claims arising after the effective date of Public Law No. 3-21, enacted in 1967, there is no longer any provision of law allowing such actions as plaintiff's arising from claims originating during the Japanese administration.

[2] A judge sitting in the Trial Division of the High Court is bound to follow decisions of the Appellate Division under the well-known doctrine of stare decisis. See 20 Am. Jur. 2d 519, 520, 521 and 20 Am. Jur. 2d 535, 536.

Plaintiff's counsel apparently claims that this court should not follow the rule of stare decisis and that the decision of the Appellate Division should not be followed. He has so forcibly argued this and other points that this court is constrained to comment on his contentions. In the first place, said decision concurred in by three judges of the High Court confirming the judgment of Associate Justice Kinnare, is based on sound principles enumerated by many authoritative opinions of the United States Supreme Court and other tribunals.

[3,4] Plaintiff's counsel argues that the Government's holding of the land in question amounts to a taking without due process of law. A similar contention was answered in *Alig v. Trust Territory*, supra, where it was said:-

"The appellant has also argued that the provisions of Section 4 of the Bill of Rights, incorporated in Chapter 1 of the Trust Territory Code, to the effect that private property shall not be taken for public use without just compensation, authorizes the present action without the need of any further consent and cites a number of authorities to the effect that action for what is sometimes called 'inverse condemnation' can be brought for recovery of damages

for property taken in violation of such a provision without further governmental consent. It should be noted, however, that the taking involved in this action is alleged to have been done by the Japanese Government on or about 1931 and that the provision in the Bill of Rights referred to by the appellant was first promulgated in the Trust Territory of the Pacific Islands by the Deputy High Commissioner's memorandum of 8 May 1948 forwarding copies of Interim Regulation No. 4-48 and later carried over into the Trust Territory Code. Whatever taking was involved here was, therefore, long prior to the enactment of the provision of the Bill of Rights in question, and we believe in accordance with the usual principles of statutory construction that this provision should be given only prospective and not retrospective effect. 16 Am. Jur.2d, Constitutional Law, § 148. 50 Am. Jur., Statutes, § 478.

"It seems to us it is particularly clear that such a provision cannot properly be applied retroactively to the actions of a former government. This court and the Trial Division of the High Court have repeatedly held in accordance with well-accepted general principles of international law, that the present Government of the Trust Territory is not required as a matter of right to correct wrongs which the former government may have permitted, except in those cases where the wrong occurred so near the time of the change of administration that there was no opportunity for it to be corrected through the courts or other administration of the former administration. The alleged wrong in this case was more than ten years before the change of administration. 30 Am. Jur., International Law, § 47. *Cessna v. United States*, 169 U.S. 165, 18 S.Ct. 314 (1898). *Wasisang v. Trust Territory*, 1 T.T.R. 14. *Jatios v. Levi*, 1 T.T.R. 578. *Aneten v. Olaf*, 1 T.T.R. 606. *Ngirudelsang v. Trust Territory*, 1 T.T.R. 512."

[5] However, notwithstanding the fact that the Trust Territory was not legally bound to consider and adjust the claims of the plaintiff, his brother and the members of their lineage, a procedure was set by the Trust Territory Government under Office of Land Management Regulation No.1 and Trust Territory Policy Letter P-1 to adjudicate claims against the Alien Property Custodian of land which was in effect taken by him from the Japanese government, Japanese corporations or Japanese nationals. Said Policy

LetterP-1 provided with relation to land transfers such as plaintiff herein alleges, as follows:-

"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."

[6] Under the provisions of Office of Land Management Regulation No.1, an appeal was provided to the Trial Division of the High Court, which could set aside, modify or amend the determination of the District Land Title Officer. As a matter of fact, in a large number of cases the High Court did set aside a number of determinations of the District Land Title Officers and rendered judgments in favor of the claims of land claimants, in some cases holding that the transfer to the Japanese corporation, individual or government was without adequate compensation and in some cases it was held that the property had not belonged to the Japanese corporation, individual or government, so that the Alien Property Custodian never had any right to the property.

[7] Therefore, plaintiff's brother and members of his lineage did have a right and opportunity to present their claims that the property in question was conveyed without compensation. As a matter of fact, plaintiff alleges that in relation to one of the parcels of property here involved, a claim was filed and decided against the claim and the appeal was denied. In relation to the other parcel of property, plaintiff, his brother and members of their lineage did not take advantage of their opportunity to present their claims. Under these circumstances this court certainly has no right to in effect now create or establish some pro-

cedure where the claims as to the land in question can again be asserted against the government of the Trust Territory or its Alien Property Custodian.

Although as to the one parcel of property it appears on the face of the complaint that the claims of the plaintiff were adjudicated by the High Court so that the ordinary rules of res judicata would apply, in view of the fact that the defendants have appeared specially to set forth their contention that they may not be sued in this action in the absence of legislation now permitting such an action, the court will not pass upon the question of res judicata as presented in defendant's motion.

[8] Plaintiff's claim that the defendants have waived their rights to immunity from this action is untenable. The case of *Porto Rico v. Ramos*, 232 U.S. 627, 34 S.Ct. 461 cited by plaintiff's counsel was a proceeding in which Porto Rico had intervened in an action, that is, voluntarily petitioned that it be made a party defendant and asserted its rights to property in dispute. In this case plaintiff brought the defendants into court without their consent and there is no basis for denying defendants their right to set up their immunity from a suit of this nature.

ORDER

It is ordered, adjudged, and decreed that the defendants' motion to quash the purported service of summons in this case and to dismiss the complaint be and the same is hereby granted and in accordance therewith the purported service of summons is quashed and the above titled action is dismissed.