

Summary of Constitutional Court Ruling

No. 41/2547

Dated 6th May B.E. 2547 (2004)*

Re: The Supreme Court referred the objection of a defendant (Mr. Prasit Kijssamoejai) in a Civil Court case to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), stating that section 121 of the Revenue Code was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Supreme Court referred the objection of a defendant in a civil case to the Constitutional Court for a ruling on whether or not section 121 of the Revenue Code was contrary to or inconsistent with section 4, section 5, section 7, section 26, section 27, section 28, section 29, section 30, section 48 paragraph one, section 60, section 75 paragraph one and section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The facts in the application could be summarized as follows.

The Ministry of Finance, by Mr. Pridi Bunyang, Director-General of the Treasury Department acting for the Minister of Finance, as plaintiff, filed suit against Mr. Prasit Kijssamoejai, the applicant, as defendant in the Civil Court. The plaintiff sought repossession of property and claimed damages from the applicant. It was requested that the court issue an order for the applicant and his servants to remove their properties from state land and deliver possession as well as compensation for damages with interest to the plaintiff. The cause of action arose from a lease agreement for a parcel of state land entered into with the plaintiff at the expiration of which the plaintiff did not renew the agreement and gave notice of termination by requesting the applicant and his servants to remove and transport properties from the leased land. The applicant took no action with respect to such request.

The applicant denied the plaintiff's claims by stating that Mr. Pridi Bunyang had not been duly authorized by the plaintiff because the power of attorney was unlawful for failing to attach duty stamps required by law. Therefore, Mr. Pridi Bunyang did not have the power to file suit and carry out proceedings on the plaintiff's behalf. It was also contended that the plaintiff was not the owner of the land.

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The Civil Court gave judgment on the first issue that the plaintiff had lawfully conferred authority to carry out legal proceedings. Thus, the plaintiff had the power to file a lawsuit. The applicant appealed on two issues, namely, (1) the power of attorney did not bear a duty stamp under the Revenue Code, and (2) the plaintiff was not the owner of the property in dispute. The Court of Appeals held on the first issue that whereas the plaintiff was a juristic person, i.e. a government ministry namely the Minister of Finance, who was a representative of the ministry, authorized the Director-General of the Treasury Department or a provincial governor to conduct proceedings on the ministry's behalf, the duty accrued from the power of attorney to which the plaintiff was liable was exempt under section 121 of the Revenue Code. Therefore the plaintiff's power of attorney was admissible as evidence in this case. The judgment was affirmed.

The applicant appealed to the Supreme Court and filed an objection that section 121 of the Revenue Code granted a right and exemption to the plaintiff as a State agency from stamp duty on a power of attorney while at the same time the applicant was under an obligation to pay such a stamp duty. Failing to attach a duty stamp would prevent such document from being admissible as evidence. Such section was therefore discriminatory and created inequality under the law, inconsistent with section 4, section 5, section 7, section 26, section 27, section 28, section 29, section 30, section 48 paragraph one, section 60, section 75 paragraph one and section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Supreme Court held that the applicant's objection on whether or not the provisions of section 121 of the Revenue Code was contrary to or inconsistent with the Constitution was a case involving the application of section 121 of the Revenue Code to a case where there had not yet been a ruling of the Constitutional Court. The Supreme Court therefore ordered the referral of the applicant's opinion through official channels to the Constitutional Court for a ruling under section 264 of the Constitution.

The Constitutional Court considered the application and supporting documents and held that the case was in accordance with section 264 paragraph one of the Constitution. The application was therefore admitted for consideration.

2. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 121 of the Revenue Code was contrary to or inconsistent with section 30 in conjunction with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 29 paragraph one of the Constitution was a provision which protected the rights of persons. In this regard, the rights and liberties of a person recognized by the Constitution could not be restricted, except by virtue of an authority specifically provided by law for purposes determined by the Constitution and provided that such restriction should be made only to the extent of necessity

and should not affect the essential substances of such rights and liberties. Section 30 was a provision which guaranteed the principle of equality of persons. In other words, all persons were equal before the law and enjoyed equal protection under the law. Men and women enjoyed equal rights. Unjust discrimination against a person the grounds of differences in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, etc. were not permitted. As for the case of section 121 of the Revenue Code, the provision dealt with payment of duties. Normally, when a law provided for the payment of duty, the purpose would be to provide a source of revenue for the State, being revenue collected from the people in order to cover the expenditures under the State budget. The objective was to collect sums from the people who enjoyed the services of the State, not to collect from the State itself. The fact that section 121 provided that in the event the taxpayer was the government, a competent official of the State exercising the functions of the government or a person acting on behalf of the government, stamp duty should be exempted was consistent with such legislative purpose. There was no unjust discrimination on the people generally. Moreover, under section 69 of the Constitution, it was provided that a person was under a duty to pay taxes as provided by law. The payment of duty under section 121 of the Revenue Code was a form of tax. It might be the case that section 121 of the Revenue Code, which exempted the plaintiff, who was a juristic person in the form of a government ministry, from stamp duty on a power of attorney, while requiring the applicant to pay such stamp duty as a condition to admissibility of evidence was a restriction of a person's rights and liberties causing inequality under section 29 and section 30 of the Constitution. However, section 29 paragraph one provided an exception for such restriction where achieved by virtue of provisions of law specifically enacted for a purpose determined by the Constitution and to the extent of necessity without affecting the essential substances of rights and liberties.

3. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that section 121 of the Revenue Code was neither contrary to nor inconsistent with section 30 in conjunction with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
