ITPIK MARTIN, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, and JOSEPH C. PUTNAM, its Alien Property Custodian, Appellees

Civil Action No. 112

Trial Division of the High Court

Palau District

September 4, 1958

Action to determine title to land in Koror Municipality, in which plaintiff represents clan whose land was taken by Japanese Navy in 1917, without consent of owner and without just compensation. On appeal from District Land Title Determination, the Trial Division of the High Court, Associate Justice Philip R. Toomin, held that where wrong occurred more than forty years prior to filing of claim, and last effort to correct it was more than thirty years ago, too much time has elapsed since original taking to warrant present review of circumstances surrounding it.

Affirmed.

1. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**

   Where taking of private property by Japanese Navy occurred forty years prior to filing of claim, and thirty years have transpired since last effort to regain possession was made, claim is not cognizable by court of equity.

2. **Former Administrations—Redress of Prior Wrongs**

   To expect court of one power to award relief which might have been obtained from prior sovereign, and to right wrongs which that power had persisted in for many years, is to impose unwarranted burden on courts and government of successor power.

3. **Former Administrations—Recognition of Established Rights**

   It is duty of nation receiving cession of territory to respect all rights of property as those rights were recognized by nation making cession.

4. **Former Administrations—Redress of Prior Wrongs**

   It is not part of duty of nation receiving cession of territory to right wrongs which grantor nation may have committed upon every individual.

5. **Former Administrations—Redress of Prior Wrongs—Exception to Applicable Doctrine**

   Exception to doctrine regarding righting of ancient wrongs of grantor nation is when wrong occurred so recently before cession that individual may not have had time to appeal to courts or authorities of that nation for redress.

6. Former Administrations—Redress of Prior Wrongs—Exception to Applicable Doctrine

Exception to doctrine regarding righting of ancient wrongs of grantor nation is inapplicable where wrong occurred more than forty years ago and last effort to correct it occurred more than thirty years ago.

Assessor: JUDGE PABLO RINGANG
Interpreter: ANTHONY H. POLLOI
Counsel for Appellant: ROSCOE L. EDWARDS, ESQ.
Counsel for Appellee: ALFRED J. GERGELY, ESQ.

TOOMIN, *Associate Justice*

OPINION

This is an appeal from a Determination of Ownership by the District Land Title Officer of Palau District acting under Office of Land Management Regulation No. 1. The Land Title Officer, after due notice and hearing of the claim filed by appellant, for a determination of ownership in him of the land Ṭuker located in Koror Municipality, Palau District, determined the matter adversely to the claimant, and released the land to appellee Trust Territory of the Pacific Islands.

The record made by appellant at the hearing of his claim in the District Land Office has been filed in this proceeding by agreement of the parties, including all the testimony and exhibits received in evidence, and the findings of fact and conclusions of the Land Title Officer. No other evidence has been offered by either party on the hearing of this appeal. From this record and the understandings and agreements of the parties, set forth in a Memorandum of Pre-Trial Conference and Order in Relation Thereto, entered and filed in this proceeding, the following appear as the relevant and material facts to be considered by this court on this appeal:

The land Tuker contains an area of approximately 153,268 square feet. Prior to Japanese times, it was the property of the

Tmetbap Clan and was taken over by the Japanese Navy between 1914 and 1917 for use as a radio station.

This was done without the consent of the then owner, and just compensation was not paid for the taking, although appellees say some compensation was paid. Efforts were made to obtain return of the land but to no avail, and the last effort was made in 1927.

The claim was made on behalf of the clan, although by custom the land is used by the Adelbai, which will be claimant's title on the death of his half-uncle.

The sole contention of appellees on appeal was that too great an interval of time had passed since the taking, for this action to be subject to review by the courts at this time. The case will, therefore, be considered on the basis of a coercive taking of the land prior to 1917, without adequate compensation.

[1, 2] Even upon that view of the facts most favorable to appellant, he makes no case cognizable by a court of equity. True, the land was taken under conditions warranting equitable relief, but this occurred forty years prior to the filing of claim. In addition, some thirty years have transpired since the last effort was made by the dispossessed owners to regain possession of their land. To expect the court of one power to award relief which might have been obtained from the prior sovereign, and to right wrongs which that power had persisted in for many years, is to impose an unwarranted burden on the courts and government of the successor power.

[3–5] In a well-considered case, *Cessna v. the United States, et al.*, 169 U.S. 165, 18 S.Ct. Rep. 314, the United States Supreme Court undertook to determine the rules of international law respecting rights in property existing, but not finally adjudicated at the time of cession. In discussing this question, the opinion by Justice Brewer states on Page 322, as follows:

"It is the duty of a nation receiving a cession of territory to respect all rights of property as those rights were recognized by the nation making the cession, but it is no part of its duty to right the wrongs which the grantor nation may have therefore committed upon every individual. There may be an exception when the dispossession and wrong of the grantor nation were so recently before the cession that the individual may not have had time to appeal to the courts or authorities of that nation for redress. In such a case, perhaps, the duty will rest upon the grantee nation, but such possible exception has no application to the present case, and in no manner abridges the general rule that among the burdens assumed by the nation receiving the cession is not the obligation to right wrongs which have for many years theretofore been persisted in by the grantor nation."

It appears that the doctrine of *Cessna v. United States*, supra, represents the general rule on the subject where courts have spoken, 30 Am. Jur. 207, International Law, § 47.

An unbroken line of cases in Trust Territory, starting in 1952, with *Wasisang v. Trust Territory*, 1 T.T.R. 14, has adopted the same legal principle. *Kumtak Jatios v. Levi*, 1 T.T.R. 578. *Cabrera v. Trust Territory*, Saipan Appellate Division, Civil Appeal No. 2. *Aneten v. Olaf*, 1 T.T.R. 606.

[6] Obviously, the exception to the doctrine of *Cessna v. United States*, that it may not apply where the wrong occurred so close to the cession as not to have allowed ample time for legal action, is inapplicable here, as it was in that case. Here the wrong admittedly occurred more than forty years ago, and the last effort to correct it, more than thirty years.

This court is, therefore, constrained to hold that too much time has elapsed since the original taking, to warrant the courts in now reviewing the circumstances surrounding it.

For the reasons stated, it appears to the court that the Determination of Ownership in appellee Trust Territory of the Pacific Islands, made by the District Land Title Officer of Palau District with respect to the land Tuker located in Koror Municipality, Palau District, is valid and binding, and it is accordingly affirmed.