



Administrative Court Decisions

Provisional Remedial Measures before Delivery of Judgment in Nuisance Case *

The Supreme Administrative Court Order No. 334/2547, 4 May B.E. 2547 (2004)

Ms. Orapin Phonsuwan Sabyeroop (P)

v.

Bangkok Metropolitan Governor, et al. (D)

The Administrative Court of First Instance had prescribed provisional remedy before delivery of Judgment by ordering the government official to issue an order prohibiting the private company operating the department store to set the car park ticket point and construct the garbage store near the Plaintiff's house. Such acts had caused the grievance to the Plaintiff by noise and pollution from the traffic as well as smell from the garbage. The Plaintiff had sent a complaint to an administrative agency, but the problems were not resolved. Consequently, the case that the court has prescribed provisional remedy by ordering the superior to supervise the acting of such government official concerning the court order strictly is not the obstacle to the administration of state affairs. It is reasonable and there are sufficient reasons to remain the provisional remedy order until the Administrative Court delivers a judgment.

Legal Principle : *Nuisance*

Administrative Court Procedure : *Provisional Remedial Measures before Delivery of Judgment, Interpleading*

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Legal Provision : *Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) (Section 66)*
Civil Procedure Code (Section 57)
Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000) (Clauses 75 and 77)

Judgment (Summary)

The Plaintiff had been receiving the grievance by Big C Supercenter Public Company Limited who constructed the department store with the gateway near the fence and frontdoor of the Plaintiff's house, causing smoke and noise pollutions from the traffic in opening hours. The Big C also built the garbage store next to the backdoor of the Plaintiff's house, causing the smell which was harmful to the health of the Plaintiff and her family at that time and might be in the future. The Plaintiff used to submit a complaint to Phayathai District Director (the Defendant No.2) regarding these problems but nothing effectively improved. The Plaintiff, therefore, filed the case to the Administrative Court of First Instance with the request for the provisional remedy order before delivery of the judgment.

According to Section 57 of Civil Procedure Code and Section 44 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999), the Court called the Big C into the case as an interpleader (the Defendant No.3) because the Defendant No.3 was an interested person in this case. The court considered the request for the provisional remedy before delivery of Judgment by inquiring from the parties and found that the plaint had sufficient ground and it was reasonable enough to prescribe the provisional remedy order before delivery of Judgment. With the said remedy, the court ordered the Defendant No.2 to exercise his authority under Section 28 of Public Health Act, B.E. 2535 (1992). The Defendant No.2 must prohibit the Defendant No.3 act anything caused the nuisance to the Plaintiff and forbid to collect the garbage from the garbage store between 8 pm-6 am (of the next day). The Defendant No.2 must also order the Defendant No.3 to stop the service at the car park tickets point in front of the Plaintiff's

house. To follow the court's order, the court ordered the Governor of Bangkok (the Defendant No.1) to supervise the acting of the Defendant No.2 strictly until the court delivered the judgment.

The Defendant No.3 appealed the court's order by claiming that the Plaintiff did not receive any harm from the act of the Defendant No.3 or may receive a little bit harm. Moreover, and the Defendant No.3 had done many things to relieve the Plaintiff's grievance according to the Defendant No.2's order. Consequently, the plaintiff had insufficient ground and there was no means to follow the court's order in action. The Defendant No.3 requested the court to reverse the provisional remedy order.

The Supreme Administrative Court considered whether it was reasonable to reverse the order of the Administrative Court of First Instance or not. For the criteria of the consideration to prescribe provisional remedy before delivery of Judgment, the Plaintiff needs to satisfy the court that the plaintiff has sufficient ground, and an application for the provisional remedy is reasonable to be prescribed due to the fact that the administrative agency or state official intends to do such conflict act repeatedly or the Plaintiff will be receiving such grievances by the act of the administrative agency or state official. In prescribing the rules and procedure for such provisional remedy, there shall also be taken into consideration of the responsibility of the administrative agency or state official as well as problems and obstacles likely to occur to the administration of state affairs under Section 66 of the Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) and Clauses 75 and 77 of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000).

By inquiring the parties, the Supreme Administrative Court found that the plaintiff had sufficient ground and the Plaintiff still received the grievance. Furthermore, such provisional remedy before delivery of Judgment did not obstruct the responsibility of the Defendant No.1 and No.2. Consequently, there were adequate reasons to remain the provisional remedy until the delivery of the judgment. The Supreme Administrative Court affirmed the order of the Administrative Court of First Instance.