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Judge upholds Isle Land Reform Act

By Gerald Kato

Advertiser Government Bureau

Circuit Judge Ronald Greig's ruling yesterday lays down a new track for the state and Kamehameha Schools/Bishop Estate to wage their protracted battle over Hawaii's Land Reform Act.

Greig upheld the act, which allows residential lessees to buy their property in fee simple, as constitutional. His ruling contradicts a decision by the U.S. 9th Circuit Court of Appeals in March.

The three-judge federal panel split 2-1 in ruling the act unconstitutional because it constitutes a "naked attempt" by the state to force the transfer of private property from big landowners to individual lessees.

The two conflicting rulings will result in the Land Reform case moving forward on parallel tracks in the state and federal court systems.

Greig's ruling appears headed for an

appeal in the Hawaii Supreme Court. The federal ruling against the state, meanwhile, is on another track, going to the U.S. Supreme Court.

Dennis O'Connor, attorney for lessees in Hawaii Kai's Kamiloiki Valley, wants a favorable state court ruling to put before the U.S. Supreme Court when it considers the case early next year. O'Connor believes it will help his attempt to overturn the 9th Circuit if the state courts declare the statute constitutional.

"The whole idea is to get a state ruling on the constitutionality based upon the facts," O'Connor said.

Greig conducted a 12-week trial that ended last month and produced volumes of testimony and documents. Until then, O'Connor said, there has never been a fact-finding hearing on the socio-economic effects of the concentration of land ownership here that led the Legislature to pass the Land Reform Act in 1967.

Based on the fact-finding hearing, Greig ruled that while the Hawaii Housing Authority committed "procedural deficiencies" in administering the act, the Bishop Estate failed to prove the act is unconstitutional. Greig's written decision and order will be issued later.

The estate — Hawaii's largest private landowner and one of the most visible opponents of the act — has argued in the state and federal courts that the act is simply a means of taking the private property of big landowners through the use of the state's land condemnation powers and transferring the property to individual lessees for their "private use." The estate contends there is no "public use" in the transfer, something the state and federal constitutions require when government condemns property.

Bishop Estate attorney Clinton Ashford said he was disappointed by Greig's ruling, but not surprised. Ash-

ford said the estate will appeal the ruling to the state Supreme Court.

Ashford explained that the state and lessees need to prevail in both the state and federal courts to uphold the act. If the estate, on the other hand, is able to convince either court system that the act is unconstitutional, the lease-fee conversion statute will fall.

"The Hawaii Constitution has another provision in it that isn't in the U.S. Constitution . . . where the right to acquire and possess property is guaranteed as one of the rights of the Hawaii bill of rights," Ashford said. "And it's our view that that means it's an additional underscoring of the public use requirement — you cannot take A's property and sell it to B merely because B wants it."

Greig's ruling is the outgrowth of a lawsuit by 257 Kamiloiki Valley leaseholders who sought to buy their house-lots from the Bishop Estate.

After failing to reach agreement on a

price, the leaseholders invoked the act to sue for a trial last year to set lot prices. The prices were set, but the state Supreme Court then ordered that hearings be conducted on the constitutional questions.

Shortly after Greig started the hearings sought by the high court, the U.S. 9th Circuit ruling was handed down.

That ruling left in limbo the status of a backlog of price-setting trials similar to the one Kamiloiki underwent last year. At least 20 other subdivisions have trials set to begin in September, but Ashford wants the process stopped until the legal ramifications are cleared away.

Federal District Judge Samuel P. King is scheduled to conduct a hearing Friday to determine if those state trials now scheduled should be stopped because of the 9th Circuit ruling that the act is unconstitutional.