

CRUZ v. ALIEN PROPERTY CUSTODIAN

In order for a court to set aside a decision by an administrative agency on the ground that it is arbitrary or capricious, the court must find there is no competent evidence supporting the agency's decision. *Dolan v. Rust*, 576 P.2d 560 (Colo.).

[3] We find the trial court to have been in error when it ruled there was an excessive, arbitrary, or capricious action by the Acting District Administrator. We find there was competent evidence to support the action of said officer. Therefore, we reverse the decision of the trial court.

JOSE CRUZ, Appellee

v.

ALIEN PROPERTY CUSTODIAN OF THE TRUST TERRITORY
OF THE PACIFIC ISLANDS, Appellant

Civil Appeal No. 290

Appellate Division of the High Court

Ponape District

November 23, 1982

Appeal from a judgment of the Trial Division in a land dispute. The Appellate Division of the High Court, Nakamura, Associate Justice, held that since Japanese corporation sold the land in 1944, the Vesting Order of 1951 was without effect as to the land, and proper title to the land was not with the Alien Property Custodian of the Trust Territory Government, but with the successor in title who bought the land from the private citizen who bought it in 1944, and judgment of the Trial Court was therefore affirmed.

1. Administrative Law—Land Title Determination—Appeal

An appeal from a determination by a Land Commission is to be treated and effected in the same manner as an appeal from a District Court in a civil action. (67 TTC § 115)

2. Courts—Trial Division of the High Court

On an appeal from the District Court, the Trial Division of the High Court may review the facts as well as the law, even if no additional evidence is taken.

3. Real Property—Adjudication of Ownership

Where land was transferred by Japanese corporation to a private citizen in 1944, the land was not affected by the Vesting Order of 1951, and therefore the proper title to the property was in person who bought the land from the private citizen, and not in the government.

4. Trust Territory—Suits Against—Sovereign Immunity

The Trust Territory is immune from suit without its consent.

5. Laches—Particular Cases

Laches was not a bar to a claim brought by the Alien Property Custodian, since the Trust Territory is not subject to the defense of laches without its consent.

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Counsel for Appellee: DELSON EHMES, MLSC, Ponape

Before BURNETT, *Chief Justice*, and NAKAMURA, *Associate Justice*

NAKAMURA, *Associate Justice*

On November 25, 1977, the Ponape District Land Commission issued a Determination of Ownership finding that the land Nusenio, Ohwa, Municipality of Metalanimw, Ponape, is public land, owned by the Alien Property Custodian of the Trust Territory Government. On appeal to the Trial Division of the High Court, the determination was reversed, and judgment entered finding the land to be the property of Jose Cruz. The matter is now before us on appeal by the Alien Property Custodian from the judgment.

Appellant, having filed a timely notice of appeal, designation of the record, and obtained a transcript of evidence on trial, has done nothing further. No brief has been filed to support the position taken on issues identified by the notice of appeal.

In similar situations, we have, not infrequently, dismissed appeals under authority of T.T. Rules App. Rule 20(a). We have elected not to do so in this instance primarily because of the extensive record made by the Land Commission, and the different result reached by the Trial Division.

Before reaching the merits of this appeal, we must note certain considerations which were, apparently, overlooked below.

[1] An appeal from a determination by a Land Commission is to be “. . . treated and effected in the same manner as an appeal from a District Court in a civil action . . .” 67 TTC Sec. 115.

The manner in which appeals were taken is prescribed by rules adopted by the Chief Justice pursuant to 5 TTC Sec. 202.

Rule 15 —Appeals from District Courts to Trial Division of the High Court.

Appeals from District Courts to the Trial Division of the High Court shall be considered on the basis of the record in the District Court, the notice of appeal, and such written or oral argument or both as the parties may submit, unless the Trial Division orders otherwise on motion of a party or on its own motion.

. . (c) *Motions to hear evidence.* If any party believes that justice requires the Trial Division of the High Court hear evidence on matters other than amendment of the record, or that the Trial Division reopen the case and try it de novo, such party shall notify the other parties and file his request together with the reasons therefore as soon as practicable. The Trial Division of the High Court shall not try a case de novo unless it is satisfied no other just solution of the matter is practicable. Trust Territory Rules of Appeal.

[2] In the course of such an appeal the Trial Court may review the facts as well as the law, even if no additional evidence is taken. 6 TTC Sec. 355 (2). It is clear, however, that the review will, in ordinary course, be of the record made in the District Court or, as here, in Land Commission proceedings.

In this matter, we find no request that the Court hear additional evidence, or reopen the case and try it de novo, nor any finding by the Court that such was necessary in order to arrive at a just solution. Instead, there was an

apparent assumption that a trial de novo was required as a matter of course.

One result was that scant attention was given to the voluminous record compiled by the Land Commission, and none at all to the lengthy notice of appeal which cited specific matters in which it was claimed that the Commission erred. In effect, we have a trial de novo, with no pleadings or order to identify issues.

We are thus faced at the outset with the question whether the obvious procedural errors below warrant reversal without consideration of the merits. Reluctantly, we conclude that they do not. As noted, appellant has filed no brief to assist us in either phase of our inquiry. The fact remains that the Court did try the case de novo, and that both parties concurred.

The findings of the Court provide the setting for our review; we cannot set aside its findings of fact "unless clearly erroneous." 6 TTC Sec. 355(2).

Once again we state that normally an appellate court will not examine the evidence in an attempt to determine whether it more strongly favors one conclusion or the other, that is to say that on appeal, the appellate court may not consider the sufficiency of the evidence as it relates to the weight or probative values of conflicting evidence. Not only must the appellate court refrain from re-weighing the evidence, its duty is to make every reasonable presumption in favor of the correctness of the decision of the lower court, and it must be kept in mind that the burden is on the appellant to affirmatively show error. *Olper v. Damarlane*, 7 T.T.R. 496 (App. Div. 1977). See also, *Edwards v. Trust Territory*, 7 T.T.R. 507 (App. Div. 1977).

Appellant's claim of title to the disputed land is derived from the Vesting Order executed September 24, 1951, by the Alien Property Custodian. That Order did not, of course, identify this land specifically, but instead referred to "all real property . . . heretofore owned or held by any private Japanese National, private Japanese organizations including corporations . . ."

It is not disputed that the land had been purchased by a Japanese corporation, Nanyo Kohatsu Kabushiki Kaisha (NKKK). Appellee claims by purchase from Listen Ono, whose title is derived from a conveyance on February 19, 1944, executed by the NKKK Manager on Ponape.

The Land Commission held that the 1944 transfer was of no effect, and that title remained in NKKK until the Vesting Order of 1951.

The Trial Court, in its statement of the facts said, "During World War II, NKKK directed its land managers to dispose of certain assets in Micronesia. On Ponape, the NKKK manager, in February of 1944, sold the land at issue to a person known as Mrs. Listen Ono. Mrs. Ono continued in possession of said land to 1974." The Court thus adopted the theory and testimony advanced on behalf of the appellee.

Thereafter, however, the Court held that "the purported sale of NKKK to Mrs. Listen Ono . . . is not the major issue in this case. Of prime consideration is whether the Appellant was a bona fide purchaser and whether the Appellee is guilty of laches." The judgment then found the Alien Property Custodian of the Trust Territory to be barred by laches, that Cruz was a bona fide purchaser, and reversed the Land Commission determination.

We think, first, that the Court should not have dismissed so lightly its finding as to the sale of the land to appellee's predecessor in interest, Mrs. Ono. Given that finding, it follows the NKKK no longer held an interest in the land which would be affected by the Vesting Order of 1951.

[3] We have carefully reviewed the record on appeal and conclude that this finding is not clearly erroneous. At the trial de novo, if it were the appellant's intention to prove that the 1944 sale was of no legal effect or that title to the land did not pass to Mrs. Ono, he failed to do so. Therefore, we can only conclude that title to the land

effectively passed to Mrs. Ono in 1944 and was thereafter transferred to the appellee in 1974. The validity of the transaction between Mrs. Ono and the appellee is not in issue. Given our conclusion that the land in question was not affected by the Vesting Order of 1951, we need not address the issue of whether the appellee was a bona fide purchaser for value, as he received title to the land in 1974, free of any claim from the Alien Property Custodian.

We think also that reliance on laches as a bar to the claim of the Alien Property Custodian was misplaced.

In the absence of an express waiver of its immunity, the Government of the Virgin Islands is not bound by the general statute of limitation . . . the general principle that claims of the sovereign are not subject to the defenses of laches and the statute of limitations is applicable. *In re Hooper's Estate*, 359 F.2d 569 (3rd Cir. 1966).

This immunity is based upon the public policy of protecting the citizens from damage to or the loss of their public rights and property through the negligence of public officers. *Guaranty Trust Co. of N.Y. v. United States*, 304 U.S. 126, 132, 58 S. Ct. 785 (1938).

[4, 5] We have held the Trust Territory immune from suit without its consent. *Alig v. Trust Territory*, 3 T.T.R. 603 (App. Div. 1967). Consent has been given by 6 T.T.O. Sec. 251, but there has been no express waiver of the limitations or laches defenses. Therefore, we conclude that the Alien Property Custodian is not subject to the defense of laches without its consent.

In view of the foregoing, judgment of the Trial Court is hereby AFFIRMED.