

Summary of the Constitutional Court Ruling No. 6/2545

Dated 12th February B.E. 2545 (2002)*

**Re : Is section 21 of the Act on Expropriation of Immovable Property,
B.E. 2530 (1987) contrary to or inconsistent with section 49 of the
Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?**

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1. Background and summarized facts

The Supreme Court submitted an objection of the plaintiff's (Mr. Prasert Namsakul) in Pending Case No. Por Kor 142/2541 requesting that the Constitutional Court make a ruling under section 264 of the Constitution as to whether section 21 of the Act on Expropriation of Immovable Property, B.E. 2530 (1987) was contrary to or inconsistent with section 49 of the Constitution. The facts of the case can be summarized as follows. The plaintiff was the owner of a 3 rai and 28 square wah piece of land. Subsequently, 3 rai and 11.9 square wah of the plaintiff's land was expropriated for the construction of a special highway under the Royal Decree Determining the Areas of Land to be Expropriated for the Construction of Special Highway No. 37, Bangkok Outer Ring Road, at the Junction Where Highway No. 34 (Bang Phli) Meets Highway No. 1 (Wang Noi), B.E. 2536 (1993). The Committee for the Initial Assessment of Price valued compensation at 4,500 baht per square wah. The plaintiff appealed for additional compensation. The Minister of Transport and Communications considered the appeal and awarded an increase in compensation to the amount of 10,000 baht per square wah. The plaintiff was still unsatisfied and hence filed a case at the Civil Court claiming compensation in an amount of 22,500 baht per square wah and requested that judgment be passed to enforce the Director-General of the Highway Department (first defendant) and the Highway Department (second defendant) to pay such compensation to the plaintiff. The Court of First Instance (Civil Court) passed judgment dismissing the case filed on the grounds that the Minister of Transport and Communications' consideration of the appeal and award of an increase in compensation to 10,000 baht per square wah was fair and appropriate under section 21 of the Act on Expropriation of Immovable Property, B.E. 2530 (1987) and consistent with the Constitution. The plaintiff appealed on both points of fact and points of law, asserting that the Court of First Instance's judgment was inconsistent with section 49 of the Constitution. The Court of Appeal affirmed the judgment. The plaintiff then appealed to the Supreme Court. The Supreme Court therefore submitted this matter to the Constitutional Court for a ruling under section 264 of the Constitution as to whether section 21 of the Act on Expropriation of Immovable Property, B.E. 2530 (1987) was contrary to or inconsistent with section 49 of the Constitution.

* Published in the Government Gazette, Vol. 119, Part 113a, dated 12th November B.E. 2545 (2002)

2. Preliminary issue

The Constitutional Court held that this case was in accordance with section 264 of the Constitution and therefore accepted the case for consideration.

3. The issue considered by the Constitutional Court

Is section 21 of the Act on Expropriation of Immovable Property, B.E. 2530 (1987) contrary to or inconsistent with section 49 of the Constitution?

The Constitutional Court held that section 21 paragraph one of the Act on Expropriation of Immovable Property, B.E. 2530 (1987) prescribed principles for the determination of compensation in 5 subsections. Subsection (1) required that due regard be given to the market value of the expropriated immovable property. Subsection (2) required that due regard be given to the price of the immovable property valued for local tax purposes. Subsection (3) required that due regard be given to the asset valuation price for fee collection purposes in relation to the registration of rights and legal acts. Subsection (4) required that due regard be given to the nature and situation of the immovable property. The provisions in all 4 of the said subsections were consistent with section 49 of the Constitution which stated that “the amount of compensation... shall be fairly assessed with due regard to the normal purchase price, nature and situation of the immovable property...” Whereas subsection (5) required that due regard be given to the cause and purpose of expropriation under the provisions of specific law. Moreover, section 21 paragraph two and paragraph three of the Act on Expropriation of Immovable Property, B.E. 2530 (1987) prescribed principles for the determination of compensation in cases where the value of the immovable property either increases or decreases. The rule stated that “if the work or activities carried out with the expropriation causes the value of the remaining immovable property to increase, such increase in price shall be deducted from the amount of compensation...” and “if only a portion of immovable property is expropriated and there is a reduction in value of the remaining portion, compensation shall also be assessed for such remaining portion whose value has been decreased.” Such provisions complement section 49 paragraph two of the Constitution which stated that “the amount of compensation... shall be fairly assessed...” Therefore, section 21 of the Act on Expropriation of Immovable Property is not contrary to or inconsistent with section 49 of the Constitution.

4. Ruling of the Constitutional Court

By virtue of the foregoing reasons, the Constitutional Court held that section 21 of the Act on Expropriation of Immovable Properties was neither contrary to nor inconsistent with section 49 of the Constitution.
