

Traditional Community Rights*

(The Supreme Administrative Court Order No. 247/2552, 30 April B.E. 2552 (2009))

Mr. Paiboon Puangsamlee (P) v. The Fine Arts Department, et al.(D)

Group of people who intend to preserve and conserve arts and refined culture of their community for the benefit of the common interests of such community and the nation in accordance with the principle of community rights is people assembling as a traditional community, which has a trace of long social and cultural characteristics. Such community shall be protected by Section 64, Section 66, and Section 67 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007). These people, therefore, are entitled to file a case to the Administrative Court.

Legal Principle : *Liberty to unite, Community Right, Right of Action against State Agencies*

Administrative Court Procedure : *The person entitled to file a case*

Legal Provision : *The Constitution of the Kingdom of Thailand, B.E. 2550 (2007) (Sections 64, 66 and 67)*

Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) (Section 42)

The plaintiff together with other people by the name of “Sri Tawaravadee Group” aimed to study, coordinate, and conserve with regard to history and archaeology. The plaintiff claimed that he and others were aggrieved or injured in consequence of an act by the Fine Arts Department (the defendant no. 1), which gave the Nakhonpathom Municipality (the defendant no. 2) a permission to construct a new office building of the Nakhonpathom Municipality on the former palace of Pathomnakhon near the Phrapathom Chedi, a major historical site. The plaintiff argued whether should the new office building

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be constructed, it would cause impact to the landscape of the Phrapathom Chedi. The Plaintiff, therefore, requested that the Administrative Court should revoke the permission of the defendant no. 1.

The Administrative Court of First Instance held that the plaintiff and others were not the persons who were aggrieved or injured or who may inevitably be aggrieved or injured under **Section 42 Paragraph one** of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999). The new office building of the Nakhonpathom Municipality was constructed at the area in which the old building was allowed to build with the same height; therefore the plaintiff, individually and as President of “Sri Tawaravadee Group”, was not aggrieved or injured for an act or omission done by the defendants. The Sri Tawaravadee Group had still kept doing its activities. Furthermore, the plaintiff’s domicile was not in the administrative district of the defendant no. 2. The Administrative Court of First Instance had issued an order refusing to accept the case for trial and striking the case out of the Case-list. Consequently, the plaintiff appealed to the Supreme Administrative Court.

The Supreme Administrative Court held that the gathering of plaintiff and others was for purposes to study history and archaeology for the conservation of archaeological and historical sites in Nakhonpathom Province, and to instill awareness of the ownership of cultural heritage to their community for development and to become a learning source. Such gathering was for preservation and conservation of arts and refined culture of their community, and shall be beneficial to the common interests of their community and the nation. Consequently, along with the principle of community rights, people assembling as a traditional community, which had a trace of long social and cultural characteristics shall be protected by the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) under **Section 64 Paragraph one** provided that *a person shall enjoy the liberty to unite and form an association*, **Section 66** prescribed that *persons so assembling as to be a traditional local community shall have the right to conserve or restore their customs, local traditional knowledge, arts or refined culture of their community*, and **Section 67 Paragraph one** provided that *the right of a person to participate with State and communities*

in the conservation, preservation and exploitation of natural resources shall be protected as the case may require and Paragraph three prescribed that the right of a community to sue a government agency, which has a legal entity to require the performance under the duties as provided by this provision shall be protected. The plaintiff and others, therefore, were held to be persons who were aggrieved or injured or who may inevitably be aggrieved or injured under **Section 42 Paragraph one** of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999).
