

of Courts of Palau District by the District Land Title Officer of said district, relative to the land Iyeb located in said District, was erroneously made, and that same be and hereby is, reversed and held for naught.

It is further adjudged that title to the land Iyeb be and the same is hereby confirmed in appellant as representative of the Blaechur Clan, free and clear of any right, title or interest therein on the part of appellees, or any other person in privity with them.

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.

NGIRATULEMAU v. TRUST TERRITORY

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.

URRIMECH, Appellant

v.

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

Civil Action No. 96

Trial Division of the High Court

Palau District

November 24, 1958

Action to determine title to land in Aimeliik Municipality, in which plaintiff claims as assignee of land formerly transferred by Japanese Government to plaintiff's grantor under agreement calling for rental payments for twenty-five years, after which title would vest. Plaintiff's grantor had made all but last payment when war broke out. On appeal from District Land Title Determination, the Trial Division of the High Court, Associate Justice Philip R. Toomin, held that upon payment to Trust Territory of last installment of rental due under contract, title to land will vest in plaintiff.

Modified.

1. Homesteads—Generally

Typical homestead entry involves gift of land from public domain upon consideration grantee develop, improve, and occupy it for stated number of years, after which title vests in grantee.

2. Homesteads—Generally

Typical homestead entry involves no payment other than effort expended and conditions such as actual entry, residence, cultivation and restrictions against alienation.

URRIMECH v. TRUST TERRITORY

3. Public Lands—Sale

Where agreement between government and grantee of property contains no restrictions against alienation, nor requirements for development and occupancy, agreement is one of purchase on contract, with title to vest in grantee upon making final payment under contract.

4. Public Lands—Sale

Where government and grantee of property contract that latter will make payments for twenty-five years after which title to property will vest in him, and grantee transfers his interest after making payments for twenty-four years, transferee's two years of occupancy may be tacked on to transferor's twenty-four years to give transferee total over projected twenty-five year minimum under contract.

5. Homesteads—Restriction Against Alienation

Trust Territory restriction against alienation of land under homestead agreement is prospective only and did not take effect in Trust Territory until November 15, 1952. (Executive Order No. 31)

6. Former Administrations—Recognition of Established Rights

Where only Trust Territory Government can now deliver title to property as contemplated in agreement between Japanese Government and grantee of property, it is required to carry out agreement of prior government and deliver proper title.

7. Former Administrations—Recognition of Established Rights

Under rules of international law, when ceded or conquered territory passes from one sovereign to another, rights of citizens to their private property remain unaffected by change in government.

8. Former Administrations—Applicable Law

Under rules of international law, validity of rights of citizens to private property within ceded or conquered territory is determined by laws under which rights arose and existed.

9. Former Administrations—Recognition of Established Rights

Under rules of international law, property rights within ceded or conquered territory are entitled to protection, whether party had full and absolute ownership of land or merely equitable interest which required further act to vest in him perfect title.

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

From 1946 or 1947 until June 29, 1953, no comprehensive machinery was available to process claim against Trust Territory Government for return of land, nor could claim be effectively prosecuted until Trust Territory Government had consented to its enforcement.

11. International Law—Sovereignty—Sovereign Immunity

Implicit in sovereignty of nations is right to determine how, when and under what circumstances they may be sued.

12. Former Administrations—Recognition of Established Rights

Where party's rights in land are enforceable against Trust Territory Government to same extent they could have been enforceable against prior government, title to land may be perfected under machinery made available by Trust Territory for processing of such claims.

<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 is from a Determination of Ownership and Release made by the District Land Title Officer of Palau District and filed with the Clerk of Courts. The proceedings arose through the filing of claim by appellant pursuant to Office of Land Management Regulation No. 1. After due hearing pursuant to said regulation, the Land Title Officer concluded the land should be returned to appellee, Trust Territory of the Pacific Islands, and therefore determined the matter adversely to appellant.

The record made at the hearing of the said claim, including the testimony and exhibits offered and received on behalf of appellant, have been received in evidence on this appeal, by agreement of the parties. In addition, the parties have offered further evidence before this court, which evidence has also been considered on this appeal.

From an examination of the record so made and of the understandings and agreements contained in a certain Memorandum of Pre-trial Conference and Order in Relation Thereto, entered and filed in these proceedings, and upon consideration of the evidence heard by the court, the following are the relevant and material facts found by the court:

1. The land Merker, located in Aimeliik Municipality, Babelthaup, Palau District, was the property of the Japanese Government in 1922. It was then occupied, as it had been since 1911, by a large group of Ponapeans brought there as prisoners by the prior German Government.

2. Sometime in 1922 the Ponapeans returned to their native land, and the Government granted this land to a Japanese national named Miyashta Juichiro, married to a Palauan, under homestead agreement calling for rental payments for twenty-five years, after which title would vest. Juichiro paid the Ponapeans 800 yen for the trees and growing crops they had planted.

3. Juichiro took possession of the land in 1922, built a house on it which he occupied for a short time, then turned over its occupancy to a succession of share croppers who planted trees and produced crops on shares, or part wages and part shares, for many years. Improvements of substantial nature were made on the land by Juichiro and parties in privity with him.

4. On July 15, 1945, Juichiro conveyed his interest in the land to appellant, his mother-in-law. In January of 1946, Juichiro was evacuated to Japan, having paid all rental due under said lease homestead agreement up to January 1946.

5. Appellant remained in possession of said land for a period of two years, and then leased it out on shares, which arrangement has continued to the time of trial.

6. No deed of conveyance has ever been requested from appellee, Trust Territory of the Pacific Islands, either by Juichiro or appellant, nor has the rental for the twenty-fifth year been paid.

[1, 2] From the facts above stated it appears the situation at bar does not readily fall into the familiar pattern of homestead entry. In the typical homestead en-

try is involved a gift of land from the public domain, upon consideration that the grantee develop, improve, and occupy it for a stated number of years, after which title vests in him. Because a gift is intended and no payment other than the effort expended is expected of the entry man, the Public Land Laws of the United States impose conditions such as actual entry, residence, and cultivation, and restrictions against alienation.

In the case at bar the pattern is different. Here is involved a purchase of government land upon the installment plan, with the installments to be received as rental until the final payment has been made, after which title will vest. Meanwhile possession is given to the lessee-purchaser who enters upon the premises, causes same to be developed substantially, and makes 24 of the 25 annual payments upon the purchase price.

Before the last payment is due, an event occurs which profoundly affects the consummation of the contract. In 1944 the raging war finally reaches, then overcomes the Japanese stronghold in the Palaus, and the local Japanese Government collapses. Control passes to the military government set up by the Department of the Navy, and it is more than two years before courts are created with jurisdiction over equitable causes of action in land matters.

Meanwhile, whether because of the imminence of his evacuation to Japan, or because of his desire to provide for his wife's family on Koror, Juichiro executes a document in July 1945, transferring his interest to appellant, his mother-in-law. In January 1946 he is evacuated to Japan. Appellant goes into possession and remains for two years, before subleasing to a share cropper, who is now in possession.

[3, 4] From the foregoing recital, the answer is suggested that calling the agreement a homestead permit does not square with the facts. The agreement appears to

be none other than the familiar purchase on contract, with title to vest upon making the final payment. No restrictions against alienation are shown, nor any requirement for development and occupancy. Nor is there any reason under the applicable laws why appellant may not take her two years of occupancy upon her son-in-law's 24 years to give her a total over the projected 25 year minimum.

[5] The restriction against alienation of land under homestead agreement did not take effect in Trust Territory until November 15, 1952, with the adoption of Executive Order No. 31. Its language is obviously prospective, so that even if the agreement at bar were truly a homestead agreement, there was no restriction against transfer of Juichiro's rights to his mother-in-law, at the time the transfer occurred. The court is therefore constrained to hold that the transfer of Juichiro's rights in the subject property to appellant, was valid and is binding on the parties thereto, and that she may tack her period of occupancy upon her grantor's in reaching the minimum period, if any, required by the contract.

[6] Title to the land here involved was in the Japanese Government in 1945 at the time it lost control of the Palau Islands. When the time arrived in late 1946 or possibly early 1947, to make the last payment on the lease purchase contract and obtain the title, the prior government was no more and could not deliver. The only government which could deliver a title as contemplated, was Trust Territory Government, which did not start to function as such until July 18, 1947. Is there any requirement on Trust Territory Government to carry out the engagement of the prior government to deliver a proper title? This court believes there is.

[7] This requirement is found in the rules of international law which are applicable when ceded or conquered

territory pass from one sovereign to another. In such cases it is uniformly held that the rights of citizens to their private property remain unaffected by the change in government. 30 Am. Jur. 205, International Law, § 46.

[8, 9] Moreover, the validity of those rights is to be determined by the laws under which they arose and existed. *Brownsville v. Cavazos*, 100 U.S. 138, 25 L.Ed. 574. Furthermore, property rights within the ceded or conquered territory are not only unaffected by the change of sovereignty, but also are entitled to protection, whether the party had the full and absolute ownership of the land or merely an equitable interest therein, which required some further act to vest in him a perfect title. However, the mode of securing these rights and setting up the procedure which must be followed to obtain them, belongs to the political department of the government, which may provide a procedure on the administrative level or delegate it to the judiciary. *Barker v. Harvey et al.*, 181 U.S. 481, 21 S.Ct. 690; *Ainsa v. New Mexico and A.R. Co.*, 175 U.S. 76, 20 S.Ct. 28.

Conformably to the power in the new government of Trust Territory to determine the mode of processing claims to lands used, owned or controlled by it or by the Government of the United States, the Government of the Trust Territory, pursuant to Interim Regulation 3-50, adopted Land and Claims Regulation No. 1 on January 11, 1951, providing for determination of land ownership and return thereof to the rightful owner after due hearing pursuant to notice. Subsequently, as provided by Section 926 of Trust Territory Code, the Land and Claims Administrator of June 29, 1953, promulgated Office of Land Management Regulation No. 1, pursuant to which the claim adjudicated herein was filed and processed.

[10-12] During the entire period then, from late 1946 or possibly early 1947, when the last payment of rental

was due from appellant or her predecessor, until notice to file claims was given by the District Land Title Officer of Palau District, subsequent to June 29, 1953, no comprehensive machinery was available to appellant to make her claim against Trust Territory for return of the land here involved. Nor could the claim be effectively prosecuted until Trust Territory Government had consented to its enforcement. This is because of the doctrine that implicit in the sovereignty of nations, is the right to determine how, when, and under what circumstances they may be sued. 40 Am. Jur. 301, States, Territories and Dependencies, § 91; 54 Am. Jur. 633, United States, § 127. If, then, the rights possessed by appellant are enforceable against Trust Territory Government to the same extent they could have been enforceable against the prior government, and if all appellant was required to do to obtain her title was to make payment of the last year's rental, no reason is apparent, now that Trust Territory has made available the machinery for processing of such claims, why appellant's title may not be perfected.

To refuse her redress under the circumstances here shown, is to violate the principles voiced by Justice Field in relation to the processing of claims by the United States of Mexican inhabitants of California, in *United States v. Anguisola*, 1 Wall, 352, 17 L.Ed. 613. He said in reference to the policies adopted by the United States: "They have not desired the tribunals to conduct their investigations as if the rights of the inhabitants to the property, which they claim, depended upon the nicest observance of every legal formality. They have desired to act as a great nation, not seeking, in extending their authority over the ceded country, to enforce forfeitures, but to afford protection and security to all just rights which could have been claimed from the government they superseded."

The court therefore holds that upon payment of the last year's rental to Trust Territory of the Pacific Islands, title to the land involved in this case, will vest in appellant, free and clear of the claims of appellees, or any person in privity with them.

It is, therefore, the judgment of this court, that the Determination of Ownership made and filed with the Clerk of Courts of Palau District by the District Land Title Officer of said district, relative to the land Merker, was erroneously made, and that the same be, and hereby is, modified in the following respects: That the title of Trust Territory of the Pacific Islands to said land is subject to the equitable interest therein of appellant as assignee of the purchaser thereof, one Juichiro, and that upon payment of the last installment of rental due under the said purchase contract, title to said land will vest in appellant, her heirs and assigns, free and clear of any right, title or interest therein of appellees, or anyone in privity with them.