

Summary of the Constitutional Court Ruling No. 41/2548

Dated 7th April B.E. 2548 (2005)*

Re: The Central Tax Court referred the objection of defendants (Miss Udomlak Soihiran, second defendant, and Mr. Niphan Soihiran, third defendant) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case of whether or not section 45 of the Building and Land Tax Act B.E. 2475 (1932) was contrary to or inconsistent with section 28, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

Bangkok Metropolitan Administration, as plaintiff, filed a lawsuit against Mr. Chaiyut or Mr. Chukij Rattanapohkajorn, first defendant, Miss Udomlak Soihiran, second defendant, Mr. Niphan Soihiran, third defendant, and Miss Sriwan Soihiran, fourth defendant, at the Central Tax Court claiming payment of outstanding building and land taxes owed to the plaintiff. The first defendant was the owner of a shop-house built on the land of Mrs. Payao Soihiran pursuant to rights in three lease contracts dated 4th December B.E. 2521 (1978) with a lease period of 23 years. All three lease contracts specified that “land taxes shall be paid by the lessor whereas building taxes shall be paid by the lessee”. As the first defendant had leased the shop-house to others and benefited from rent as from the year B.E. 2521 (1978), the first defendant was liable for building and land taxes for such shop-house.

The second, third and fourth defendants received a transfer of ownership in the land from Mrs. Payao Soihiran on 14th April B.E. 2523 (1980). As all three land lease agreements specified that “the ownership of structures in the leased land shall be the lessor’s upon the expiration of the lease contract,” and the land lease contract expired on 4th December B.E. 2544 (2001), the second, third and fourth defendants, as recipients of the transfer of land ownership, consequently also received a transfer of property in those shop-houses and were therefore liable to building taxes that were outstanding as well as additional charges for such building pursuant to the proportion of ownership received by each person from the transferor. Those defendants were jointly liable with the first defendant. Payment was not yet made under section 45 of the Building and Land Tax Act B.E. 2475 (1932) which provided that “if tax is outstanding and remains unpaid at the time of transfer of ownership

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to a new owner, regardless of the means of transfer, the previous owner and new owner shall be jointly liable to the tax.”

The second and third defendants filed a defence and an objection that section 45 of the Building and Land Tax Act B.E. 2475 (1932) was contrary to or inconsistent with section 28, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), because it provided that a transferee must be liable as a joint debtor with the transferor for outstanding tax payments “regardless of the means of transfer”. As such, the law provided a one-sided protection to the State by estopping the transferee from raising any arguments and despite the transfer being made in good faith and for value. This placed the transferee at a disadvantage and an absolute estoppel against the transferee. The essential substances of rights were affected. The transferee was made jointly liable for debts which he/she did not incur. Human dignity was also affected. The second and third defendants thus motioned for the Central Tax Court to refer their objections to the Constitutional Court for ruling.

2. The issues considered by the Constitutional Court

The issues in the application which had to be considered by the Constitutional Court were whether or not section 45 of the Building and Land Tax Act B.E. 2475 (1932) was contrary to or inconsistent with section 28, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 28 of the Constitution was a provision which recognized the ability of a person to invoke human dignity or exercise rights and liberties to the extent that the rights and liberties of other persons were not violated, and that no harm was done to the Constitution nor contradicted the good morals of the people. The provision also provided a guarantee of a person’s right to exercise judicial rights when rights and liberties were violated. Section 29 was a provision which prohibited the restriction of rights and liberties of a person unless done by virtue of provisions of any law specifically enacted for the purpose specified by the Constitution and provided that it was done to the extent of necessity. In addition, the restriction should not affect the essential substances of the rights and liberties and must have a general application without directing specifically to any particular case or person. Finally, section 30 provided for the principle of equality whereby persons were equal under the law and received equal legal protection. Men and women were equal and unfair discrimination against a person was prohibited.

The Building and Land Tax Act B.E. 2475 (1932), on the other hand, was a law enacted to empower the state, through local administrative organizations, to raise revenue through taxes in order to meet the expenses of providing public services pursuant to the powers and duties of the organization. These activities were undertaken for the public benefit. Building and land tax was one form of taxation under section 69 of the Constitution, under which a person was under a duty to pay taxes to the State or State agency in order to raise revenues to meet the expenditures of State administration. Building and land tax was targeted at landowners, except where there was a separation of ownership in land and building or other

structures in which case the owner of the building or other structure would be the taxpayer. In any event, there was still a relevance to land because the person benefiting from the land was the builder of building or other structures. This application involved building tax imposed on a lessee who constructed a building for rent. Thereafter, the lessee who constructed the building owed outstanding building and land tax to the Bangkok Metropolitan Administration. Such tax was a debt pertinent to the land and the owner of the building, being a charge attached to the land and building. When there was a transfer of ownership of the land and building, the charge on the land and building followed the transfer. The recipient of ownership transfer should therefore bear the burden of such taxes. In this regard, section 45 of the Building and Land Tax Act B.E. 2475 (1932) was a specific provision of law enacted for a purpose specified by the Constitution and to the extent of necessity without affecting the essential substances of the rights and liberties. The provision was also generally applicable and not aimed at any specific case or person. The law was applied to persons equally and conferred equal legal protection to persons. There was no unfair discrimination on the grounds of differences in place of birth, race, language, gender, age, physical condition or health, personal, economic or social standing, religious faith, education or political views which were not unconstitutional. Moreover, the collection of outstanding building taxes from the recipient of land and building transfer jointly with the transferor did not in any manner affect human dignity, rights and liberties under the Constitution. Such measure was therefore neither contrary to nor inconsistent with section 28, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. Ruling of the Constitutional Court

By virtue of the reasons above, the Constitutional Court held that section 45 of the Building and Tax Act B.E. 2475 (1932) was neither contrary to nor inconsistent with section 28, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
