

GRIFFITHS & ANOR v. MINISTER FOR LANDS, PLANNING AND ENVIRONMENT & ANOR (D8/2007)

Court appealed from: Court of Appeal, Supreme Court of the Northern Territory

Date of Judgment: 10 May 2004

Date of grant of special leave: 21 June 2007

The first respondent issued three notices under section 32 of the *Lands Acquisition Act* 1978 (NT) for the compulsory acquisition of “all interests including native title rights and interests (if any)” in unalienated Crown land in the town of Timber Creek. The notice was in relation to Lots 47, 109, 97-100 and 114. The lots were the subject of registered native title determination applications made by the appellants under the *Native Title Act* 1993 (Cth).

In respect of Lots 47 and 109 Lloyd Fogarty had held a Crown lease and a grazing licence respectively from 1986 to 1996 and 1987 to 1997 respectively. Mr Fogarty made applications under the *Crown Lands Act* 2000 (NT) to purchase these lots. In pursuance of this, the Minister issued notices of proposed compulsory acquisition in relation to those Lots. The notices stated the manner in which the Territory proposed to deal with the land, which was, if acquired, to grant Crown leases under the *Crown Lands Act* to Warren Pty Ltd, a company controlled by Mr Fogarty. Upon the completion of the development, the leases might be surrendered in exchange for a freehold title.

In respect of Lots 97 to 100 and 114, following requests for the release of land in Timber Creek, the Minister issued a notice of proposed compulsory acquisition. It stated the manner in which the Territory proposed to deal with the land if acquired, which was to offer the lots for sale by public auction and grant Crown leases under the *Crown Lands Act* for the purpose of commercial tourism development. Upon the completion of the development, the leases might be surrendered in exchange for freehold title.

The appellants, Alan Griffiths and William Gulwin on behalf of the Ngaliwurru and Nungali Peoples as registered native title claimants to the land, lodged objections to the proposed acquisitions. The Minister referred these to the second respondent, the Lands and Mining Tribunal, for determination. The appellants contended that the Tribunal lacked jurisdiction because the notices of proposed acquisition were invalid. The Tribunal held that it had jurisdiction and proceeded to determine the objections and recommended that the Minister proceed to effect the proposed acquisitions. The Minister advised the registered native title claimants that he intended to act on the recommendations.

On an application to review the Tribunal’s recommendations and the Minister’s decision, the primary judge (Angel J) held that the notices were invalid because they sought to acquire all interests in unalienated Crown land and that the power conferred by the *Lands Acquisition Act* did not extend to the acquisition of unalienated Crown land.

The Minister appealed from the decision and by notice of contention the appellants sought to uphold the decision of the primary judge on the basis that the power conferred on the Minister to issue the notices was exercised for a

purpose other than the purpose for which the power was conferred. The Court of Appeal (Martin (BR) CJ, Mildren and Riley JJ) allowed the Minister's appeal and rejected the appellants' contention.

The application for special leave to appeal to this Court was part-heard on 22 April 2005 (Hayne and Callinan JJ) and adjourned to permit proceedings in the Federal Court of Australia to make a determination of native title in respect of the land the subject of the proposed compulsory acquisition to take place. On 28 August 2006 the Federal Court determined that native title exists in the subject land, the nature and extent of the native title to be "non-exclusive rights to use and enjoy the land" (*Griffiths v Northern Territory (No.2)* [2006] FCA 1155). The appellants have appealed to the Full Court of the Federal Court from that decision. Following further written submissions by the parties, special leave was granted on 21 June 2007.

The grounds of appeal include:

- In circumstances where land the subject of a compulsory acquisition is unalienated Crown land in which the only interests are those of the Crown and native title rights and interests:
 - (1) Does the *Lands Acquisition Act* 1978 (NT) permit the compulsory acquisition of native title rights and interests in the land for the purpose of extinguishing the native title, in order to alienate the land for the private benefit of another citizen; and
 - (2) Does section 24MD of the *Native Title Act* 1993 (Cth) permit the acquisition to vest the land in the Territory freed and discharged of the native title rights and interests?

The Attorney-General of the Commonwealth of Australia and the Attorney-General for the State of New South Wales are intervening in this matter pursuant to s. 78A of the *Judiciary Act* 1903.