

Summary of Constitutional Court Ruling No. 26-27/2551

Dated 26th December B.E. 2551 (2008)*

Re: Whether or not section 309 bis paragraph one and paragraph four of the Civil Procedure Code were contrary to or inconsistent with section 4, section 30, and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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1. Summary of background and facts

The Courts of Justice referred the application of Mrs. Pornthip Suthamratbodee, or Suthamratanabodee, and Mrs. Nuanchan Lakornpol, or Kaewsanga, a total of 2 applications, to the Constitutional Court for a ruling under section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in the case of whether or not section 309 bis paragraph one and paragraph four of the Civil Procedure Code was contrary to or inconsistent with section 4, section 30 and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

1.1 In the application of Mrs. Pornthip Suthamratbodee, or Suthamratanabodee, the first defendant in a civil case at the Kampaengphet Provincial Court, the facts could be summarized as follows. The Court had ordered the legal execution officer of Kampaengphet Provincial Office of Legal Execution to carry out the market sale of land and buildings of the first defendant, a total of 3 plots, with a combined appraisal value together with buildings as determined by the legal execution officer in the amount of 8,797,350 baht. In the first market sale on 1st August B.E. 2550 (2007), there was no interested buyer. The legal execution officer therefore postponed the market sale. In the second market sale on 15th August B.E. 2550 (2007), the plaintiff submitted the highest bid for 4,400,000 baht. The first defendant, however, protested the market sale price. The legal execution officer thus suspended the market sale and allowed the first defendant to find a buyer who would submit a bid at the required price, otherwise no further protest would be heard. In the third market sale on 29th August B.E. 2550 (2007), Mr. Wuthikrai Ratanapusadikul submitted the highest bid in the amount of 7,100,000 baht. The legal execution officer therefore executed the sale of such assets.

The first defendant filed a motion dated 10th September B.E. 2550 (2007) at the Kampaengphet Provincial Court in request of the revocation of market sale. Another motion dated 29th November B.E. 2550 (2007) was filed at the Kampaengphet Provincial Court in

* Published in the Government Gazette Vol. 126, Part 30a, 14th May B.E. 2551 (2008).

objection that section 309 bis paragraph one of the Civil Procedure Code, which provided for an interested party to have only one opportunity of protesting the price, resulting in the market sale of assets at a price lower than the appropriate sale price by up to 1,900,000 baht, imposed an unfair restriction of rights, and that section 309 bis paragraph four, which provided for the order of the court of first instance to be final, was inconsistent with section 30 and section 219 in conjunction with section 4 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). It was therefore requested that the Kampaengphet Provincial Court impose a temporary stay of proceedings and refer the first defendant's objection to the Constitutional Court for ruling.

1.2 In the application of Mrs. Nuanchan Lakornpon, or Kaewsanga, the first defendant in a civil case at the Mahasarakam Provincial Court, the facts could be summarized as follows. A court order had permitted the legal execution officer of the Mahasarakam Provincial Office of Legal Execution to carry out the market sale of land and buildings of the first defendant. In the market sale on 6th May B.E. 2551 (2008), Mr. Wijitr Nanbunma submitted a bid for 500,000 baht. The first defendant filed a protest to the price in this market sale. The legal execution officer, however, found that section 309 bis of the Civil Procedure Code had provided only one opportunity to file a protest of the price in a market sale and the first defendant had already exercised the rights to protest the market sale price on 29th April B.E. 2551 (2008). The first defendant's protest was therefore dismissed.

The first defendant filed a motion dated 20th May B.E. 2551 (2008) at the Mahasarakam Provincial Court requesting for the revocation of market sale and objected that section 309 bis of the Civil Procedure Code was contrary to or inconsistent with the Constitution. The opinion was held that the enforcement of judgment under section 309 bis paragraph one of the Civil Procedure Code, which provided for a person interested to have only one opportunity of filing a protest to the price in a market sale, and paragraph four, which provided for the order of the court of first instance to be final, imposed a restriction of rights that was contrary to or inconsistent with section 4 and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), resulting in the underpriced market sale of assets and causing loss and injustice to the first defendant.

Since in both applications, each of the applicants objected that section 309 bis paragraph one and paragraph four of the Civil Procedure Code were contrary to or inconsistent with section 4, section 30 and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), which were sections in the same cluster, the Constitutional Court therefore ordered on 23rd December B.E. 2551 (2008) to consolidate the trial of both applications into one case.

2. Issue considered by the Constitutional Court

The issue which had to be ruled upon by the Constitutional Court was whether or not section 309 bis paragraph one and paragraph four of the Civil Procedure Code were contrary

to or inconsistent with section 4, section 30 and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After consideration, the Constitutional Court held as follows. In relation to section 4, section 30 and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), which the applicants objected that section 309 bis paragraph one and paragraph four of the Civil Procedure Code were contrary to or inconsistent with, the Constitutional Court had already made Ruling No. 21-23/2551, dated 26th December B.E. 2551 (2008), that section 309 bis paragraph one and paragraph four of the Civil Procedure Code were neither contrary to nor inconsistent with section 2, section 4, section 6, section 26, section 27, section 28, section 30 and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Furthermore, section 216 paragraph five of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that a ruling of the Constitutional Court was final and binding on the National Assembly, Council of Ministers, Courts and other state organs. The Constitutional Court was therefore not required to rule on the issues in the application.

3. Ruling of the Constitutional Court

By virtue of the foregoing reasons, the Constitutional Court dismissed the applications.
