Meriang Clan v. ROP, 7 ROP Intrm. 33 (1998)

MERIANG CLAN,
Appellant,

v.

REPUBLIC OF PALAU, PALAU PUBLIC LANDS AUTHORITY, and KOROR STATE PUBLIC LANDS AUTHORITY,
Appellees.

CIVIL APPEAL NO. 10-97
Civil Action Nos. 210-90, 227-90, 242-90 and 275-90

Supreme Court, Appellate Division
Republic of Palau

Argued: March 23, 1998
Decided: March 31, 1998

Counsel for Appellant: Johnson Toribiong, Esq.

Counsel for Appellee PPLA: Yukiwo P. Dengokl, Esq.

Counsel for Appellee KSPLA: David Shipper, Esq.

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

BEATTIE, Justice:

I. Introduction

This case involves a determination of ownership in which the LCHO found that certain land in Koror State was seized from Meriang Clan by the Japanese Government and should therefore be returned to Meriang Clan pursuant to 35 P.N.C. § 1104(b). [1] This is the second time the case has come before us. The first time, we held that the Trial Division had erred by failing to grant a limited trial de novo after it was discovered that there were substantial deficiencies in the LCHO record due to inaudible tape recordings of a portion of the LCHO testimony. We reversed the Trial Division's affirmance of the LCHO and remanded the matter for a limited trial de novo. *KSPLA v. Meriang Clan*, 6 ROP Intrm. 10 (1996).

On remand, and after a limited trial de novo, the Trial Division affirmed the LCHO decision that the land was seized from Meriang Clan and should be returned to it. The instant appeal concerns an issue that we did not address in the first appeal due to the possibility that it might have become unnecessary depending upon the Trial Division's decision on remand. That

[1] The statute has been repealed and reenacted as 35 P.N.C. § 1304(b).

issue is whether the same statute which requires the return of the land to those from whom it was seized also vests them with ownership of any buildings which were not on the land when it was seized but were constructed later.[2] The Trial Division held that it did not. We affirm.

⊥34 II. Discussion

Several buildings were constructed on the subject property by the Trust Territory government after World War II ended. Meriang Clan claims that it now owns those buildings by reason of the determination under 35 P.N.C. § 1104(h) that the land on which the buildings are situated were seized from it by the Japanese government and should be returned. As noted, the Trial Division held that the buildings constructed by the government were not part of the property to be returned to the Clan under the statute. The sole issue on appeal is whether the terms "land" and "public lands" as used in Art. XIII, § 10 of the Constitution and 35 P.N.C. § 1104(b) include buildings.

Article XIII, § 10 of the Constitution states:

> 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.

To implement this constitutional mandate, the Olbiil Era Kelulau enacted 35 P.N.C. § 1104(b), which provides in pertinent part that:

> The Land Claims Hearing Office shall award ownership of any public land, or land claimed as public land, to any citizen or citizens of the Republic who prove that such land became claimed as part of the public lands, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration, and that prior to such acquisition such land was owned by such citizen or citizens or that such citizen or citizens are the proper heirs to such land.

Neither the constitutional provision nor the statutory one gives any explicit direction concerning the disposition of improvements made to the public lands between the time it was seized and the time it is returned.

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[2] In its brief, Meriang Clan also argued that the Trial Division was clearly erroneous in identifying the boundaries of the Clan's land claim. However, this issue was not raised in the first appeal in this case and is distinct and separable from the issues raised therein. Only the Trial Division's decision respecting ownership was reversed. Accordingly, the boundary determination was not affected by the reversal and remand and it stands as the final adjudication of the matter. *In re Delemel*, 5 ROP Intrm. 58 (1995).

Appellant Meriang Clan contends that the terms "land" and "public lands" in Art. XIII, § 10 of the Constitution and 35 P.N.C. § 1104(b) include improvements because the common law definition of land always includes improvements. According to the Clan, if the constitutional drafters and the OEK had intended to exclude improvements from the definition of "land" and "public lands," they would have said so explicitly.

Even if the common law definition of land incorporates improvements on the land, this does not necessarily indicate that the framers and the OEK intended to give the terms "land" and "public lands" such a meaning in the Constitution and in section 1104(b). The issue before us requires that we ⊥35 construe the statutory and constitutional provisions as a whole and not look at the term "land" in a vacuum. The Constitutional drafters and the OEK were attempting to solve a distinctly Palauan problem, a problem foreign to the common law. Read as a whole, Art. XIII, § 10 and § 1104(b) reveal an intent to restore to the original owners or their successors in interest lands that were wrongfully taken from them. Nothing in these provisions indicate an intent to give the original owners anything more than what was seized from them.[3]

Accordingly, the decision of the Trial Division is AFFIRMED.

MILLER, J., concurring:

I concur in the decision of my colleagues, but write separately because I believe that it stops short of addressing an issue that could and should be resolved now. While further litigation between appellant and appellees may be inevitable, I would narrow the scope of that litigation as much as possible.

The Court's decision rejects Meriang Clan's claim to ownership of the buildings on its land. However, it does not explain what the practical effect of this ownership situation will be.[4]

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[3] We note that the limited jurisdiction of the LCHO did not allow the claimants to claim the buildings at issue under any theory other than a contention that 35 PNC § 1104(b) gave them ownership. Similarly, our holding today is limited to Meriang Clan's claim of ownership under the statute.

We are mindful of the statement in the concurring opinion that we should venture beyond the single issue presented in this appeal. The concurring opinion speculates that there may be further litigation among the parties, speculates further that in the event of future litigation one of the appellees may argue that it should be paid for the value of the buildings, and then proceeds to offer a suggestion of how the issue might be resolved under Art. XIII. This is all done without the benefit of the legal briefs, argument, and presentation of relevant facts that would be offered in the event that the concurring opinion's speculation proves accurate. We see no point in accepting the invitation to add further length to this opinion by offering dicta concerning the impact Art. XIII may have on future litigation, if any, among the parties.

[4] The Court's opinion leaves open the possibility that Meriang may claim ownership of the buildings under another theory. *See* n.3 *supra*. The status quo, however, is that Meriang owns the land and the government owns the buildings on it. It hardly seems speculative to

If the Clan wants the buildings removed, as it suggested at oral argument that it does, does it have to pay appellees for the fair market value of those improvements, as appellees have argued? I am extremely skeptical that the constitutional drafters of Article XIII, § 10, intended that to be the case. Such a rule would mean that original owners would have their lands returned to them encumbered by a responsibility to pay off the government (or other owners of improvements) before using those lands in the manner they best saw fit. That is a ⊥36 considerable burden and is a doubtful result of a constitutional provision designed to ameliorate past injustices by restoring original owners to their pre-taking circumstances. The Court's opinion rightly concludes that this provision was not intended to provide successful claimants with a windfall by giving them back more than what they originally had; it seems equally unlikely that it was intended to give them less either by effectively depriving them of the use of the land or making them pay for it.

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suggest that this state of affairs will engender further litigation. Nor is it speculation that the appellees will argue that they are entitled to compensation for those buildings - - they have made that argument in this case. The question is therefore before us; if the provisions we are today interpreting give an answer to that question - - as I believe they do - - we should say so.