

# Summary of the Constitutional Court Ruling No. 62/2548

**Dated 8<sup>th</sup> December B.E. 2548 (2005) \***

**Re: Whether or not section 42 paragraph two and section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) were 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 facts in the application could be summarized as follows. Mr. Pramut Sutabutr (the plaintiff) filed a plaint against the Samut Prakarn land official (defendant), Bang Phli Branch, at the Central Administrative Court claiming that the plaintiff was a holder of usufruct rights in land situated at Moo Baan Green Valley, land deed number 42038, Tambon Bang Chalong, Bang Phli District (Bang Phli Yai), Samut Prakarn Province. The defendant had exercised powers and duties to register the merger of land belonging to a housing estate juristic person without notifying the plaintiff. As a result, the plaintiff, who was the holder of usufruct rights in such land, suffered damages. It was therefore requested that the Central Administrative Court revoke the order of the land official. The Central Administrative Court ordered a denial of trial hearing for the plaint, giving the opinion that the plaintiff did not suffer any damages. In addition, the plaintiff had filed a plaint after the expiration of ninety days as from the date of knowledge or reasonably implied date of knowledge, and the plaintiff had not appealed the order of the land official as required under section 42 and section 49 of the Act on Establishment of Administrative Court and Administrative Court Procedures B.E. 2542 (1999). The plaintiff therefore appealed such order to the Supreme Administrative Court and objected that section 42 paragraph two of the Act on Establishment of Administrative Court 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), and that 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 276 in conjunction with section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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## **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 found that the application was an objection that section 42 paragraph two 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), and that 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 276 in conjunction with section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Supreme Court had sent the provision to the Constitutional Court for consideration in accordance with section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) The Constitutional Court therefore had the power to accept the application for consideration.

## **3. The issues considered by the Constitutional Court**

The issues considered by the Constitutional Court were whether or not section 42 paragraph two 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), and 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 276 in conjunction with section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 42 paragraph two of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) provided condition precedents for filing a plaint at the Administrative Court that the plaintiff must first seek remedies for sufferings or damages inflicted as a result of an act of the State agency or State official under the steps and procedures prescribed by law for such case before filing a plaint at the Administrative Court. This was provided so the administration could inspect, review and remedy defects or faults occurred, which was a remedial procedure that was fair for the potential plaintiff and beneficial to the official service. If remedies had been provided to the satisfaction of the potential plaintiff, there would be no need to take court proceedings. Such provision was consistent with section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and did not constitute a restriction of rights and liberties of a person in any way. Therefore, section 42 paragraph two 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).

The next 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 276 in conjunction with section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court found that Ruling No. 58/2548, dated 13<sup>th</sup> October B.E. 2548 (2005), had already determined that section 49 of the Act on Establishment of Administrative Court 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). Such ruling had also taken section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), into consideration and found that the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) 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) whereby the reasons for enacting the Act were stated in the endnote that whereas the Constitution of the Kingdom of Thailand had provided for the establishment of Administrative Courts to exercise adjudicative jurisdiction over disputes under administrative law arising between a private person and a State agency or State official or between State agencies or State officials in relation to an act or omission of an act which was the responsibility of the State agency or State official under law or as a consequence of an act or omission of an act which was the responsibility of the State agency or State official to perform under the law, etc. The Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) provided for several time periods for filing complaints in various complaints, such as in section 49, section 50, section 51 and section 52. Each section provided varying condition precedents to filing complaints. In this case, section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) provided the time period for filing a complaint for general administrative cases whereby a plaintiff had to 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 agency requesting performance of duties under the law and a written reply from the administrative agency or State official was not received or a reply was received but was deemed to be unreasonable by the plaintiff, as the case may be, unless otherwise provided by specific provisions of law. The time periods provided by law varied according to the characteristics and type of case after taking into consideration suitability and fairness. In any event, the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was a law of general application not directed at any particular case or person. Hence, section 49 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) did not contain any instance which could be contrary to or inconsistent with section 276 in conjunction with section 29 as well as section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the latter provision being a recognition of a person's right to take legal action against a government agency, State agency, State enterprise, local government or other State organizations which were juristic persons in order to hold them liable for acts or omission of acts of government officials, officers or officials of such agencies.

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

The Constitutional Court held that section 42 paragraph two 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), and 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 276 in conjunction with section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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