

Summary of the Constitutional Court Ruling No. 51/2548

Dated 26th July B.E. 2548 (2005)*

Re: The Central Administrative Court referred the objection of plaintiffs (Suswas Real Estate Development Partnership Limited and others) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), that section 29 and section 30 of the Petroleum Authority of Thailand Act B.E. 2521 (1978) was contrary to or inconsistent with section 48 and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Central Administrative Court heard the objection of plaintiffs in a plaint against the Ministry of Industry (presently the Ministry of Energy), the first defendant, pertaining to a Notification prescribing a petroleum pipeline transport system area (Sriracha-Saraburi Project) over the land of the four plaintiffs, and against the Petroleum Authority of Thailand (presently PTT Public Company Limited), the third defendant, claiming compensation in the amount of 6,656,979,650.61 baht with interests. The plaintiffs also objected that section 29 and section 30 of the Petroleum Authority of Thailand Act B.E. 2521 (1978) were contrary to or inconsistent with section 48 and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), because the third defendant laid down a petroleum pipeline transport system without complying with the law and had been able to take possession or utilized the plaintiffs' land indefinitely without having to undertake expropriation. The Central Administrative Court referred the objection to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court could accept the application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the case was in accordance with section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and therefore accepted the application for consideration.

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3. The issues considered by the Constitutional Court

The issues considered by the Constitutional Court were whether or not section 29 and section 30 of the Petroleum Authority of Thailand Act B.E. 2521 (1978) were contrary to or inconsistent with section 48 and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 48 paragraph one of the Constitution was a provision on the rights of a person in property. It was stated that a person's rights in property were protected provided that the limits of such rights and the restriction of such rights were defined by law. In this regard, a person having rights in property enjoyed the right to use, dispose of one's property, trace and seek return of possession from a person without the right of possession and exclude others from unlawful interference with such property. Section 49 of the Constitution dealt with the expropriation of immovable property by laying down the principle that expropriation of immovable property was prohibited except where undertaken by virtue of specific provisions of law for the purposes of public utilities, a necessity for national defence or other public benefits and just compensation must be provided within a reasonable time to the owners as well as rights holders damaged by such expropriation. In any event, the Constitution provided equal protection to all persons. However, this did not mean that the rights and liberties of a person protected by the Constitution could not be restricted. Section 29 of the Constitution provided the principle on restriction of rights and liberties of a person by stating that the rights and liberties of a person could be restricted to the extent of necessity without affecting the essential substance of rights and liberties recognized by the Constitution. Also, the law must be generally applicable and not aimed at applying to a specific case or person. In the case of the Petroleum Authority of Thailand Act B.E. 2521 (1978), the reasons for enactment stated that whereas the undertaking of petroleum business was one form of a public utility industry which bore great significance to the economy and security of the country, but the government agencies involved in exploration, production, transport and distribution of petroleum were of unsuitable size and scattered amongst several government agencies and State organizations, thereby constituting a cause for the inefficient operation of petroleum business from the exploration of petroleum to the distribution of fuel oil and petroleum products obtained from petroleum separation. Therefore, enactment of such law was necessary for the benefit of the people and national security. When the Ministry of Industry issued the Notification prescribing a petroleum pipeline transport system area, the reasons given were the necessity to undertake the construction of a petroleum pipeline transport system and marks indicating the area from Chonburi Province to Saraburi Province in order to mitigate problems of land transport, traffic congestion and pollution problems for the benefits of the economy and national security.

Upon a consideration of the above principles and reasons, the Constitutional Court found that the reasons for enacting the Petroleum Authority of Thailand Act B.E. 2521 (1978) were that whereas the undertaking of petroleum business was one form of a public utility industry which bears great significance to the economy and security of the country and

the government agencies involved in exploration, production, transport and distribution of petroleum were scattered in many places, it was expedient to combine the functions into a single agency and establish a State enterprise to undertake petroleum business efficiently and the notification prescribing a pipeline transport system area was an undertaking related to the petroleum business for mitigating problems of land transport, traffic congestion and pollution problems which was beneficial to the economy and national energy security.

Section 29 paragraph one of the Petroleum Authority of Thailand Act B.E. 2521 (1978) stated that “for the benefit of constructing and maintaining petroleum pipeline transport systems, an official and persons working in collaboration with the official shall have the power to temporarily use or take possession of immovable property which is not a residence of any person under the following conditions: (1) the use or possession is necessary for exploration work for the construction or maintenance of petroleum pipeline transport system or is necessary for preventing harm or damage to the petroleum pipeline transport system; (2) PTT has given advance notice to the owner or possessor of the immovable property, whereby the notice to the owner or possessor must be made in writing within a reasonable period of time which shall not be less than three days; if the owner or possessor of the immovable property cannot be contacted, notice shall be given to such owner or possessor not less than thirty days in advance by effecting the notice in writing posted at the place where the immovable property is situated and at the metropolitan district office or provincial district office, the tambon chief office and the village chief office which the immovable property is situated, whereby the date, time and intended activities shall also be stated in the notification.” Section 30 paragraph one stated that “in the transport of petroleum by pipeline, PTT has the power to (1) prescribe petroleum pipeline transport system areas as necessary with the approval of the Minister; (2) lay petroleum pipeline transport systems underneath, above, along or across the land of any person; (3) remove buildings, houses or demolish other items built or constructed or demolish or cut trunks, branches or roots of trees or crops in the petroleum pipeline transport system area”. This was therefore a case where the law empowered a competent official and persons working in collaboration with the competent official for the benefit of constructing and maintaining the petroleum pipeline transport system in order to achieve the purposes of enacting the Petroleum Authority of Thailand Act B.E. 2521 (1978). Procedures were stipulated for acts under such provisions as well as measures for the competent officials and persons working in collaboration with the competent officials in order to minimize the impact on owners or possessors of the immovable property or holders of rights. Should any damage be inflicted, there was a process for claiming compensation from PTT.

Upon a consideration of section 48 paragraph one of the Constitution, which stated that “the property right of a person is protected; the extent and the restriction of such right shall be in accordance with the provisions of the law,” the Constitutional Court found that the rights of a person in property could be restricted by provisions of law. In this regard, section 29 and section 30 of the Petroleum Authority of Thailand Act B.E. 2521 (1978) were provisions of law which restricted the rights of a person in property. However,

the restriction of property rights was imposed to the extent of necessity without affecting the essential substances of a person's rights in property in any way as stated in section 48 paragraph two of the Constitution. There was no change in ownership rights. Only a portion of the right to use the property was restricted, and the essential substance of the right of a person to inherit the property was unaffected. Section 29 and section 30 of the Petroleum Authority of Thailand Act B.E. 2521 (1978) were enacted for the benefit of the public, not for the benefit of any specific individual person. The provisions were therefore neither contrary to nor inconsistent with section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 49 of the Constitution, on the other hand, dealt with expropriation of immovable property. In this application, the applicant's objection called for the enforcement of the law on expropriation of immovable property in order to provide justice to the applicants. Thus, the Constitutional Court held that the objection was directed to the exercise of discretion by the Petroleum Authority of Thailand, which was not relevant to the issue of a law being contrary to or inconsistent with such provisions of the Constitution. Moreover, section 29 and section 30 of the Petroleum Authority of Thailand Act B.E. 2521 (1978) were not provisions on expropriation of immovable property, and therefore excluded any question of their being contrary to or inconsistent with section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

The Constitutional Court held by a resolution comprised of the votes 13 judges that section 29 and section 30 of the Petroleum Authority of Thailand Act B.E. 2521 (1978) were neither contrary to nor inconsistent with section 48 and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

One Constitutional Court judge held that section 29 of the Petroleum Authority of Thailand Act B.E. 2521 (1978) was neither contrary to nor inconsistent with section 48 and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), but ruled that section 30 of the Petroleum Authority of Thailand Act B.E. 2521 (1978) amounted to a permanent use of the land which the landowner had to bear the burden imposed by the application of law. PTT had at the time already been incorporated as a public limited company which carried out business activities analogous to a private entity and no longer functioned for the benefit of the public. The restriction of rights therefore exceeded the extent of necessity and the provision resulted in granting PTT with legal rights above other private entities. For this reason, section 30 of the Petroleum Authority of Thailand Act B.E. 2521 (1978) was contrary to or inconsistent with section 48 and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
