



**IN THE NAME OF THE KING**  
**The Constitutional Court**

**Ruling No. 11/2541\***

**Dated 6<sup>th</sup> October B.E. 2541 (1998)**

**Re : Nonthaburi Provincial Court requested for a reference of the parties opinions objecting that provisions of law applicable to a case by the Court was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to the Constitutional Court for a ruling.**

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The Permanent Secretary of the Ministry of Justice submitted an application, dated 30<sup>th</sup> July B.E. 2541 (1998), requesting the Constitutional Court to make a ruling in the case where Nonthaburi Provincial Court requested the Ministry of Justice to refer Civil Case Judgment No. 1044/2526, between Mr. Yang Boromthongchum and company, a total of two plaintiffs, and Mr. Muiheng Sae-tan and a company of eight, as defendants, regarding the Act on Lease of Land for Agriculture, B.E. 2524 (1981). In such case, Mrs. Siriporn Pornsutthichaipong, the sixth defendant, submitted an objection that the provisions of law applicable to the case in Supreme Court Judgment No. 4432/2536 were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and requested that such objection be referred to the Constitutional Court for a ruling.

According to the facts in Mrs. Siriporn Pornsutthichaipong's application, Mr. Yang Boromthongchum and company were plaintiffs who filed claims against Mr. Muiheng Sae-tan and eight others, as defendants at Nonthaburi Provincial Court. The plaintiffs asserted claims for the defendants to transfer the title of lands (paddy) by sale to the two plaintiffs 25 rai of the rice paddies each originally farmed on by the plaintiff lessees at the price of Baht 10,000 per rai, in accordance with the price purchased by the defendants from the owner. Nonthaburi Provincial Court was of the opinion that the plaintiff's claim was too vague and therefore dismissed the claims. The plaintiffs appealed to the Court of Appeal who affirmed the judgment. The plaintiffs then appealed to the Supreme Court,

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which held that the plaintiff's claim was not vague and therefore arrived at Supreme Court Judgment No. 245/2531 which overruled the judgments of the Court of First Instance and the Court of Appeal and referred the case back to the Court of First Instance for a new judgment. Subsequently, Nonthaburi Provincial Court passed a new judgment for all 8 defendants to transfer the 25 rai of land by sale to each of the two plaintiffs at the price of Baht 10,000 according to the purchase price. If the 8 defendants failed to make such transfers, the judgment was deemed as the expression of intents by the defendants. The defendants appealed to the Court of Appeal, which affirmed the judgment. The defendants thereafter appealed to the Supreme Court, which passed Supreme Court Judgment No. 4432/2536 affirming the judgment. Mrs. Siriporn Pornsutthichaipong's, the applicant, who was the sixth defendant in the case, submitted an objection that the provisions of law applicable to the case by the Court to this case were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the first issue, the applicant objected that in Supreme Court Judgment No. 245/2531 and Supreme Court Judgment No. 4432/2536, the judge signatures did not constitute a quorum. Even if the President of the Supreme Court verified that the judges who did not affix their signatures participated in the deliberations of the quorum and some had notified the reasons for failing to affix their signatures that they held other positions while others retired by age from the official service prior to affixing their signatures the President of the Supreme Court did not clearly note that "and the opinions held was consistent with such judgment". The two judgments were therefore unduly made under section 141 paragraph two of the Civil Procedure Code inconsistent with section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and subject to section 6 and section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the second issue, the applicant objected that Nonthaburi Provincial Court's application of the Lease of Paddies Control Act, B.E. 2517 (1974), which had been repealed by the Act on Lease of Land for Agriculture, B.E. 2524 (1981) prior to the date of case filing by the plaintiff to the case in which the applicant was a defendant, was an act which contravened section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and subject to section 6 and section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Pursuant to the objections on points of dispute stated above, the applicant requested Nonthaburi Provincial Court to refer the matter to the Constitutional Court for a ruling.

The facts received by the Constitutional Court were sufficient for the consideration of this case. Hence, there was no need to adduce other evidence. The Constitutional Court considered such facts and held the following opinion.

Section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that "in the application of the provisions of any law to any case, if the Court by

itself is of the opinion that, or a party to the case raises an objection that, the provisions of such law fall within the provisions of section 6 and there has not yet been a decision of the Constitutional Court on such provisions, the Court shall stay its trial and adjudication of the case and submit, in the course of official service, its opinion to the Constitutional Court for consideration and decision.” The applicant’s first objection was an objection on the proceedings in the Supreme Court as being improper under section 141 paragraph two of the Civil Procedure Code, which stated that “any judgment or order shall be signed by the judge making the judgment or order, or if a judge is not able to affix his signature, other judges who made the judgment or order in such case or the Chief Justice as the case may be shall note the cause for the such judge’s failure to affix his signature and that such judge was in agreement with such judgment or order and attach it to the case file.” The objection did not state that the provisions of law applicable to a case by the Court, i.e. section 141 paragraph two of the Civil Procedure Code was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The case was therefore not an objection that provisions of law applicable to a case by the Court was prohibited by section 6 under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The application on the second objection, that the Court applied a repealed law at the time when the plaintiff filed the case in which the applicant was a defendant, was an objection that the Court applied the wrong law, not an objection that a law was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The case was therefore not an objection that provisions of a law applicable to a case was prohibited by section 6 under section 264 paragraph one of Constitution of the Kingdom of Thailand, B.E. 2540 (1997) as the case of the first objection.

By virtue of the reasons stated above, the Constitutional Court dismissed the application.

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