

## Unlawful Order Denying the Right to Receive a Rent Subsidy<sup>\*</sup>

Supreme Administrative Court Judgment No. A. 480/2561, dated 9<sup>th</sup> May B.E. 2561 (2018)

*Mrs. J (P)*

v.

*Chief of General Administration Subdivision Nakhon Pathom Central Prison (D1)*  
*Committee on Management of Official Accommodation of Nakhon Pathom Central Prison (D2)*  
*Commander of Nakhon Pathom Central Prison (D3)*  
*Department of Corrections (D4)*

The Plaintiff notified the Defendant No.3 that she would like to return official accommodation because it was not suitable to reside. She instead requested a rental subsidy from the Defendant No.3. The Commander only accepted the return of the house yet disapproved the request. The Plaintiff brought this case to the Administrative Court, claiming that the order of the Defendant No.3 not approving the rent payment was unlawful. The Supreme Administrative Court held that considering the reasonable person standard, the Defendant No.3 provided the inappropriate house to the Plaintiff. The allocation of accommodation was not in accordance with Clause 6 paragraph one of the Rule and Procedure on Management of Official Accommodation. Additionally, it was considered that the Defendant No.3 failed to comply with Clause 3 paragraph one (1) of the Rule and Procedure requiring the government to grant accommodation to an official. Therefore, the Plaintiff was entitled to a rental reimbursement under Section 7 paragraph one of the Royal Decree on a Rent Subsidy Provided to a Civil Servant. The mentioned order, denying the right to receive a Rent Subsidy, was unlawful. The Court revoked the order and ordered the revocation thereof to be in effect retrospectively on the day the order was issued.

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<sup>\*</sup> Summarized by Thirat Porntawesub, Bachelor of Laws (LL.B., 2<sup>nd</sup> Class Honour), Chulalongkorn University, Master of Laws (LL.M.), George Washington University, United States of America, Administrative Case Official, Practitioner Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts.

**Legal Principles:** *Administrative Act, Issuance of order*

**Administrative Court Procedure:** *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999): Section 9 paragraph one (1)*

**Legal Provisions:** *Royal Decree on a Rent Subsidy provided to a Civil Servant, B.E. 2547 (2004): Section 7*  
*Rule and Procedure on Management of Official Accommodation, B.E. 2551 (2008): Clause 3, Clause 6 and Clause 9*

### **Judgment (Summary)**

The Plaintiff, a penologist, used to work at Surat Thani Central Prison. On 13<sup>th</sup> October 2008, she was transferred to work at Nakhon Pathom Central Prison. Then, she solicited the Defendant No.1 to provide her accommodation. The Defendant No.2 adopted a resolution on 14<sup>th</sup> November 2008 to approve the request; however, she did not have a chance to inspect the house because a previous resident had not yet moved out. Until 9<sup>th</sup> January 2009, the Plaintiff discovered that the house was in a state of disrepair and treacherous; consequently, she refused to live in the house and submitted the letter to the Defendant No.3 requesting a house rental fee. Nevertheless, the Defendant No.2 had a resolution stating that the accommodation had already been repaired and it was suitable to live in. Later, the Plaintiff notified the Defendant No.3 that she would like to return the house and demanded a rental subsidy. The Defendant No.3 accepted the return of the house; nonetheless, he refused to allow her to acquire the payment, explaining that the Plaintiff's right to reimburse the rental fee was terminated since she had already filed the request for obtaining the official accommodation. The Plaintiff appealed the decision to the Defendant No. 3 but the result had not been issued yet.

The Supreme Administrative Court held that Section 7 paragraph one of the Royal Decree on a Rent Subsidy Provided to a Civil Servant, B.E. 2547 (2004) provides that a civil servant who has been transferred to a different area will receive a rental subsidy but not more than the amount specified in the Royal Decree, except (1) an official contributes accommodation following Ministry of Finance's rules... Clause 3 paragraph one of the Rule and Procedure on Management of Official Accommodation, B.E. 2551 (2008) requires that in managing official accommodation, a government should consider not only the appropriateness and necessity but also costs and benefits... Moreover, paragraph two of the same Clause specifies that if an authorized person provides accommodation to an official pursuant to (1) and (2) but a person denies to accept the accommodation, it will be considered that the official waives his/her right to accept the house and he/she is not entitled to a rental reimbursement under Section 7 (1) of the mentioned Royal Decree.

Furthermore, Clause 6 paragraph one of such Rule and Procedure stipulates that, in a case of available official accommodation is in a state of disrepair, insecure, or there is a force majeure, the house is on fire or, flooded, or other incidents causing a person cannot inhabit are occurred, for example. An authorized person shall repair or alleviate such situation. On paragraph two, it requires that the government shall provide a rental fee to an official who has the right to live in the official accommodation until the restoration or alleviation is complete. The Court reached the conclusion that the purpose of the above mentioned laws was to support official accommodation costs. The laws require the government to either grant a rental fee or provide a house to an official. The Defendant No. 3 had to consider not only the costs and benefits of the government but also the conditions of the house. In other words, accommodation shall be convenient and safe as a reasonable person could live in. It should not be in deteriorating conditions, unsafe or have any cause that prevents a person from occupying a house. Also, the Defendant No.3 was required to consider the official status of a person who would receive accommodation.

In this case, the Plaintiff's statement and the house's photocopies presented that there were many defects in the house, a large hole in a damaged back door, stairs without handrails, a damaged area between the first and second floors, no mosquito net for downstairs windows, and various holes on the floor. The Defendant No.3 and No. 4 did not argue these facts. They merely claimed that the house was in proper conditions and it was restored since 2005. Besides, the stairs with handrails was the result of the restoration and design. The Court determined that the house was still unsafe and unavailable for a reasonable person to utilize. Moreover, the conditions of the house were not appropriate to the status of the Plaintiff as a Civil Servant Level 7. Consequently, the allocation of official accommodation of the Defendant No. 3 was inconsistent with Clause 6 paragraph one of the Rule and Procedure on Management of Official Accommodation. As a result, the Defendant No.3 did not provide the house to the Plaintiff pursuant to Clause 9 paragraph one under the same Rule and Procedure. The Plaintiff was entitled to receive the rental reimbursement under Section 7 paragraph one of the Royal Decree on a Rent Subsidy Provided to a Civil Servant. Therefore, the order disapproving the Plaintiff's request was unlawful. The Court revoked the mentioned order and ordered the revocation thereof to be in effect retrospectively on the day the order was issued. The judgment of the Administrative Court of First Instance was reversed.