
JOSE P. MAFNAS, Appellant
v.
SAIPAN SHIPPING CO., INC., Appellee
Civil Appeal No. 46
Appellate Division of the High Court
Mariana Islands District
April 28, 1969

SHOECRAFT, *Chief Justice*

Upon motion of appellant on April 24, 1969, this matter is hereby dismissed. Costs are taxed to the appellant.

RAMON P. CALVO, Deceased,
PILAR L. CALVO, Administratrix, Plaintiff-Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, And Others,
Defendant-Appellee
Civil Appeal No. 29
Appellate Division of the High Court
April 30, 1969

Appeal from title determination. Appellant contended that appellee government did not have sovereignty and therefore was without governmental power or authority. The Appellate Division of the High Court, D. Kelly Turner, Associate Justice, held that the right to exercise all necessary powers of government over the Territory was provided in the Trusteeship Agreement and delegated by Congress to the President to the secretary of Interior and thus although there was not sovereignty in the international sense there was a right to govern derived from the delegation of legislative power by the United States Congress.

Judgment appealed from affirmed.

1. Courts--Jurisdiction

The status of sovereignty, being a political question, is not one for the courts to declare.

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2. Trust Territory-Administering Authority-Sovereignty
Sovereignty has been defined as the right to govern.
3. Trusteeship-Administering Authority-Powers
The right to exercise all necessary powers of government over the territory was provided in the Trusteeship Agreement and delegated by the United States Congress to the President who designated the Secretary of the Department of the Interior, who in turn established the governmental organization by a series of Secretarial Orders commencing in 1951 and continuing to the present day. (Trusteeship Agreement, Arts. 3, 6; Enabling Act, 48 U.S.C. § 1681 et seq.; Secretarial Order Nos, 2658,2882,2918)
4. Trust Territory-Administering Authority-Obligations
The "qualified sovereignty" of the Trust Territory Government carries with it the inherent power of government to condemn private property for a public use, to settle property rights, to exercise the police power generally and to exercise such other powers as are appropriate legislative subjects.
5. Trusteeship-Administering Authority-Sovereignty
Sovereignty, to be effective, need not be specifically delegated.
6. Trusteeship-Administering Authority-Sovereignty
The power to govern carries with it by inference such necessary powers of government as to permit the exercise of the authority delegated.
7. Trusteeship-Administering Authority-Powers
The delegation of authority relating to the Trust Territory by the President of the United States, as authorized by Congress, is within the constitutional power of Congress and the President over foreign affairs.
8. Former Administrations-Redress of Prior Wrongs
The court will not undo the official acts of the Japanese administration, even though wrongful, unless they occurred so near the end of the Japanese regime as to prevent recourse to Japanese courts.
9. Treaties-Generally
A United States treaty is a living law, operating upon and binding the judicial tribunals, state and Federal; and those tribunals are under the same obligation to note it and give it effect as they are to notice and enforce the Constitution and laws of Congress made in pursuance thereof.
10. Treaties-Generally
Section 20, Trust Territory Code, imposes the same obligation upon the High Court to "note and give effect" to United States treaties, including the Trusteeship Agreement, as is imposed upon state and federal courts in the United States. (T.T.C., ISec. 20)

11. Appeal and Error-Scope of -Review

Where there was no indication that the issue of denial of due process was raised before the trial court and where there was nothing in the record relating to the point, the appellate court need not consider it.

12. Appeal and Error-Scope of Review

Where the alleged error did not point out or specifically show wherein the trial court committed error court would decline to consider the issue.

13. Appeal and Error-Scope of Review-Facts

The weight of the evidence is for the trial court and is not decided anew in the appellate court.

14. Appeal and Error-Scope of Review-Facts

It is the function of the appellate court to ascertain whether there is any probative evidence in support of the trial court's findings and conclusions, and if there is any evidence in support, the findings of the trial court will not be disturbed.

15. Appeal and Error-Final Judgment or Order

Upon an appeal from a land title determination the Trial Division tries the matter de novo and an appeal lies from a final judgment entered in a trial de novo.

Counsel for Appellant:

Counsel for Appellee:

FINTON J. PHELAN, JR.

ROBERT A. HEFNER, *Assistant Attorney General* and

JOHN D. MCCOMISH, *District Attorney*, On the Brief

Before TURNER, *Associate Justice*, SHRIVER and CLIFTON, *Temporary Judges*

TURNER, *Associate Justice*

This case, and the case also decided this day, *Ngiralois v. Trust Territory*, 4 T.T.R. 517, were argued together. Counsel for each were the same.

The main thrust of appellants' arguments in the briefs and orally to the court was that the appellee government did not have sovereignty and therefore was without governmental power or authority. This challenge to the status of the Trust Territory government, including its judicial power, is made in both this case and in No. 30,4 T.T.R. 517.

Because of the similarity of issues the cases were considered together with the intent they be decided in one opinion.

The court now finds it inconvenient to do this because of the dissimilarity of the ultimate issues involved, even though the two results have been challenged largely on the same grounds. The same questions of law considered and disposed of in this case which also are found in No. 30, 4 T.T.R. 517, will not be repeated in that opinion.

The similar issues raised may be reduced to a single ultimate question and several resultant concomitant questions:-

Whether the Trust Territory government is sovereign in the absence of a specific declaration of sovereignty in the Trusteeship Agreement or whether it possesses any of the rights of a sovereign in the absence of a specific delegation to it of sovereign authority by the United States?

The appellant suggests the Trust Territory government, not being sovereign, has no authority other than that which may be exercised by a trustee in a caretaker role. Appellant declines to employ the term "government", referring instead to the Trust Territory administration.

We assume that it follows from appellant's argument that his conclusion is that if there is no executive authority there can be no judicial authority and that the only applicable legislative power in the territory, as well as the only sovereignty, rests with the people in each island group in their "native law and custom".

In short, the court is asked not only to reverse the two trial court decisions but to find that the government is acting without authority, the court without jurisdiction and the Congress of Micronesia without effect. Apparently, appellants believe we should close up shop and go home except for those who may be required to maintain order, provide "essential services" (whatever that means) and preserve

the status quo, presumably as of 1947 when the Trusteeship Agreement became operative.

[1] Unfortunately for the appellant, it is not that simple. If the argument now made had been presented to the Congress of the United States more than twenty years ago, it may well have influenced the subsequent course of events. The status of sovereignty, being a political question, is not for the courts to declare. *Panama Agencies Co. v. Franco*, 111 F.2d 263, 265. *The Deny*, 40 F.Supp. 92. *Chicago v. Waterman*, 333 U.S. 103, 68 S.Ct. 431. *Clark v. Allen*, 311 U.S. 503, 67 S.Ct. 1431.

This court does not propose to order the liquidation of the Trust Territory government because of a political issue. Nor have we been persuaded that as a matter of law it should be liquidated. Particularly, when we apply the hindsight of twenty years to the question, we are of the opinion there is amply adequate law to sustain the exercise of governmental power. For almost twenty years the Congress of the United States has approved, financed and legislated in behalf of the territory government. The Security Council of the United Nations, the other party to the Trusteeship Agreement, has commended and approved the manner and extent of the exercise of governmental authority. The interpretation the parties to the agreement have given it in twenty years is sufficient in itself to require rejection of the ultimate conclusion appellant suggests.

Appellant urges that without either a declaration of sovereignty or a delegation of power from a sovereign there can be no sovereignty. If this were true the court would not hesitate to hold there is no power in the Trust Territory government. But the theory advanced is neither legally tenable nor in accordance with historical fact.

[2] Sovereignty has been defined as the right to govern. *Chisholm v. State of Georgia*, 2 U.S. 419, 1 L.Ed. 440.

[3] The right to exercise all necessary powers of government over the territory was provided in the Trusteeship Agreement and delegated by the United States Congress to the President who designated the Secretary of the Department of the Interior, who in turn established the governmental organization by a series of Secretarial Orders commencing in 1951 and continuing to the current year.

The power to govern was authorized in the several articles of the Trusteeship Agreement, particularly Articles 3 and 6. Article 3 provides:-

"The administering authority shall have full powers of administration, legislation, and jurisdiction over the territory."

Article 6 imposes obligations scarcely consonant with the caretaker role suggested by appellant. The article authorizes the administering authority to foster the development of political institutions and to promote economic, social and educational advancement.

Pursuant to this agreement, the United States Congress in an enabling act (Title 48, Ch. 14, Sec. 1681-1687, U.S. Code) vested "all executive, legislative and judicial authority" in such persons or agencies "as the President of the United States may direct or authorize." A broader or more comprehensive delegation of the "right to govern" would be difficult to find.

Secretarial Order No. 2658, dated September 6, 1951, placed "executive" authority in a High Commissioner and judicial authority in a branch of government "independent of the executive and legislative powers." Secretarial Order No. 2882, dated September 23, 1964, separated legislative and administrative power and Secretarial Order No. 2918, dated December 27, 1968, consolidates previous orders for the purpose of delimiting "the extent and nature of the authority of" the Trust Territory government as exercised under the jurisdiction of the Secretary of the Interior and for the further purpose of prescribing "the manner in

which relationships of the Government of the Trust Territory shall be established and maintained with the Congress, the Department of the Interior and other Federal agencies, and with foreign governments and international bodies."

The court is unable to accept appellant's theory that the Trust Territory "administration" (as distinguished from "government") is limited to maintaining order and preserving the status quo.

This court has previously considered a challenge to the governmental power of the Trust Territory government in *Alig v. Trust Territory*, 3 T.T.R. 603. That case dealt with the immunity of the Trust Territory government from suit without its consent. Such immunity from suit is an inherent attribute of sovereignty. It is comparable to the inherent power of eminent domain exercised in *Ngiralois v. Trust Territory*, supra, and in the determination of land titles exercised in the present case.

In *Alig* this court did not find sovereignty in "the international sense" but did find a "right to govern" derived from the delegation of legislative power by the United States Congress. The court said:-

"Leaving aside any technical question as to what word or small group of words most accurately describes the relation of the Trust Territory of the Pacific Islands to the United States of America, we hold that the delegation of legislative power outlined above to the Trust Territory of the Pacific Islands, even though subject to some limitations, gave the Trust Territory what United States courts have referred to, as noted above, as 'quasi sovereignty'; carrying with it the attributes of immunity from suit without its own consent."

[4] We now add that this "qualified sovereignty" carries with it the inherent power of government to condemn private property for a public use, to settle property rights, to exercise the police power generally and to exercise such

other powers as are appropriate legislative subjects.

Nor does the power need to be explicitly delegated, it may be inferred.

The United States Supreme Court said in *Albert Hanson Lumber Co. v. United States*, 261 U.S. 581, 43 S.Ct. 442 at 444:-

"The power of eminent domain is not dependent upon any specific grant; it is an attribute of sovereignty, limited and conditioned by the just compensation clause of the Fifth Amendment."

Also we find in *State of Georgia v. City of Chattanooga*, 264 U.S. 472, 44 S.Ct. 369 at 370:-

"The taking of private property for public use upon just compensation is so often necessary for the proper performance of governmental functions that the power is deemed to be essential to the life of the state. It cannot be surrendered, and, if attempted to be contracted away, it may be resumed at will."

[5-7] We hold that sovereignty, to be effective, need not be specifically delegated and that the delegation of the power to govern carries with it by inference such necessary powers of government as to permit the exercise of the authority delegated. Further, that the delegation of this authority by the President of the United States, as authorized by Congress, is within the constitutional power of Congress and the President over foreign affairs.

[8] Appellant also offers an interesting historical dissertation on the question of Japanese sovereignty. Whatever consideration we have given to sovereignty of the Trust Territory government, we decline to go any further and explore the question of Japanese sovereignty exercised half a century ago until it lost control over the territory during World War II. As this court has said many times in the past, we will not undo the official acts of the Japanese administration, even though wrongful, unless they occurred so near the end of the Japanese regime as to prevent recourse to Japanese courts.

What the Japanese code was during that administration and whether its provisions were violated by assumption of dominion over land previously seized by the German government in the Mariana Islands is not for our inquiry at this late date. We continue to adhere to the long line of decisions of the court, beginning with the very first and continuing until the recent *Alig* decision. *Jatios v. Levi*, 1 T.T.R. 578. *Alig v. Trust Territory*, 3 T.T.R. 603.

Finally, we consider the suggestion that this court and no other court but a United States Constitutional court has jurisdiction to consider or interpret a treaty of the United States. That is not the law in the United States and we reject the suggestion that it is the law in the Trust Territory.

[9] It is said in 52 Am. Jur., Treaties, § 4, that a United States treaty is:---

"... a living law, operating upon and binding the judicial tribunals, state and Federal; and these tribunals are under the same obligation to note it and give it effect as they are to notice and enforce the Constitution and laws of Congress made in pursuance thereof."

[10] Section 20, Trust Territory Code, imposes the same obligation upon this court to "note and give effect" to United States treaties, including the Trusteeship Agreement, as is imposed upon state and Federal courts in the United States.

[11, 12] In both the present case and in *Ngiralois* the appellants argue there has been a denial of "due process". Appellants say there was denial of due process because "the various actions of the Trust Territory and its agents are arbitrary, capricious and violative of those rights". This general proposition, without specific application to anything in the record, is ineffective as an appealable error. There is no indication denial of due process was raised before the trial court and since there is nothing in the

record relating to the point we need not consider it. Furthermore, because the alleged error does not point out or specifically show wherein the trial court committed error we decline to consider the issue. *Fahrenbrink v. Moore* (Ariz.), 75 P.2d 360. 5 Am. Jur. 2d, Appeal and Error, § 658.

A further assignment of error which relates to denial of due process pertains to the statutory provisions in the Trust Territory Code for condemnation of private property is asserted in *Ngiralois* and is considered in that opinion.

We now come to the assignment of error in the present case not identical or similar to errors claimed in *Ngiralois*. It concerns the alleged insufficiency of the evidence in support of the judgment. Appellant claims the "uncontroverted evidence" proves chain of title in the deceased plaintiff. If the claim were correct the judgment of the trial court would be reversed. The ultimate question in the trial was determination of title and the trial court determined it was not shown to be in the plaintiff-appellant.

Appellant's initial link in the title chain was the claim his predecessor "secured his title in the 1890's through proceedings in the Spanish Court of the First Instance in Guam."

The evidence shows appellant's predecessor obtained two "Possessory Informations" from the Spanish court. We take judicial notice of the record and the Spanish law therein set forth of the trial court and appellate decisions in *Cabrera v. Trust Territory*, Civil Action No.2, Saipan Court of Appeals (predecessor in the Mariana Islands to the High Court).

The trial decision notes that:-

"... under Spanish law it took 20 years, as a rule, to perfect a possessory information to a point where one could request a crown grant."

But when the Germans took over from Spain the lands were confiscated when pasture lands were not planted to coconuts. Those lands seized by the Germans were taken over by the Japanese after World War 1. This was the pattern in both the Cabrera and now in the Calvo land claims. The evidence shows the Japanese government conveyed to some of the defendants the lands claimed by appellant and the trial court's conclusion, clearly in accord with the evidence, was:-

"The court considers that even if these 'Possessory Informations' remained in effect at the close of the period of the Spanish administration of Rota, the plaintiff-appellant has still failed to establish any present rights to any of the lands in question as against any of the parties hereto."

[13,14] When the appellant concludes, after a detailed review of the trial testimony, **that:-**

"The weight of the evidence is all in favor of the appellant." he misconstrues the duties of the appellate court. The weight of the evidence is for the trial court and is not decided anew in the appellate court. **It** is the function of this court to ascertain whether there is any probative evidence in support of the trial court's findings and conclusions. **If** there is any evidence in support, the findings of the trial court will not be disturbed. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619. *Kenyul v. Tamangin*, 2 T.T.R. 648.

We hold that the facts found by the trial court are amply supported by the evidence and that the conclusions drawn from the application of law to the facts are in accord with the law and the evidence.

We may not conclude without noting one point raised by the Trust Territory in its brief. **It** is suggested this court does not have jurisdiction because this is an appeal from a decision entered on an appeal from the title determinations of the Land Title Officer. An appeal from an appeal does not lie, it is said.

[15] The appellee indulges in a bit of casuistry. Upon the appeal from the administrative proceedings, the Trial Division tried the matter de novo. By definition, trial de novo is "a trial from the beginning as if the case originated in the court trying the case de novo." Appeal lies from a final judgment entered in a trial de novo.

JUDGMENT

The judgment appealed from is affirmed.

EBAS NGIRALOIS, The Remed Lineage, and Unknown Owners,
Defendants-Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff-
Appellee

Civil Appeal No. 30

Appellate Division of the High Court

April 30, 1969

Trial Court Opinion-3 T.T.R. 303

Appellate Court Opinion-3 T.T.R. 637

Appeal from judgment awarding damages for condemnation taking of quarry by Trust Territory government. Appellant claimed that government had no power to take by condemnation. The Appellate Division of the High Court, D. Kelly Turner, Associate Justice, held that where the government had been created with full power delegated to it there need not be a specific delegation of the right of eminent domain.

Judgment affirmed.

1. Trusteeship--Administering Authority-Powers

The Government of the Trust Territory has been created with full power delegated to it to execute governmental functions through legislative, administrative and judicial branches.

2. Eminent Domain-Delegation of Power

There need not be a specific delegation of the right of eminent domain where there has been a delegation of full power of government.