

[t]he Local Government Act provides a fair and reasonable means by which local communities on islands and atolls may establish suitable local governments as a part of a system of local governments having some semblance of uniformity to each other, and having the mechanism to fulfill their responsibility.

Birash Joash v. Cabinet of Marshall Islands (Trial Div. 1984). Since there exists a legitimate purpose in seeking uniformity among the local communities on the islands and atolls, this court finds that the Act had a rational basis.

CONCLUSION

The appellants have failed to overcome the burden that a statute is presumed to be constitutional. Under a plain and ordinary construction of the Constitution, the Nitijela has the requisite constitutional authority to order amalgamation. Accordingly, the trial division's decision is affirmed.

JINNUNA JABLOTOK, Petitioner

v.

MELA EBOT, Successor to LEVI LANUIT, Deceased, Respondent

Certiorari No. C-5-84

Appellate Division of the High Court

Marshall Islands District

October 22, 1985

Writ of certiorari issued to Supreme Court of the Republic of the Marshall Islands, on a finding by that Court that Marshall Islands courts were not bound by Land Title Officer's determination as to right or title to land. The Appellate Division of the High Court, per curiam, held that Secretarial Order 2969, which declared that all rulings made by a Land Title Officer not otherwise overruled or amended by the High Court of the Trust Territories must stand, was a valid law and could not be ignored by any governmental entity, and therefore Supreme Court decision that in effect ignored Land Title Officer's determination was reversed.

1. Administrative Law—Land Title Determination—Validity

Secretarial Order 2969, which declared that all rulings made by a Land Title Officer not otherwise overruled or amended by the High Court of

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the Trust Territory must stand, is a valid law and cannot be ignored by any governmental entity in the Trust Territory.

2. Administrative Law—Land Title Determination—“Res Judicata”

Determination by Land Title Officer as to *dri jermal* rights of Loelen *weto*, issued pursuant to valid Secretarial Order and never appealed until more than 22 years later, was given *res judicata* effect, which all courts of the Trust Territory were bound to recognize.

Counsel for Petitioner: PHILIP A. OKNEY, ESQ.
Counsel for Respondent: BENJAMIN M. ABRAMS, ESQ.

Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate Justice*, and LAURETA, *Associate Justice**

PER CURIAM

Pursuant to Section 5b. of Secretarial Order 3039, a writ of certiorari was issued to the Supreme Court of the Republic of the Marshall Islands in *Mela Ebot, Successor to Levi Lanwit (Deceased) v. Jinnuna Jablotok*, Supreme Court Civil 83-01, to review the Opinion of that court. The Supreme Court had found, in essence, that the Marshall Islands courts were not bound by the finality provisions of Trust Territory Land Management Regulation No. 1 as it applied to the determinations of the Land Title Officer because the hearings were administrative and summary. The petitioner contends that a Land Title Officer's determination as to right or title to land between the parties or their successors is final after the appeal has run, and such determination was *res judicata*, pursuant to Secretarial Order 2969.

The facts that bear upon the issue are as follows: on May 21, 1958, pursuant to Office of Land Management

* United States District Judge, District of the Northern Mariana Islands, designated as Temporary Associate Justice by the United States Secretary of the Interior.

Regulation No. 1 issued by the Director of Political Affairs of the Trust Territory government and approved by the High Commissioner on June 29, 1953, Land Title Officer Thomas Gilliland of the Marshall Islands District Administration posted public notices in English and in Marshallese of a series of hearings to be held to determine the ownership of a number of *weto* on Uliga Island, Majuro Atoll. One of the *weto* was Loelen *weto*, the subject of dispute in this case.

The notices declared that the meetings were to be held at the courthouse of the Marshall Islands District in Majuro and that "All persons concerned with this Loelen *weto* should be present at this hearing to present all evidence concerning the ownership of this *weto*. The ownership determination made at this hearing will be final and binding, unless and until it is overruled by the High Court."

Pursuant to this notice and the informal meetings held on April 4, 7, and 8, 1958, in the conference room of the Administration building in Uliga, Majuro Atoll, a hearing was conducted by the District Land Title Officer at the courthouse on June 10, 1958. In that hearing, Mike, the *Iroij Erik* of Loelen *weto*, testified under oath that Jirak was the senior *dri jermal* of that *weto*. No one else testified or disputed the statement of the *Iroij Erik*, although given the opportunity to do so. At the end of the hearing, Mr. Gilliland announced his conclusion that Jirak was the senior *dri jermal* of Loelen *weto*, and also declared, based on Section 14 of Land Management Regulation No. 1, that "the decision of this hearing may be appealed to the High Court [Trust Territory] providing that the appeal is filed within one year from today." A formal written document known as "Determination and Release No. 58-29" for Loelen *weto* was issued and filed with the Clerk of Court on August 3, 1959. No appeal was filed.

The petitioners are the successors in interest of Jirak, the senior *dri jermal* named in the Land Title Officer's determination.

On November 2, 1981, more than 22 years after the appeal period had run on the Land Title Officer's determination, the respondent filed a complaint for declaratory relief in the Trial Division of the High Court of the Trust Territory¹ to determine who had *dri jermal* and senior *dri jermal* rights to Loelen *weto*. The trial judge held that the Land Title Officer's determination was not binding upon the court under the doctrine of *res judicata* or estoppel, and found for the respondent as having senior *dri jermal* rights to Loelen *weto*. No counsel or party brought to the attention of the court the existence of Secretarial Order 2969.

Upon appeal, the Marshall Islands Supreme Court affirmed the judgment of the Marshall Islands High Court, declaring that "the courts will not be bound by finality provisions of Land Management Regulation No. 1." It also declared that "No one will pretend that the 'somewhat hasty meetings' (so characterized by the trial court) of the Land Title Officer included the procedural safeguards to be expected on such an important matter as land rights. The record is clear that the procedure was administrative and summary." Once more, no attempt apparently was made to bring to the attention of the court the existence of Secretarial Order 2969.

Secretarial Order 2969 relating to the transfer of Trust Territory public lands to district control authorized, *inter alia*, the respective district legislatures

to establish an adjudicatory body to resolve claims disputes as to title or rights in land transferred to district legal entity; provided, however, that no such body shall have the authority to redetermine any claim or dispute as to right or title to land between parties or

¹ Later transferred to Marshall Islands High Court pursuant to Secretarial Order 3039.

their successors or assigns where such claim or dispute has already been finally determined either by a Land Title Officer, by a Land Commission or a court of competent jurisdiction, and all final determinations shall be *res judicata* (Emphasis added.)

The source of governmental power over the Trust Territory provided for in the Trusteeship Agreement was delegated by the United States Congress to the President, who, in turn, designated the Secretary of Navy and later the Secretary of Interior to establish governmental organization necessary to administer the Trust Territory. The Secretary of the Interior, pursuant to Executive Order No. 11021 issued by President John F. Kennedy on July 1, 1962, had been administering the Trust Territory by laws, regulations, orders, appointments and other acts. Pursuant to this authority, Secretarial Order 2969 had been issued.

Section 101 of Title 1 of the Trust Territory Code provides that,

[T]he following are declared to be in full force and have the effect of law in the Trust Territory: (1) The Trusteeship Agreement; (2) Such laws of the United States as shall, by their own force, be in effect in the Trust Territory, including the executive orders of the President and *orders of the Secretary of Interior*; (3) Laws of the Trust Territory and amendments thereto (Emphasis added.)

Clearly, Secretarial Order 2969 is a valid law in the Trust Territory and cannot be ignored by any governmental entity, including the three political subdivisions established by Secretarial Order 3039, so long as the Trust Territory exists as a legal entity under the Trusteeship Agreement.

[1] Thus, it is clear that Secretarial Order 2969, which declares that all rulings made by a Land Title Officer not otherwise overruled or amended by the High Court of the Trust Territory, must stand, and this is the situation in this case. The fact that the hearings were administrative