

**ALFONSO R. OITERONG,
and TECHITONG REMERANG, Appellants**

v.

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

Civil Action No. 71

Trial Division of the High Court

Palau District

September 25, 1958

Action to determine ownership of land in Koror Municipality, in which plaintiffs claim as former owners of land taken from them by Japanese Government in 1927 and again in 1930, without payment of compensation. On appeal from District Land Title Determination, the Trial Division of the High Court, Associate Justice Philip R. Toomin, held that there are no equitable or legal grounds for dispossessing Trust Territory Government of ownership of premises in view of interval of time which has elapsed since plaintiffs were wrongfully deprived of title by former government.

Affirmed.

1. Eminent Domain—Generally

Under present Trust Territory law, taking of private property without just compensation warrants legal action and ensures recovery of fair compensation. (T.T.C., Sec. 4)

2. Former Administrations—Redress of Prior Wrongs

Where taking of private property occurred during occupation of prior power, basis for making claim against present Trust Territory Government for dereliction of former government has no legal footing in legal or equitable principles.

3. Former Administrations—Redress of Prior Wrongs

There are no legal or equitable grounds for dispossessing Trust Territory Government in ownership and use of property where long interval of time has elapsed since plaintiffs were wrongfully deprived of title thereto by former government.

4. Former Administrations—Redress of Prior Wrongs

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

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

Only exception to rule regarding righting of ancient wrongs of former power, is in cases where wrong occurred so closely to time of change

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of government as to have afforded aggrieved party no opportunity to obtain redress in courts.

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

Where taking of private property by Japanese Government occurred in 1919, exception to general rule as to righting of ancient wrongs of former government is not applicable.

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

Until Trust Territory Government has opened door to claims for redress of wrongs originating as far back as 1927 and 1930, 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 Appellee:</i>	ROSCOE L. EDWARDS, ESQ.
<i>Counsel for Appellant:</i>	ALFRED J. GERGELY, ESQ.

TOOMIN, *Associate Justice*

OPINION

This appeal is from a Determination of Ownership filed by the District Land Title Officer with the Clerk of Courts of Palau District. The case originated with a claim filed by appellants with the District Land Title Office for Palau District, pursuant to which they claimed ownership of the land Iengid, located in Koror Municipality, Palau District. After due hearing, pursuant to Office of Land Management Regulation No. 1, the Title Officer decided the claim adversely to appellants, and released the land instead to appellees. The record consisting of the said claim and the evidence received at the hearing of the claim, including the testimony and exhibits of the parties, and the findings of facts and conclusions of the Title Officer, have been received in evidence on this appeal by stipulation of the parties. No other evidence has been offered by either party upon the hearing of this appeal.

An examination of the record so made and received in evidence, supplemented by the understandings and agreements of the parties as contained in that certain Memorandum of Pre-Trial Conference and Order In Relation Thereto, entered and filed in this proceeding, establishes the following to be the relevant and material facts involved in this appeal:

The dispute of the parties concerns the land known as Iengid located adjacent to the Intermediate School on the west side of Koror Municipality, Palau District, and containing approximately forty-four thousand five hundred and fifty (44,550) square feet in area. This land was owned by appellant Techitong as his individual land, having inherited same from his uncle. The appellant Oiterong has joined in the appeal as the heir of Techitong.

In 1927 and again in 1930 appellants were deprived of this land by the Japanese Government which took it without their consent and without payment of compensation, for the purpose of using it for homesteading. It had been used theretofore for the raising of taro and trees by appellants. No proceedings were filed by appellants in the Japanese Courts for the return of their land.

Appellees concede that the land was taken without agreement and without payment of compensation, but contend that too great an interval of time has passed since the taking to allow the courts to review the circumstances thereof at this time. Thus this case presents the problem whether a sovereign power, succeeding to the title and property rights of the former sovereign, is required to redress ancient wrongs which the former sovereign may have perpetrated against the rights and property of its subjects.

[1] At the outset it is clear that it is now the law in Trust Territory that a taking of private property without just compensation, as was admittedly done in the case at

bar, would warrant legal action and ensure recovery of fair compensation in such type of proceedings as may be authorized by law or executive authority. T.T.C., Chapter I, Sec. 4.

[2] However, since the taking occurred during the occupation of another power, the basis for making claim against this Government for the dereliction of the former seems to have no footing in any legal or equitable principles apparent to this court.

[3] Upon comparing the facts in the case at bar with those in *Itpik Martin v. Trust Territory*, 1 T.T.R. 481, decided September 4, 1958, it appears there is such close similarity between the two, as to require imposition in this case of the legal conclusions reached there. 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 *Itpik Martin*, supra, the courts can find no valid and persuasive legal or equitable grounds for dispossessing appellees in the ownership and use of the subject premises, in view of the interval of time which has elapsed since appellants were wrongfully deprived of title by the former government.

[4-6] 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 against its subjects by the prior power before cession or conquest of the lands involved. 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. *Cessna v. United States, et al.*, 169 U.S. 165, 18 S.Ct. Rep. 314. Obviously with a taking in 1919, this exception is not applicable in the case at bar.

[7] 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.

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

TAMAEL, Appellant

v.

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

Civil Action No. 109

Trial Division of the High Court

Palau District

September 25, 1958

Action to determine title to land in Ngerchelung Municipality, in which plaintiff claims as representative of clan which formerly owned land taken by Japanese Government in 1924 without payment of compensation. On appeal from District Land Title Determination, the Trial Division of the High Court, Associate Justice Philip R. Toomin, held that adequate time for recourse to courts for redress of wrongs was not available to plaintiff and clan prior to change of sovereignty and that taking was therefore in suspense and does not constitute a taking prior to cut-off date set by administration. Reversed.

1. Former Administrations—Redress of Prior Wrongs

Where question for determination by court involves righting of ancient wrongs of prior power, answer is found in domain of international law and not in principles of equity jurisprudence.

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

Where party's claim for return of property taken by Japanese Govern-