

Summary of the Constitutional Court Ruling No. 58/2548

Dated 13th October B.E. 2548 (2005)*

Re: Whether or not section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was contrary to or inconsistent with section 29 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

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1. Background and summarized facts

Mr. Pramut Sutabutr, the plaintiff, filed a plaint against the Chonburi Land Allotment Committee, first defendant, the Chonburi Consumer Protection Subcommittee, second defendant, and the Consumer Protection Board, third defendant, at the Central Administrative Court in case no. 961/2547, judgment no. 1210/2547. The facts stated that the plaintiff was the title holder of land deed number 2893, land number 187, Tambon Na Jomtien, Sattaheep District, Chonburi Province. The plot of land had an area of 1 rai and 74 square wa and included certain structures. Ownership was obtained as a gift from Mrs. Rampha Sutabutr on 25th August B.E. 2532 (1989). The land was plot number 47 in a Baan Suan Rim Talay Project, under which there were land allotments since the year B.E. 2525 (1982). According to the project plan and contents of publicity materials, there were also communal areas such as a clubhouse, swimming pool, playground, garden, supermarket and tennis courts, etc.

The business operator sold the areas intended for the construction of a park and supermarket to others. The tennis courts were moved to an area outside the project site and buildings were constructed instead. The clubhouse was also moved to a new site until part of the building overlapped onto the seashore and part of the land was used for hotel construction. No land was allotted as a public area as advertised in the publicity documents. Moreover, an area in the southern parts of the project site was extended by removing the walls along the plaintiff's land and constructing a new wall distant from the prior boundary by approximately 60 meters. The business operator proceeded to collect service fees for various public services without displaying any license duly issued under the law. There were also no issue of receipts nor maintenance of public utilities. There was no evidence that the business operator owned the plaintiff's land, but merely an application to obtain a license to allot 31 rai and 99 square wa of land, dated 3rd March B.E. 2525 (1982).

The plaintiff sent a complaint letter, dated 11st June B.E. 2544 (2001), to the third defendant, after which the third defendant summoned the plaintiff to give a statement.

* Published in the Government Gazette, Vol. 123, Part 27a, dated 16th March B.E. 2549 (2006)

Thereafter, the plaintiff sent a letter inquiring on the progress of considerations undertaken by the third defendant, which up to the time of the plaint the plaintiff was not yet notified of the outcome of the considerations of the complaint undertaken by the third defendant. In addition, the plaintiff sent a complaint letter to the Minister of Interior and the Land Department that the land allotment business operator of Baan Suan Rim Talay Project, situated at Soi Na Jomtien 48, Sukhumvit Road, Kilometers 161-162, Tambon Na Jomtien, Sattaheep District, Chonburi Province, had carried out a land allotment business without a license under the Land Code, thereby causing damage to the plaintiff and buyers of land from the project. In due course, the Secretary of the Land Department sent a letter, dated 31st July B.E. 2546 (2003), responding to the plaintiff's complaint stating that the Land Department had assigned Chonburi Province to investigate facts and carry out proceedings within its powers and duties. Chonburi Province later sent a letter to the plaintiff, dated 29th August B.E. 2546 (2003), responding to the plaintiff's complaint that Chonburi Province had notified Sattaheep District to carry out an investigation of facts, pursuant to which it was revealed that the Ban Suan Rim Talay Project was situated on plots of land which were originally deed number 548, number 1636, number 2229, number 2421, number 2422 and number 2439, Tambon Na Jomtien, Sattaheep District, Chonburi Province, and it was further revealed that only land deed number 548 was evidenced by an application for a license to undertake land sales and allotment. No license application was found for other plots of land. However, due to insufficient clarity in the information, Sattaheep District had requested the cooperation of Chonburi Land Office, Sattaheep Branch, to inspect the site of Baan Suan Rim Talay with respect to land deed number 1636, number 2229, number 2421, number 2422 and number 2439 to determine whether there had been unlawful acts relating to land sales and land allotment. But up to the date of filing plaint, the plaintiff had not yet received a notification of the outcome of such considerations. The plaintiff was of the opinion that the three defendants failure to exercise legal powers and duties in taking proceedings against the land allotment business operator of Baan Suan Rim Talay Project constituted omissions in the performance of legal duties and undue delays in the performance of duties. It was thereby requested that the court give judgment or an order for the three defendants to carry out proceedings to ensure compliance of the business operator in Baan Suan Rim Talay Project with the Land Allotment Act B.E. 2543 (2000) and the Consumer Protection Act B.E. 2522 (1979) as well as other relevant laws.

The Central Administrative Court held as follows. The plaintiff petitioned that he suffered damages as a result of the defendants' omission of duties and delayed performance of duties under the laws relating to land allotment and consumer protection with respect to the business operator of the Baan Suan Rim Talay Project. This was a dispute relating to a State official omitting duties mandated under the law and undue delay of performance under section 9 paragraph one subsection (2) of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999). The plaintiff had to file a plaint within ninety days as from the date or reasonably implied date of knowledge of the grounds for filing the plaint, or as from ninety days from the date at which the plaintiff sent a letter to administrative agency or State official requesting performance of duties under the law and

there was no written reply from the administrative agency or State official, or a reply was received but was deemed by the plaintiff to be unreasonable, as the case may be, unless provided otherwise by specific provisions of law. Therefore, since the plaintiff sent a complaint letter, dated 11th June B.E. 2544 (2001), to the third defendant but did not receive a written reply from the third defendant, as well as a complaint letter, dated 18th July B.E. 2546 (2003), to the Land Department whereby a reply was received by a letter dated 31st July B.E. 2546 (2003), the plaintiff was entitled to file a plaint at the Administrative Court within the time prescribed under section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999). However, when the plaintiff filed a plaint at the court on 20th August B.E. 2547 (2004), the filing was made after the expiration of the period for filing a plaint prescribed by section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999). The Central Administrative Court therefore ordered the dismissal of the plaint and the removal of the case from the dockets.

The plaintiff filed an appeal at the Central Administrative Court that the plaintiff's case was a protection of public benefits which could be filed at any time pursuant to section 52 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999). Moreover, the case involved was collectively beneficial or there were grounds of necessity which the Administrative Court could accept for consideration pursuant to clause 30 of the Rules of the General Assembly of Supreme Administrative Court Judges B.E. 2543 (2000). It was therefore requested that the Supreme Administrative Court accept the plaint for consideration. It was also asserted that section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) restricted the rights and liberties of persons to file plaints against a State agency or a State official, and was thus contrary to or inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In the consideration of this case, the court applied section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) and the plaintiff, who was a party to the case, requested to exercise rights under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), by objecting that the provisions of section 49 of such Act was subject to section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As there had not yet been a ruling of the Constitutional Court on such section it was thereby requested that the Supreme Administrative Court impose a temporary stay of proceedings and refer the plaintiff's opinion to the Constitutional Court for consideration.

The Supreme Administrative Court held that in giving judgment or order in this case, the Supreme Administrative Court had to apply section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999). However, since the appellant (the applicant) objected that such provision was contrary to or inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and there had not yet been a ruling of the Constitutional Court on such section, the appellant's objection was therefore referred 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 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 Supreme Administrative Court referred the appellant's application to the Constitutional Court for a ruling on whether or not section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was contrary to or inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Supreme Administrative Court had to apply the provisions of section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) when giving judgment or an order in this case. Moreover, there had not yet been a ruling of the Constitutional Court on such provision. Therefore, the Constitutional Court could accept this application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was contrary to or inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), provided the principle that the restriction of rights and liberties recognized by the Constitution could be imposed subject to the conditions prescribed by the Constitution. In other words, it must be a case where the Constitution authorized the enactment of laws restricting certain rights and liberties, which must be imposed to the extent of necessity and should not affect the essential substances of the rights and liberties recognized by the Constitution. In addition, the law should be applied generally and not directed at any specific case or person.

The Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999), on the other hand, was a law enacted pursuant to section 276 in conjunction with section 334(3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The reasons for enactment of the Act were stated in the endnotes to the Act, i.e. that "whereas the Constitution of the Kingdom of Thailand provided for the establishment of Administrative Courts to adjudicate cases of disputes concerning administrative laws arising between private persons and State agencies or State officials, or between State agencies and State officials, in relation to acts or omissions of State agencies or State officials mandated by law or as a result of acts or omissions of State agencies or State officials that were responsible for performance of duties under the law, etc.

The Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) had provided for time periods in many cases, such as section 49, section 50, section 51 and section 52. Each section had provided for different condition precedents for filing complaints and time periods for filing complaints. Section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was a provision on the general time period for filing complaints whereby a plaintiff could file a complaint within ninety days as from the date of knowledge or reasonably implied date of knowledge of the cause of action or as from the date of expiration of ninety days as from the date which the plaintiff sent a letter to the administrative agency or State official requesting compliance with legal duties and there was no written reply from the State agency or State official or a reply was received but deemed to be unreasonable by the plaintiff, as the case may be, unless otherwise provided by specific provisions of law. The variation in time periods prescribed by law depended on the characteristics or type of case, after having regard to suitability and justice. In any event, section 49 of the Act on Establishment of Administrative Court and Administrative Court Procedures B.E. 2542 (1999) was a law generally applicable and not directed at any specific case or person.

4. Ruling of the Constitutional Court

By virtue of the reasons above, the Constitutional Court held by unanimous resolution that section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was neither contrary to nor inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
