

# Summary of the Constitutional Court Ruling No. 55/2548

**Dated 30<sup>th</sup> August B.E. 2548 (2005)\***

**Re: The Central Administrative Court referred the application of the plaintiffs in case no. 1516/2546 to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on whether or not the Order of the Prime Minister No. SLR. 39/2517, dated 1<sup>st</sup> August B.E. 2517 (1974), issued by virtue of section 17 of the Charter of the Kingdom B.E. 2515 (1972), 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 Central Administrative Court referred the application of the plaintiffs in case no. 1516/2546 to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The facts in the application and supporting documents may be summarized as follows. The parties were Than Phuying Sawai Jarusatean and Khunying Suphanapha Attanant, as the first and second plaintiffs, and the Land Department, Director-General of the Land Department, Investigation Committee under Section 61 paragraph two of the Land Code, the Ministry of Interior and Permanent Secretary of the Ministry of Interior, as the first, second, third, fourth and fifth defendants. The two plaintiffs petitioned that the first plaintiff had acquired ownership of land evidenced by Deed No. 12196, Tambon Seekan, Bangkhen District (Talad Khwan), Bangkok, by purchase. Thereafter on 6<sup>th</sup> November B.E. 2500 (1957), the first plaintiff registered a transfer of the disputed land to Miss Supaporn Jarusatean (presently Mrs. Supaporn Kittikachorn), Mr. Tuangsitthi Jarusatean, Miss Oraphan Jarusatean (presently Khunying Oraphan Sasiprapha) and Miss Jirapha Jarusatean (presently the second plaintiff). Mr. Tuangsitthi died subsequently, whereby the portion of ownership in the disputed land held by Mr. Tuangsitthi was inherited by his legal heir, namely the first plaintiff in her capacity as his mother. On 24<sup>th</sup> March B.E. 2541 (1998), the first plaintiff filed an application to register a transfer of such estate which was Mr. Tuangsitthi's portion, and on 17<sup>th</sup> July B.E. 2541 (1998), a land official in Bangkok, Don Muang Branch, carried out the registration in accordance with the application. On the same day, the first plaintiff registered a transfer of ownership of the disputed land to the second plaintiff.

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\* Published in the Government Gazette, Vol. 123, Part 19a, dated 24<sup>th</sup> February B.E. 2549 (2006)

On 3<sup>rd</sup> March B.E. 2543 (2000), the second plaintiff filed an application to register a transfer of the land with respect to the portion owned by the second plaintiff in the proportions of one fourth of the land received from a transfer by the first plaintiff on 6<sup>th</sup> November B.E. 2500 (1957) and another one fourth of the land received from a transfer by the first plaintiff on 17<sup>th</sup> July B.E. 2541 (1998) to Miss Nonthinet Attanant and Miss Chutima Attanant. However, the Bangkok land official, Don Muang Branch, denied the request for registration and gave notice that an inspection had revealed that the land was attached under Order of the Prime Minister No. SLR 40/2516, dated 30<sup>th</sup> October B.E. 2516 (1973) and became the State's property under Order of the Prime Minister No. SLR 39/2517, dated 1<sup>st</sup> August B.E. 2517 (1974). On 29<sup>th</sup> November B.E. 2545 (2002), the Bangkok land official, Don Muang Branch, sent a letter to both plaintiffs giving notice that the second defendant had issued an order appointing the third defendant to investigate and annul two items in the registration of rights and transactions recorded on 17<sup>th</sup> July B.E. 2541 (1998). The letter further stated that should the two plaintiffs wish to object, an objection had to be filed with the Investigation Committee within thirty days as from the date of receiving the notice. Both plaintiffs filed objections within the deadline.

On 9<sup>th</sup> April B.E. 2546 (2003), the two plaintiffs were notified by the second defendant that there was an Order of the Director-General of the Land Department No. 706/2546, dated 9<sup>th</sup> April B.E. 2546 (2003), annulling the two items registered on 17<sup>th</sup> July B.E. 2541 (1998). The two plaintiffs appealed such order on 6<sup>th</sup> May B.E. 2546 (2003) and was notified by the second defendant that the appeals of both plaintiffs could not be heard, and at the same time, notified that an opinion had already been submitted to the fifth defendant to consider the appeals of both defendants. In due course, the second defendant sent a letter to the second plaintiff stating that the fifth defendant affirmed the order of the second defendant and therefore dismissed the appeal of both plaintiffs.

The two plaintiffs disagreed with the orders of the first defendant and the second defendant as well as the considerations of the third to fifth defendants and were of the opinions that such orders and opinions were unlawful. This was because the Order of the Prime Minister No. SLR. 40/2516, dated 30<sup>th</sup> October B.E. 2516 (1973) and Order of the Prime Minister No. SLR 39/2517, dated 1<sup>st</sup> August B.E. 2517 (1974), were orders which had the force of laws, and therefore subject to the Charter of the Kingdom B.E. 2515 and the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Order of the Prime Minister issued at the time to seize and attach property constituted a confiscation of property which amounted to a criminal penalty. The disputed land was owned by the first plaintiff and acquired prior to such order. The issuance of an Order by the Prime Minister resulted in the enactment of criminal laws having retroactive effect on the first defendant. Hence, the order was inconsistent with the Constitution and unenforceable. Both orders were not issued by virtue or in accordance with section 17 of the Charter of the Kingdom B.E. 2515 (1972). Moreover, both Orders of the Prime Minister which appointed a group of persons authorized to consider and issue orders to seize property were unlawful and inconsistent with the law since they appointed groups of persons, who were not courts, empowered to adjudicate cases

as if they were courts, which was inconsistent with Thailand's conventions of rule under a democratic form of government. Therefore, the orders of the Prime Minister and orders of the committees appointed to carry out the orders of the Prime Minister to seize the disputed land as property of the State was unenforceable under the law.

The Central Administrative Court determined that the main issue in this case was as follows. The two plaintiffs petitioned for the revocation of the second defendant's order which annulled the registration of rights and transactions in relation to the land. The order had been issued under section 61 of the Land Code. The second defendant asserted that the disputed land became the State's property pursuant to Order of the Prime Minister No. SLR. 39/2517, dated 1<sup>st</sup> August B.E. 2517 (1974), issued by virtue of section 17 of the Charter of the Kingdom B.E. 2515 (1972). However, the two plaintiffs argued that such Order of the Prime Minister was inconsistent with the current Constitution of the Kingdom of Thailand and unenforceable. It was claimed, therefore, that such order of the second defendant was unlawful. As the two plaintiffs objected that such Order of the Prime Minister was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which resulted in the second defendant's order being unlawful, and that such Order of the Prime Minister had the force of law, this was a case on an objection that provisions of law to be applied by a court to a case were subject to section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Also, there had not yet been a ruling of the Constitutional Court on such Order of the Prime Minister. The Central Administrative Court therefore imposed a temporary stay on the proceedings and referred the plaintiffs' objection that the Order of the Prime Minister No. SLR. 39/2517, dated 1<sup>st</sup> August B.E. 2517 (1974), contained substance which were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), to the Constitutional Court through official channels for a ruling under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The stay was to be in place until the Constitutional Court reached a ruling.

## **2. The issue considered by the Constitutional Court**

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

The Constitutional Court held as follows. The application was an objection on Order of the Prime Minister No. SLR. 39/2517, dated 1<sup>st</sup> August B.E. 2517 (1974), issued by virtue of section 17 of the Charter of the Kingdom B.E. 2515 (1972). Such Order of the Prime Minister was an order of the executive made pursuant to the Charter of the Kingdom B.E. 2515 (1972). Even though the order had the force of law, it still had the characteristics of an administrative order issued by the executive in order to perform a specific task authorized under section 17 of the Charter of the Kingdom B.E. 2515 (1972). The order was not enacted by an organ exercising legislative powers, and was therefore not a provision of law within the meaning in section 264 paragraph one of the Constitution of the Kingdom of

Thailand, B.E. 2540 (1997). The application was thus outside the powers of the Constitutional Court to consider.

### **3. Ruling of the Constitutional Court**

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

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