Ngerungel Clan v. Eriich, 15 ROP 96 (2008)

NGERUNGEL CLAN,
Appellant,

v.

PAULINO ERIICH, MERUK RENGULBAI, RENGCHOL OCHERAOL, KESAU MALSOL, SIMON OLKERIIL, SATSKI DUKOR, SIKSEI NGIRUCHELBAD, TMATK TIMULCH, DERBAI TENGATEK, KALISTUS NGIRTURONG,
Appellees.

CIVIL APPEAL NO. 07-030
LC/M 06-421 to 430

Supreme Court, Appellate Division
Republic of Palau

Decided: April 21, 2008[1]
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Counsel for Appellant: John K. Rechucher

Counsel for Appellees: Micronesian Legal Service Corporation

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; C QUAY POLLOI, Associate Justice Pro Tem.

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Senior Judge, presiding.

PER CURIAM:

This is an appeal from the Land Court's Findings of Fact, Conclusions of Law and Determination dated May 30, 2007. In 1982, the Aimeliik Land Registration Team of the Palau District Land Commission held hearings on the land at issue here: homestead lots in Imul Hamlet, Aimeliik State. Judgment was entered awarding the lots to the homestead claimants, but this judgment was never approved by the Land Commission and no determinations of ownership were issued. The case eventually passed on to the Land Court, which issued the Determination appealed here.

BACKGROUND

Prior to 1931, the Japanese seized the land at issue, known as *Ngerderar.* In 1955, Rechekemur Ngirachelsau filed a claim for *Ngerderar* on behalf of Ngerungel Clan. At a ⊥98 hearing in 1961, the Land Title Officer determined that the land was unoccupied before the Japanese took it, and that Ngerungel Clan protested this taking only when "the Japanese came to

[1] Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

Aimeliik looking for protests. There was no protest or suit filed reasonably soon after the taking and pursued vigorously and continuously until stopped by the war." Appellant Ex. 14. The Acting Land & Claims Administrator agreed with this assessment and the land was awarded to the Alien Property Custodian in 1961.

In 1963 or 1964, Appellees applied for and received homestead entry permits to various plots of land in *Ngerderar.* Ngerungel Clan did not apply for a homestead entry permit. In 1982, the Aimeliik Land Registration Team held a hearing to determine the ownership of the homestead lands. Ngerungel Clan appeared at this hearing and again asserted its claim of original ownership of the land. Nevertheless, the Registration Team awarded the lands to the homesteaders, but this judgment was never officially approved by the Palau Land Commission. In 1988, Ngerungel Clan filed another claim for return of lands pursuant to Article XIII, Section 10 of the Palau Constitution and 35 PNC § 1101 *et seq*. The case was treated as a pending matter before the Land Court, and Ngerungel Clan filed a motion for a *de novo* hearing on its return of public land claim; its superior title claim; and its claim that the homesteaders did not comply with the homestead laws of the Trust Territory and must therefore be divested of their land. The Land Court credited the testimony of Isamu Towai, a land classifier technician at the Lands and Surveys office during the time of the homestead program. Towai testified that although he did not keep a record of his actions during the homestead program, he believes that all the homesteaders complied with the requirements and obligations of the homesteading laws under the homestead agreement. The Land Court also noted that Ngerungel Clan did not raise the issue of whether the homesteaders complied with the homestead laws at the 1982 hearing.

The Land Court also declined to hold a new hearing on the superior title and return of public land claims, stating that "Ngerungel Clan has not made any kind of showing that might conceivably warrant reconsideration of the judgment issued by the Aimeliik Land Registration Team" in 1982. The Land Court awarded determinations of ownership to the homesteaders as identified in the 1982 proceeding.

STANDARD OF REVIEW

Land Court findings of fact are reviewed for clear error. *Tesei v. Belechal,* 7 ROP Intrm. 89, 90 (1998). "Under this standard, ifthe Land Court's findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made." *Obak v. Joseph,* 11 ROP 124, 127 (2004) (citation omitted). The Land Court's conclusions of law are reviewed *de novo. Roman Tmetuchl Family Trust v. Whipps,* 8 ROP Intrm. 317, 318 (2001). The Land Court's decision to deny a new hearing is reviewed for abuse of discretion. *See Ngiracheluolou v. Baules,* 8 ROP Intrm. 293, 294 (2001).

⊥99 DISCUSSION

Appellant first argues that the Land Court abused its discretion when it refused to hold a new hearing on the return of public land claim under Article XIII.[2] Appellant admits that it

[2] "The National Government shall . . . provide for the return to the original owners or

appeared at the 1982 hearing "to defend their title to Ngerderar." The thrust of the argument is that because the implementing legislation, 35 PNC § 1301 *et seq.,* was not enacted until after the 1982 hearing, this legislation constitutes new evidence which mandates a new hearing.

[2] For this argument to prevail, Article XIII, passed with the Constitution on January 1,1981, must not have taken effect until the enactment of 35 PNC § 1301 *et seq.* On the other hand, if Article XIII was self-executing, the public land claim was available to Appellant at the 1982 hearing and Appellant is precluded from seeking a new hearing on this basis. This Court has applied the *Gibbons* test to determine whether constitutional provisions are self-executing. *See The Senate v. Nakamura,* 7 ROP Intrm. 212, 213 (1999) (citing *Gibbons v. Etpison,* 4 ROP Intrm. l, 4 (1993)). Constitutional provisions are presumed to be self-executing; a presumption that can be overcome only where "(1) [the Court] cannot determine the scope or nature of the right from the language of the provision even with recourse to the full panoply of interpretive devices which courts normally use to divine the meaning of constitutional language; or (2) [w]here the provision reflects an intention of the framers that it not be implemented until legislative or other action is taken." Id. Appellant fails on both of these prongs.

Although it could be argued that Article XIII does not provide a mechanism for return of public lands claims, a provision does not have to provide for a remedy in order to be self-executing. 16 Am. Jur. 2d *Constitutional Law* § 104 (1998). "The question whether a constitutional provision is self-executing is distinct from the question whether it creates a private right of action for damages or other relief." *Nakamura,* 7 ROP Intrm. at 214. Here, the nature and scope of the right created by Article XIII is obvious – original owners of land which became public land through force or coercion are entitled to the return of their lands. The first *Gibbons* prong is satisfied.

"The second question posed by *Gibbons* is whether the framers intended that the provision have effect immediately or whether they contemplated subsequent legislation to give it effect." *Nakamura,* 7 ROP Intrm. at 214. This Court has held that phrases such as "pursuant to appropriation laws" or "as provided by law" indicate that enabling legislation was contemplated and required. The phrase at issue here, "[t]he National Government shall . . . provide" does not so indicate. "It is not inconsistent to say both that a particular clause is self-executing and that the legislature has the power to enact legislation to carry out its purposes." *Nakamura,* 7 ROP Intrm. at 214 (citing 16 Am. Jur. 2d *Constitutional Law §* 105 (1998)). *Gibbons* itself held that "although the framers intended to permit the OEK to iron out details of the [provision at issue], and perhaps ⊥100 even expected them to do so, they did not intend that the OEK's failure to act on this subject should stand in the way of a citizen's right to directly introduce constitutional changes." *Gibbons, 4 ROP* Intrm. at 6 (internal quotations omitted). Thus Appellant's argument fails both prongs of the *Gibbons* test. Appellant's claim for the return of public lands was available and was asserted at the 1982 hearing, and the Land Court did not abuse its discretion by refusing to allow Appellant to assert it again 25 years later.

Appellant also claims it was denied due process. This argument can be summarily

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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.

dismissed. Appellant does not dispute that it was provided with actual notice of the 1982 hearing, as it entered an appearance and asserted its claim to the land. Nor does Appellant claim that it was not afforded a full and fair opportunity to present its claim at the 1982 hearing. The record demonstrates that Appellant attended the hearing, made an opening statement, called one witness, and left of its own accord without cross examining any other witnesses or allowing its own witness to be cross examined. Neither a substantive nor a procedural due process claim can lie here.

Next, Appellant claims the records of the earlier hearing were insufficient for the Land Court to issue determinations of ownership based on the earlier hearing pursuant to Land Court Rule of Procedure 25. Appellant cites *Ngiratechekii v. Klai Clan, 7* ROP Intrm. 152 (1999), as an example of what constitutes insufficient records. In that case, the Appellate Division stated that "the record is deficient because the tape-recording of the hearing is missing and substantial questions have been raised concerning the accuracy of the transcription." *Id*. at 153.

Here, the Land Court relied on the judgment of the Aimeliik Land Registration Team summarizing the testimony of Isamu Towai as "indicative of the true state of affairs regarding the homestead lots" Appellant does not claim that this testimony was inaccurate or not credible. This testimony was sufficient for the Land Court to "accept the record of such proceedings as evidence in hearings before it, giving such record as much weight as it deems appropriate."[3] Land Court R. P. 17. The Land Court also relied on the partial transcript from the 1982 hearing reflecting the opening statement of the lawyer representing Appellant at the time. Appellant cites only "presumably missing testimonies" as its reason to declare that the Land Court abused its discretion. Appellant offers no reasons why a *de* novo hearing would improve the record, or what these missing testimonies might reveal, and the Land Court was well within its discretion to rule on the Adjudication of the Registration Team. *See Ngircheloulou v. Baules,* 8 ROP Intrm. 293, 294 (2001).

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Finally, Appellant argues that, even if there was relevant evidence to support the Land Court's findings, as a matter of law the homesteaders did not comply with the homestead laws of the Republic, as codified in 35 PNC § 800 *et seq.* Specifically, § 810(a) provides:

> A deed of conveyance shall be issued by the national government, over the signature of the President, for homestead land entered under the provisions of this chapter; provided that no such deed shall be issued until the expiration of three years from the date of entry and the execution of a certification by the President

[3] Appellant also argues that the Land Court wrongly framed its decision on Appellant's argument for a *de novo* hearing as a motion to reconsider. This contention is meritless. The Land Court credited the record of the earlier hearing, acknowledged that "Ngerungel Clan's request for a de novo hearing is not a motion for reconsideration," and concluded that a *de novo* hearing was not warranted "based on the complete record of Formal Hearing No.43 before the Land Commission." Although the Land Court occasionally couched its conclusions in motions to reconsider terms and called the earlier hearing a "final judgment," the Land Court applied Rules 17 and 25 correctly and was well within its discretion to dispose of the case on the record of the earlier hearing.

certifying that the homesteader has complied with all laws, rules and regulations appertaining to the homestead.

Appellant argues that without proof of three years' time spent in homestead land and without a certificate from the President, the Land Court cannot issue title to the homestead lands.

What Appellant misses here is that the applicable law is the law in place at the time of the 1982 hearing, upon which the homestead claims here are based. That law, 67 TTC Chapter 9, § 208, states that a homestead deed shall be issued upon "the expiration of three years from the date of entry and the execution of a certification by the District Administrator certifying that the homesteader has complied with all laws, rules and regulations appertaining to the homestead." It is undisputed that the homesteaders moved onto the land and began farming in 1964, satisfying the first element of § 208. Second, Appellant does not dispute that Isamu Towai, following the order of the Acting District Administrator at the time, inspected the homesteads and satisfied himself (and reported his findings to the Acting District Administrator who directed him to so inspect) that each homesteader "has complied with all laws, rules and regulations appertaining to the homestead." Appellant does not argue that Towai's certification to his superior was never "executed" and this panel will not overturn the Land Court's determination due to a presumed procedural mishap. To disregard the judgment of the Aimeliik Land Registration Team and the determination of the Land Court based on the possibility of a technical error that may have occurred over 40 years ago would thwart the interests of justice. Any such error that may have occurred if Towai did not "execute" his certification to his superior was harmless.

CONCLUSION

For the foregoing reasons, the decision of the Land Court is affirmed.