

## Lawful Notification on Road Closure at Thungyai Naresuan Wildlife Sanctuary\*

Supreme Administrative Court Judgment No. A. 804/2555\*\*, dated 14<sup>th</sup> December B.E. 2555 (2012)

*Moniko Co., Ltd (P1) and Mr. Leuang Chaiwat (P2) v Department of Natural Resources and Environment (D1), Department of National Parks, Wildlife and Plant Conservation (D2), Director General of Department of National Parks, Wildlife and Plant Conservation (D3), Deputy Director General of Department of National Parks, Wildlife and Plant Conservation (D4), Director of Wildlife Conservation Office (D5), Mr. Wisit Wongsanunsin, Forestry officer level 8 (D6), and Chief of Thungyai Naresuan Wildlife Sanctuary (D7)*

Even the Notification of the Department of Natural Parks, Wildlife and Plant Conservation, dated 30<sup>th</sup> June B.E. 2549 (2006) had already voided, the Notification which contains the similar statement as the said one shall issue in rainy season every year. The Court shall review the legitimacy of the said Notification for the public administration and the public interests protection. Given the fact that the said Notification, which was the achieving measure with the purposes of Wild Animal Reservation and Protection Act, B.E. 2535 (1992), was issued by the competent official. Moreover, it was the essential measure due to there was no any other similar effective measures. Also, it brought more public interests than the damage of the two Plaintiffs. The Notification on Road Closure at Thungyai Naresuan Wildlife Sanctuary was lawful.

**Legal Principles:** *Proportionality, Lawful Rule*

**Administrative Court Procedure:** *Competence of the Administrative Court*

**Legal Provision:** *Act on Establishment of Administrative Court and Administrative Court Procedure B.E. 2542 (1999) : Section 9*

*Wild Animal Reservation and Protection Act, B.E. 2535 (1992) : Section 37*

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### Judgment (Summary)

The Plaintiff No.1 was a licensee the Artimony mining, located at Laiwo Subdistrict, Sangkhla Buri District, Kanchanaburi Province outside the Thungyai Naresuan Wildlife Sanctuary. The Plaintiff No.1 considered that the Defendant No.3 issued the Notification of the Department of National Parks, Wildlife and Plant Conservation dated 30<sup>th</sup> June B.E. 2549 (2006) closing four routes of ecotourism within the western Thungyai Naresuan Wildlife Sanctuary, Kanchanaburi Province as follows: Route No.1) Thi Nuai – Thi Kong – Song Thai Forestry Control Unit, Route No.2) Thi Nuai – Thi Kong – Nam Jon Forestry Control Unit, Route No.3) Sa Ne Pong – Koh Sa Deng Route, and Route No.4) Ta Kheng Thong – Salava Waterfall. This Notification came into force since 1<sup>st</sup> June B.E. 2549 (2006) to 30<sup>th</sup> November B.E. 2549 (2006). Moreover, any person, who shall take the said routes, had to go on foot and get permission from the official all the time. The Notification was the unlawful act. Given the fact that two Plaintiffs were injured because of the road closure of Thi Nuai – Thi Kong – Song Thai route and Sa Ne Pong – Koh Sa Deng route, which were only two main routes transporting foodstuffs, medical supplies, medicines, mining materials to the mining, together with transferring the workers or injured persons to the hospital. Also, the people living in those villages were aggrieved in consequence of the said Notification. The Plaintiff filed a petition to the involving officials several times, but no any responses from them. As the result, the Plaintiff brought the plaint to the Administrative Court.

The Administrative Court of First Instance held that the Notification of the Department of National Parks, Wildlife and Plant Conservation dated 30th June B.E. 2549 (2006) was the lawful act. In this case, the Defendant No.3 was entitled to issue the said Notification according to Section 37 of the Wild Animal Reservation and Protection B.E. 2535 (1992). Moreover, the road did not suit for the rainy season. Given the fact that the routes in question, which were the cause of action, were always closed every year, but it did not impact to public administration or to access the area of the wildlife sanctuary at all. Presently, the said Notification had already voided. As the consequence, the Court dismissed the plaint concerning to give the ways in question. Besides, the Court gave the remark in order to issue the Notification on road closure in the disputed areas for the next time. In this case, the Defendant No.3 shall consider the conditions to access into the disputed areas, as it thinks fit, regarding to the right in safety of life and property of a person in need to take the routes in the west of Thungyai Naresuan Wildlife Sanctuary in Kanchanaburi Province such as the permission to take the car in order to transport foodstuffs, medical supplies, medicines or transfer the injured people to the hospital and others, as it thinks fit.

The Supreme Administrative Court held that even the sanction of the said Notification had already voided, the Notification on the road closure in the Thungyai

Naresuan Wildlife Sanctuary shall issue in rainy season every year. The Court shall review the legitimacy of the said Notification for the public administration and the public interests protection.

The Notification of the Ministry of Natural Resources and Environment, dated 19<sup>th</sup> April B.E. 2547 (2004), Re: the appointment of the officials by virtue of Wild Animal Reservation and Protection Act, B.E. 2535 (1992) stated that the Defendant No.3 was the official as Wild Animal Reservation and Protection Act, B.E. 2535 (1992), Section 37 of the said Act and Ministerial Regulation No.7, B.E. 2538 (1995), issued under Wild Animal Reservation and Protection Act, B.E. 2535 (1992), with the approval of the National Wild Animal Reservation and Protection Committee. The said Act empowered the official granting permission to any person accessing to the wild animals sanctuary and regulating the access to the wildlife animals sanctuary. The Defendant No.3 was empowered to order in writing the competent officer or the Royal Forest Department to perform any such activity for purposes of protection, preservation and maintenance of wild animals sanctuary pursuant to Section 38 paragraph two of Wild Animal Reservation and Protection Act, B.E. 2535 (1992). Therefore, the defendant No.3 was empowered to issue the said Notification without the approval of the National Wild Animal Reservation and Protection Committee.

Besides, the issuance of the said Notification resulted the restoration of the forests and ecology both sides of the roads through Thungyai Naresuan wild animals sanctuary. Also, the wild animals were able to feeding and propagation themselves. Therefore, the said Notification was the accomplishing measure with the purposes of protection, preservation and maintenance of wild animals sanctuary. Also, the wild animal had a chance to natural propagation, balancing forests utilization and natural resources conservation. Even though the said measure would impact to the two Plaintiffs, it had no any other effective measures as the said Notification. It was deemed as the essential measure for the purposes of protection, preservation and maintenance of wild animals sanctuary. Given the fact that since B.E. 2547 (2004) until now, regarding to the issuance of the said Notification on road closure, there had been no any impacts to the group people or the agencies located nearby the mining of the Plaintiff No.1 in public administration or access within the Thungyai Naresuan Wildlife Sanctuary. The Defendant No.3 also gave a dispensation to the Plaintiff No.1 to access the disputed area, as it deemed necessary. The said Notification brought more the public interests than the damage of the two Plaintiffs. As the result, the Notification of the Department of National Parks, Wildlife and Plant Conservation dated 30<sup>th</sup> June B.E. 2549 (2006) was lawful. Besides, the Court gave the remark in order to issue the Notification on road closure in the disputed areas for the next time. In this case, the Defendant No.3 shall consider the indulged conditions to

the Plaintiff No.1 or any person living nearby the disputed areas with regarding to the safety of life of people living in the areas in question, as sample of the permission to take the disputed routes by car in case of emergency to the hospital and so on.

The Supreme Administrative Court affirmed.