

Airai State Pub. Lands Auth. v. Seventh Day Adventist Mission, 12 ROP 38 (2004)
**AIRAI STATE PUBLIC LANDS AUTHORITY, TMEWANG RENGULBAI, and
SMENGESONG CLAN,
Appellants,**

v.

**SEVENTH DAY ADVENTIST MISSION,
Appellee.**

CIVIL APPEAL NO. 03-039
Civil Action No. 02-125

Supreme Court, Appellate Division
Republic of Palau

Argued: November 23, 2004

Decided: December 28, 2004

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Counsel for Appellants: John K. Rechucher, Raynold B. Oilouch

Counsel for Appellee: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; R. BARRIE MICHELSEN, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

MICHELSEN, Justice:

The primary issue in this appeal is whether the Trial Division of this Court may, in deciding a quiet title action, *sua sponte* vacate a land court determination of ownership for that property and return the case to the Land Court for further fact findings. We find that the jurisdiction of the Trial Division does not include vacating determinations and remanding the case to the Land Court for additional hearings. Accordingly, we vacate the Trial Division's order.

This action concerns a dispute over the ownership of Lot No. 164-11162, located at Ngerikiil in Airai State ("the lot"). Smengesong Clan ("the Clan") filed a timely claim pursuant to the Return of Public Lands provision of the Palau Constitution, Article XIII, section 10.¹ The

¹"The national government shall, within five (5) years of the effective date of this Constitution, provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration." ROP Const. art. XIII, § 10.

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Land Court subsequently issued notice of hearing for a Return of Public Lands that included the 140 disputed lot. The notice stated, in pertinent part:

Notice is hereby given that the Land Court shall conduct Hearings on certain claims to public land(s) or land(s) claimed to be public lands located in Ngerikill Hamlet . . .

Pursuant to RPPL No. 4-43 Section 4(b), claims to public lands must have been filed on or before January 1, 1989, in order to be considered. Accordingly, no new claims will be accepted at this time.

The Clan was the only claimant to assert an Article XIII claim for the lot. Before the hearing, the Clan and Airai State Public Land Authority (“ASPLA”) submitted a settlement agreement to the Land Court, in which ASPLA conceded that the lot should be awarded to the Clan, and the Land Court issued a determination of ownership consistent with that agreement.

Seventh Day Adventist Mission (“SDA”), an ecclesiastical corporation, operates a school on part of the lot. SDA claims ownership rights in both the lot and the buildings thereon by virtue of authority granted by the Trust Territory Government in the 1970’s and also by deeds from the purported owner of the property. Consequently, SDA had no Article XIII claim to file, since it was already in possession of the property and has never claimed that it was the original owner whose rights were taken by a government by one of the means set forth in the Return of Public Lands Clause.

After the Clan allegedly began to enter portions of the lot on the strength of the Clan’s new determination of ownership, SDA filed a complaint in the Trial Division. SDA requested that the trial court: (1) declare that the determination of ownership was null and void and that the SDA held valid title to the land; (2) find that the Clan and the ASPLA had perpetrated a fraud on the Land Court; (3) determine that the Clan had trespassed on the lot; and (4) grant an injunction preventing the Clan from further entering on the lot.

The trial court denied SDA’s motion for summary judgment on the issues of fraud and trespass. After a trial on the issue of whether the land in dispute was public land or private land, the court vacated the Land Court’s Determination of Ownership and *sua sponte* referred the case to the Land Court for further proceedings on that issue, because it found that there was some evidence supporting both positions. The trial court concluded that the Land Court should not have issued the determination of ownership without making sure all interested parties were before it. The Clan and the ASPLA have appealed the trial court’s remand. On appeal, they claim that the remand order was an abuse of discretion.

STATUTORY BACKGROUND

Before considering the specifics of this appeal, we will examine the pertinent statutory provisions for guidance. The applicable law is the Land Claims Reorganization Act of 1996. 35 PNC §§ 1301-21. Pursuant to the Act, the Land Court has two independent responsibilities: (1)

Airai State Pub. Lands Auth. v. Seventh Day Adventist Mission, 12 ROP 38 (2004) to administer the Lands Registration Program, 35 PNC § 1304(a); and (2) to hold hearings and make determinations for the return of public land as required by the Palau Constitution. 35 PNC § 1304(b). When the Land Court is conducting land registration **141** hearings pursuant to Section 1304(a), it sets a date for hearing, and all claims must be filed no later than 60 days prior to the date set for the hearing. 35 PNC § 1309. Prior notice of the hearing must be given by physically posting notice on the land, as well as at locations specified in the law. There also must be radio notice, and personal service of the notice must be effected on all persons known to the registration officer to claim an interest in the land. 35 PNC § 1308.

After such notice has been given, the Land Court resolves any factual disputes and issues a determination of ownership consistent with its findings. 35 PNC § 1311. Thereafter, an aggrieved party may appeal the determination. 35 PNC § 1312. Once any appeal has been considered by the Appellate Division of the Supreme Court (or if no appeal has been timely filed) the Land Court issues a certificate of title. “Such certificate of title shall be conclusive upon all persons so long as notice was given as provided in Section 1308, and shall be prima facie evidence of ownership subject to any leases or use rights of less than one year, which need not be stated in the certificate.” 35 PNC § 1313.

When the Land Court is considering an Article XIII claim, Section 1304(b) applies. In such cases, the claimants do not contest government ownership – they concede it. The claimants assert that they are the original owners (or the proper heirs of the owners) of the subject property and that the property became public land before January 1, 1981 “through force, coercion, fraud, or without just compensation or adequate consideration.” 35 PNC § 1304(b). The government is precluded from asserting certain affirmative defenses in Article XIII claims. *Id.* When the Land Court finds that the claimant has not proven all of the elements of an Article XIII claim, the land remains government property. *Masang v. Ngirmang*, 9 ROP Intrm. 215, 217 (2002). In those cases where the Land Court has held that the subject property should be returned, and any appeals are resolved, a certificate of title is issued. At that point the claimant becomes the successor in interest to the government’s title.

The point of this discussion of the statute is to highlight the distinction between the land registration program and the process for Article XIII claims. They have different deadlines, different burdens of proof, and different objectives. Although judicial economy may be served by consolidating hearings for both the land registration program and Article XIII claims into one evidentiary hearing if both types of claims concern one parcel, the Land Court must consider any Article XIII claims as analytically separate from determinations of ownership under the land registration program.

DISCUSSION

Having the above statutory framework in mind, we turn to the record in this case. Here, the Land Court’s notice was expressly limited to Article XIII claims. It specifically stated that “no new claims will be accepted at this time,” because it was only considering “certain claims to public land(s) or land(s) claim to be public lands.” Therefore, the proceedings were not part of the land registration program. In such a case, ASPLA was authorized to concede the merit of the

Airai State Pub. Lands Auth. v. Seventh Day Adventist Mission, 12 ROP 38 (2004) Clan's position, and not oppose the claim.² In 142 this Article XIII claim, however, both ASPLA and the Clan assumed that the State had good title to give. That assertion may or may not be true. We have previously made clear that persons remain free to challenge a government's assertion of good title in proceedings other than Article XIII hearings.

Citizens had a right to contest government claims of title to property before the enactment of the constitution and that right continues after the expiration of the period for filing Article XIII claims. Hence, Appellant could have, and still may, bring a quiet title action.

Carlos v. Ngarchelong State Pub. Lands Auth., 8 ROP Intrm. 270, 272 (2001) (footnotes omitted).

The Trial Division questioned the efficacy of the procedure followed by the Land Court in this case, because the Land Court issued a determination of ownership for the lot after only hearing the Article XIII claim. The Trial Division sensibly concluded that the Land Court should not have issued a determination of ownership until after parties who wish to challenge ASPLA's assertion of title were heard. We agree with the Trial Division's conclusion but we disagree with the remedy chosen. Although there was a time when the Trial Division was authorized to hear appeals from the Land Claims Hearing Office, 35 PNC § 1113 (repealed 1996), and in the law previous to that was also authorized to hear appeals from the Palau Land Commission, 35 PNC § 933(a) (repealed 1986), that is no longer the case. The Trial Division has no appellate authority over the Land Court and there is no current statutory authority for the Trial Division to remand a case. We therefore do not characterize the trial court's action as an "abuse of discretion" as stated by Appellants, because the Trial Division had no discretion to remand the case under any circumstances.

There is an additional problem with the Trial Division's approach. The allegation of SDA was that, based upon the authority of the Land Court's determination of ownership, the Clan was already present on the lot and SDA sought an injunction to prevent what is categorized as the "trespass" by the Clan. The Land Court has no injunctive powers, and a remand of the case would not address, at least directly, this new problem.

We also note a further reason why this dispute is properly in the Trial Division. SDA claims that it acquired the lot by quitclaim deeds in 1967 and 1970. At that time only citizens or corporations wholly owned by citizens could acquire title to land. 57 TTC § 201. This provision has been elevated to a constitutional principle. ROP Const. art. XIII, § 8. SDA is a "corporation sole" formed for ecclesiastical purposes under Trust Territory law. Corp. Partnerships and Associations Regulations (now found at Ch. 4, p. 64, 1996 Regulations). Although the SDA asserts that the officers and directors of SDA are Palauan citizens, the citizenship of its officers

²SDA asserts that the actions of ASPLA can be challenged because the chairman of ASPLA was an ocell member of the Clan, and the representative of the Clan in the Land Court also was a member of ASPLA. SDA alleges that both members had a conflict of interest when they actively participated in the actions of ASPLA in this case. The Trial Division did not resolve this issue, and we need not address the matter in this appeal.

Airai State Pub. Lands Auth. v. Seventh Day Adventist Mission, 12 ROP 38 (2004) and directors is, of course, irrelevant. The pertinent issue has always been the citizenship of the owners of the corporation. SDA cannot be said to be “owned” by anyone since it has 143 no shareholders.³ Therefore, SDA cannot be said to be “wholly owned by citizens” as was required by law at the time of the alleged transfer of title.⁴ Nonetheless, SDA clearly has a cognizable claim to the improvements that were on the lot before the Land Court issued its determination, *Meriang Clan v. ROP*, 7 ROP 33 (1998), and has a right to assert its interest in those improvements in this litigation. Determination of such legal and equitable issues are beyond the jurisdiction of the Land Court, whose authority is limited to deciding ownership of land. *ROP v. Wally*, Civ. App. No. 01-22 (Feb. 17, 2003).

CONCLUSION

Because the Trial Division: (1) unquestionably had jurisdiction over the case; (2) had no statutory authority to remand the matter (3) was the only Court that could consider SDA’s request for injunctive relief; and (4) must resolve legal and equitable rights concerning SDA’s improvements on the property, the Trial Division should have heard the case on the merits. The order remanding the case to the Land Court is vacated and the case is remanded for further proceedings consistent with this opinion.

³*Cf. Berry v. Soc’y of Saint Pius X*, 81 Cal. Rptr. 2d 574, 582 (1999) (purpose of corporation sole is to insure the continuation of ownership of property which may be held in the name of corporations titular head and the assets of the corporation sole remain with the organization rather than passing to the officeholder’s heirs).

⁴On remand, if SDA has some other argument as to why it holds title to the land, it is, of course, not precluded from making that argument.