

# Summary of Constitutional Court Ruling No. 32/2555 (2012)

Dated 7<sup>th</sup> November B.E. 2555 (2012)\*

**Re: Whether or not section 47 paragraph one and section 50 paragraph two of the Land Allocation Act B.E. 2543 (2000) were contrary to or inconsistent with section 29, section 41 and section 64 of the Constitution.**

.....

## 1. Summary of background and facts

Dhevi Park Housing Estate Juristic Person, as plaintiff, filed an action against Commander Wittaya La-ongchan, defendant, at Pattaya Provincial Court claiming payment from the defendant for maintenance and public utility fees, as well as for public services provided. The defendant argued that the plaintiff had no right to claim such fees since the defendant had cancelled his membership and served notice to cease payments for such fees. The plaintiff counterclaimed that the defendant had continued to reside on the property and remained a member of the plaintiff. The defendant submitted a motion to refer the matter to the Constitutional Court, challenging that section 47 paragraph one of the Land Allocation Act B.E. 2543 (2000) which provided that all purchasers of allocated land should be members of the housing estate juristic person, and section 50 paragraph two which provided that as regards a person with an outstanding debt for maintenance and public utility fees over a consecutive period of six months or above, a competent official would have the authority to withhold registration of rights and juristic acts with respect to such land allocated to the person with such outstanding liability until full payment was made, were restrictions of the defendant's liberty to decline assembly as an association, union, confederation, cooperative, agriculturalist group, non-governmental organisation, private development organisation or other forms of groups as provided under section 29 and section 64 of the Constitution. Moreover, there was no specific provision governing the cancellation of membership of a housing estate juristic person. Furthermore, the Land Office did not have the authority to withhold registration of rights and juristic acts relating to the defendant's land, which constituted the defendant's right in property protected under section 29 and section 41 of the Constitution. Hence, section 47 paragraph one and section 50 paragraph two of the Land Allocation Act B.E. 2543 (2000) were contrary to or inconsistent with section 29, section 41 and section 64 of the Constitution. Pattaya Provincial Court had to apply the provisions in

---

\* Published in the Government Gazette Vol. 130, Part 24a, dated 15<sup>th</sup> March B.E. 2556 (2013).

both sections when deciding on the disputed issues. Upon an objection by the defendant that the provisions were contrary to or inconsistent with the Constitution, the Court found that it was appropriate to refer the defendant's objections to the Constitutional Court for ruling.

## **2. Preliminary issue**

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to admit the application for a ruling under section 211 paragraph one of the Constitution. The Constitutional Court found that there was an objection on whether or not section 47 paragraph one and section 50 paragraph two of the Land Allocation Act B.E. 2543 (2000) were contrary to or inconsistent with section 29, section 41 and section 64 of the Constitution, and that Pattaya Provincial Court was going to apply such provisions of law to a case and there had not yet been a ruling of the Constitutional Court in relation to such provisions. Therefore, the case was in accordance with section 211 paragraph one of the Constitution. The Constitutional Court ordered the admittance of this application for consideration.

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

On the issue of whether or not section 47 paragraph one of the Land Allocation Act B.E. 2543 (2000) was contrary to or inconsistent with section 29, section 41 and section 64 of the Constitution, the Constitutional Court found as follows. Section 47 paragraph one of the Land Allocation Act B.E. 2543 (2000), despite the provisions on the restriction of liberty to assemble as an association, union, confederation, cooperative, agriculturalist group, non-governmental organisation, private development organisation or other group forms as provided under section 64 paragraph one of the Constitution, such a restriction of liberty was imposed in the interest of safeguarding the common interests of members in the housing estate. The restriction was imposed by virtue of provisions of law as permitted under section 64 paragraph three of the Constitution. The absence of any specific provision in the Act on the cancellation of one's membership to a housing estate juristic person could be attributed to the protection of the common interest of housing estate juristic person members in the use of public utilities. Such responsibility would cease only upon the transfer of the purchased allocated land to another person. Furthermore, section 47 paragraph one of the Land Allocation Act B.E. 2543 (2000) was not a provision which restricted a person's right in property pursuant to section 41 paragraph one of the Constitution. Therefore, section 47 paragraph one of the Land Allocation Act B.E. 2543 (2000) was neither contrary to nor inconsistent with section 29, section 41 and section 64 of the Constitution.

As for the issue of whether or not section 50 paragraph two of the Land Allocation Act B.E. 2543 (2000) was contrary to or inconsistent with section 29, section 41 and section 64 of the Constitution, the Constitutional Court found as follows. Section 50 paragraph two of the Land Allocation Act B.E. 2543 (2000) provided for the provisional restriction of property

rights in order to compel persons with outstanding debts for maintenance fees and public utility fees to satisfy those debts and not take advantage of other members. This restriction of a person's rights in property was therefore permitted under section 41 paragraph one of the Constitution. When the defendant completely paid the maintenance and public utility fees to the housing estate juristic person, he could proceed with the registration of rights and juristic act in the allocated land. Also, section 50 paragraph two of the Land Allocation Act B.E. 2543 (2000) was not a provision which restricted the liberty to assemble as an association, union, confederation, cooperative, agriculturalist group, non-governmental organisation, private development organisation or other groups pursuant to section 64 of the Constitution. Hence, section 50 paragraph two of the Land Allocation Act B.E. 2543 (2000) was therefore neither contrary to nor inconsistent with section 29, section 41 and section 64 of the Constitution.

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

By virtue of the foregoing reasons, the Constitutional Court held that section 47 paragraph one and section 50 paragraph two of the Land Allocation Act B.E. 2543 (2000) were neither contrary to nor inconsistent with section 29, section 41 and section 64 of the Constitution.

---