

IYAR NGIRATULEMAU, Appellant

v.

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

Civil Action No. 61

Trial Division of the High Court

Palau District

October 21, 1958

Action by former owner of land in Koror Municipality seeking to recover from Trust Territory Government land taken by Japanese in 1920 and again in 1934, for which no compensation was paid to owner. On appeal from District Land Title Determination, the Trial Division of the High Court, Associate Justice Philip R. Toomin, held that Trust Territory Government cannot be dispossessed of ownership in view of interval of time which has elapsed since owner was deprived of his title by former government.

Affirmed.

1. Former Administrations—Redress of Prior Wrongs

There are no valid and persuasive legal or equitable grounds for dispossessing Trust Territory Government of ownership and use of premises when long interval of time has elapsed since prior owner was deprived of title by former government.

2. Former Administrations—Redress of Prior Wrongs

There is no legal basis upon which sovereign power can be required to right ancient wrongs committed by former sovereign power against its subjects before cession or conquest of lands involved.

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

Exception to principle that sovereign cannot be required to right ancient wrongs of former sovereign power, is where wrong occurred so close to time of change of government as to have afforded aggrieved party no opportunity to obtain redress in courts.

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

Where taking of land of proper owner by Japanese Government occurred in 1920 and again in 1934, exception to rule regarding righting of ancient wrongs of former power is not applicable.

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

Until Trust Territory Government opens doors to claims for redress of wrongs originating as far back as 1920 and 1934, court may not act where legislative branch has failed to do so.

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

TOOMIN, *Associate Justice*

OPINION

The appeal in this case was taken by the owner of a tract of land located in Koror Municipality, Palau District, from a Determination of Ownership made and filed with the Clerk of Courts of Palau District by the District Land Title Officer of that District. Appellant had filed a claim alleging ownership of the tract in himself individually, and after hearing pursuant to Office of Land Management Regulation No. 1, the Title Officer had determined the issue of ownership adversely to claimant, and had released the land to appellees.

The record made before the District Land Title Officer, including the testimony and exhibits offered in evidence by the parties, and the findings of fact and conclusions of the Title Officer were received in evidence in this case,

by agreement of the parties. No other evidence was offered by the parties on the hearing of this appeal.

From an examination of said record, supplemented by the understandings and agreements between the parties contained in a Memorandum of Further Pre-Trial Conference and Order In Relation Thereto, entered and filed in this proceeding, the following appear as the relevant and material facts:

The land in question known as Diberdii is located in Ngerkesewsol Village, Koror Municipality and contains approximately 94,500 square feet. Prior to Japanese times, it was owned by the family of appellant, and all ownership rights possessed by the family are now vested in appellant.

In 1920-21 the Japanese Government requested appellant to remove his growing crops and vacate the southern two thousand tsubo of the land, so it could be used for an Agricultural Experimental Station, and for this they paid him five yen for Tapioca which he had planted. The Government then took possession of this land.

Later (in 1934) without any formal demand and without payment of compensation, the Japanese Government took possession of the balance of the land, and it remained in the possession of the Government until taken over by Trust Territory as part of the public domain. It is now used as part of the forest reserve.

In the Japanese survey of 1938-1941 the land was listed as Government land. Appellant insists he did not know it was considered government land until completion of the survey. Though he requested rent from the head of the station and says this request was to be submitted to the authorities in Japan, no rent was ever paid, nor was any action brought by appellant either for rent or recovery of land until the filing of the instant claim, February 17, 1955.

Appellees, while conceding the land was taken by the former government without payment of adequate compensation, contend that too great an interval of time has elapsed since the taking, for the matter to be reviewed by the courts at this time. The question then to be resolved on this appeal, is whether the courts of a successor sovereign are authorized to redress ancient wrongs perpetrated by the prior sovereign upon its subjects, where the property thus obtained has passed into the hands of the successor sovereign as part of the public domain.

[1] The facts in the case at bar so closely analogous to those in *Itpik Martin v. Trust Territory*, 1 T.T.R. 481 as to make the rule of that case applicable here. Attention is directed to the discussion of legal issues in that case, the legal principles there adopted, and the legal authorities there followed, all of which are adopted as the law of this case. As in that case, the court can find no valid and persuasive legal or equitable grounds for dispossessing appellees of the ownership and use of the subject premises, in view of the interval of time which has elapsed since the appellant was deprived of his title by the former government.

[2-4] In cases like the one at bar, the rule applicable is that there is no legal basis upon which a sovereign power can be required to right ancient wrongs committed by a former sovereign power against its subjects, before cession or conquest of the lands involved. *Cessna v. United States, et al.*, 169 U.S. 165, 18 S.Ct. Rep. 314. The only exception recognized is in cases where the wrong occurred so closely to the time of change of government as to have afforded the aggrieved party no opportunity to obtain redress in the courts. Obviously, with a taking in 1920 and again in 1934, this exception is not here applicable.

[5] The only recourse available to appellant is to obtain alleviation of the situation by legislative or administrative action of Trust Territory Government. So far that government has failed to open the door to claims for redress originating as far back as the case at bar, and until it does, this court is constrained to hold that it may not act where the legislative branch has failed to do so.

Upon the basis of the foregoing conclusions, the court is of the opinion that the Determination of Ownership of the property Diberdii made by the District Land Title Officer of Palau District, in favor of appellees, is valid and binding, and the same is hereby affirmed.