

1922.

NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND
CLAIMS ADJUSTMENT ACT, 1920.REPORT AND RECOMMENDATION ON PETITION No. 202/17, RELATIVE TO ADJUSTMENT OF
NAMES OF THE PIRIRAKAU TRIBE IN THE TITLE TO TE PUNA, LOT 154D BLOCK.

*Presented to Parliament in pursuance of Section 32 of the Native Land Amendment and Native Land
Claims Adjustment Act, 1920.*

Native Department, Wellington, 15th July, 1922.

Re Te Puna 154d.—Petition 202 of 1917.

PURSUANT to section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1920, I forward herewith the report of the Native Land Court herein.

I find myself at variance with the three Judges who have dealt with this matter. Probably the ambiguous terms of section 8 of the Native Land Claims Adjustment Act, 1914, which enacted that the land should be held "in trust for such members of the Pirirakau Tribe as shall be ascertained by the Native Land Court," without giving the Court any lead as to what members were intended, accounts for what appears to me to be an injustice. On a statute enacted in precisely similar terms and affecting other land in the same grant another Court held a more restricted set of Natives were entitled.

The facts leading to the legislation regarding this block were shortly as follows: A grant of the land had been made to two Natives "in trust for the Pirirakau Tribe." The Native Land Court on inquiry held the two so-called trustees were absolute owners. The Native Appellate Court slightly varied this by adding the names of two other persons. Other members of the Pirirakau Tribe said to be settled on the block complain that they were by this decision deprived of their homes. Potaua Maihi and seventy-four others, feeling aggrieved, petitioned Parliament for redress, and their petition was referred to the Government for immediate consideration. To remove the feeling of supposed injustice which rankled in the minds of the petitioners, the Government offered to buy the land in dispute, and succeeded in securing 263 acres of it at a price of £9 per acre. One of the vendors, however, insisted on retaining 20 acres for himself, while the other two admitted by the Native Appellate Court were non-sellers, so that the whole block was not secured.

The Act referred to was then passed to enable the beneficial owners to be ascertained, and the vendors who had sold and had received cash for their land, according to the enclosed report, were enabled to join in and receive back out of the 263 acres so sold an area of 96 $\frac{3}{4}$ acres, which at the price paid would be valued at over £868. That Natives should be paid for land and then claim to have it given back to them free of charge or deduction seems unreasonable. It was evidently intended when the whole block was to be purchased to allow the vendors, if they so desired, to participate, but it is not thinkable that they were to have the money as well as the land. At any rate, that project fell through, and with the consent of Potaua Maihi on behalf of the petitioners the vendors arranged to retain 20 acres and were fully paid for the balance. To admit them again as owners after being fully paid for the land is, to my mind, a wrong which should be rectified. If the vendors were to be paid and then get land back without payment, it is hard to understand why the 20 acres were expressly reserved from the sale at all.

I therefore recommend that legislation be passed authorizing the Native Land Court to rehear the matter, with a direction that the persons who received payment for the land purchased are not entitled to be admitted as beneficial owners, and giving power to the Court to make any consequential amendment that may be required in subsequent orders.

At the same time, your attention is called to the fact already mentioned, that three other Judges evidently disagree with my views.

The Hon. Native Minister, Wellington.

R. N. JONES, Chief Judge.

In the Native Land Court of New Zealand, Waiariki District.—In the matter of the land known as Te Puna, Lot 154; and in the matter of section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1920 (Petition No. 202 of 1917).

Report of Native Land Court pursuant to the above-mentioned Section.

To the Chief Judge, Native Land Court, Wellington.

As directed by your reference dated 9th November, 1920, the Court duly held an inquiry at Tauranga in March last, and I desire to report as follows :—

Judge Wilson's report of the 22nd August, 1917, can be adopted as a correct statement of the facts in this matter, and in reference thereto I wish to make the following comments and additions :—

1. It was subsequent to the finding of the Native Appellate Court in December, 1910, and in order to give effect to a petition to Parliament, that the Crown bought 263 acres 1 rood 24 perches in Te Puna, Lot 154—the total area of which was 293 acres—on partition called Lot 154D.

2. As to Judge Wilson's remarks on paragraph 7 of the petition, Potaua Maihi is the same as Potaua Tangitu. He is the leading petitioner. It is to be noted that he and his children received their proper shares in the land purchased by the Crown, but his complaint is that the Crown should either have bought and distributed the whole of Te Puna, Lot 154—viz., 293 acres—or else that the vendors to the Crown should have been excluded from the 263 acres 1 rood 24 perches.

3. As the land was purchased by the Crown to give redress to the Pirirakau Tribe, the question arises as to whether the Crown intended it for all the Pirirakau or only a section of them—viz., the rebel Pirirakau.

At the hearing before Judge Browne (see Tauranga Minute-book, No. 9, pages 66 *et seq.*—copy attached to Judge Wilson's report), Mr. Sharp, who acted as solicitor for the Crown on the purchase, handed the Court a letter from the Native Minister showing that it was intended that the vendors should share with the other Pirirakau. Mr. Sharp's sworn evidence bears this out, and I consider that the greatest weight should be given to his statements.

4. After Judge Browne had decided the basis upon which the Court would award the land, Potaua Maihi (or Tangitu) made up and handed in his list of names, and apparently raised no further objection. He did not appeal from Judge Browne's order (dated 17th April, 1916), nor did he appeal from the subsequent partition of the land made on the 3rd August following. The reason he gave to me was that he did not understand the procedure with regard to appeals. That statement is quite untrue. He is a man who has been mixed up in many land cases, and I regret to state that he gave me the impression of being somewhat of an agitator.

5. Judge Browne proceeded to ascertain the names of the original Pirirakau, and then brought this list up to date. I consider this method was correct, and the names so ascertained and their relative shares have not been disputed by the petitioners. Thus there were sixty-eight shares, out of which the vendors (and their successors) were entitled to twenty-five shares. The petitioners cannot and have not denied this; yet they say the vendors should be content with their 30 acres reserved from the sale, apparently because they were paid for the 263 acres; but it was theirs to sell by virtue of the award of the Appellate Court.

6. The Crown grant for Te Puna, Lot 154 (293 acres), was in favour of (1) Maungapohatu, and (2) Te Wanakore, "in trust for the Pirirakau Tribe, their heirs and assigns." On the proper names and shares of the original Pirirakau (not disputed) the vendors would have had twenty-five shares out of sixty-eight of the 293 acres—viz., 107 acres 2 roods 35 perches. To-day they own as follows: (1) Area excepted from sale (Te Puna, Lot 154, Nos. A, B, C, 30 acres; (2) area in Lot 154D, pursuant to Judge Browne's order, 96 acres 3 roods: total, 126 acres 3 roods. The excess is 19 acres and 5 perches, and that, I consider, is the only area which the petitioners can attempt to attack. Their attempt to confine the vendors to an area of 30 acres only is clearly unreasonable. On the first day of the inquiry before me Potaua said he would confine his claim to the unsold 30 acres, which he wanted for all Pirirakau, including the vendors, but later he went back on this.

7. I consider, as the vendors had a title to the whole block (293 acres) under the Appellate Court order, and as the Crown purchased 263 acres 1 rood 24 perches for all the Pirirakau, including the vendors (I hold this established by the evidence), that the petitioners have no cause for complaint. In any event they have only a right to speak about 19 acres and 5 perches.

8. Hare Pitua, who spoke for those opposing the petition, stated that the land is being worked according to Judge Browne's partition, and that most of the Pirirakau are satisfied. Wanakore (Kerekau) Maungapohatu, mentioned in paragraph 8 of the petition, is now dead.

9. The reference by Potaua Maihi to Te Puna, Lot 16, and other lands at my inquiry has no significance. Lot 16 contains 50 acres, and the Crown grant was in exactly the same position as that for Lot 154, but at the time Judge Browne made the order complained about by the petitioners the beneficial owners had not been ascertained. I may add that Judge Rawson, in October, 1919, made an order for Lot 50 in favour of the persons found by the Appellate Court to be entitled to Lot 154, and there was no appeal.

Attached is a copy of the minutes of my inquiry.

As witness my hand and the seal of the Court, this 24th day of April, 1922.

H. F. Ayson, Judge.

References.

1. Order of 6th April, 1910 (Browne, J.), determining beneficial owners of Lot 154. (Tauranga M.B. 7/48.)
2. Appellate Court order of 7th December, 1910, varying above.
3. Partition of 29th July, 1914. (Tauranga M.B. 8/154.)
4. Order of 17th April, 1916 (Browne, J.), determining owners of Te Puna, Lot 154D. (Tauranga M.B. 9/66.)
5. Partition of Lot 154D on 3rd August, 1916. (Tauranga M.B. 9/272.)

Extract from Tauranga Minute-book No. 11, Pages 21–23.

(3rd March, 1922.)

Re TE PUNA, LOT 154D.—INQUIRY UNDER SECTION 32 OF THE ACT OF 1920.

Present: (1) Potaua Maihi, or Tangitu; (2) Hare Pitua; and other owners.

Court has read all previous orders and minutes of proceedings already taken in this block.

POTAU MAIHI, or POTAU TANGITU (sworn): I am one of the petitioners. My complaint is that the sellers were also included in the title to the land which the Crown purchased and gave back—Lot 154D. A piece of 20 acres was cut off for Te Wanakore Maungapohatu (see partition order of 29th July, 1914, reserved from sale to Crown); also 5 acres each cut off for Pitua family and Potier family. My main objection is that they had those awards, and yet participated in the 263 acres. (See 8/1914.)

Section 157—200 acres (about)—was given by grant to Potier family, and Sections 164 and 184—200 acres—to Pitua family. Potier and Pitua are Pirirakau. Te Puna, Lot 16 (50 acres), also went to the eight persons found by Appellate Court in Lot 154.

(Shares of vendors in award was twenty-five out of sixty-eight—that is, 96 $\frac{3}{4}$ acres out of 263 acres 1 rood 24 perches. They reserved from sale 30 acres only.)

POTAU (continuing): In 1870 Crown grant to two persons in trust. People living on land—but some away, and noxious weeds growing. The others benefited by our labours. I ask for amendment of shares.

To Court: I did not appeal because I did not know about rules. Later on land partitioned, and we got No. 10—36 acres and 16 perches. I was present. Our houses to be cut out there. No appeal.

Faulkner family agree with me, and Te Keno Hekenui, also Heke Hotu, Ratina family (Lot 154D, No. 8), and Tarau family (Lot 154D, No. 11).

HARE PITUA, HOKI MARE, TE MOETU: We oppose.

POTAU TANGITU: I am prepared to confine my claim to the unsold 30 acres for all the Pirirakau, including vendors.

(Court pointed out that the sellers would get twenty-five shares out of sixty-eight of the 30 acres.

POTAU TANGITU: I ask for adjournment until Monday. (Granted.)

Extract from Tauranga Minute-book No. 11, Pages 50, 51.

(6th March, 1922.)

Re TE PUNA, LOT 154D.

Inquiry resumed.

POTAU MAIHI, or TANGITU (sworn): When this came before Native Affairs Committee, opposition did not attend. I am not now asking for the 30 acres not sold to the Crown, but I will ask for order to be amended for the 263 acres by cutting out all names of vendors.

It is because the petitioners suffered and the others did not.

ROTOHIKO WHAKANA (sworn): We petitioned because some Pirirakau left out of order for the 263 acres. I was left out.

(In list—No. 58.)

I have finished, as I find I am in the list.

(Case.)

HARE PITUA (sworn): I oppose the petition. Judge Browne's order on 17th April, 1916, is correct, and we have worked the land according to the partition orders made subsequently, on 3rd August, 1916. The Pirirakau are all right as a whole, but Potaua is making trouble.

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