

## Abuse of Discretion to Grant Permission for the Use of Land in a Land Reform Area<sup>\*</sup>

Supreme Administrative Court Judgment No. A. 230/2560, dated 10<sup>th</sup> March B.E. 2560 (2017)

*Miss L (P1)*

*Mr. A (P2)*

*Mr. K (P3)*

v.

*Agricultural Land Reform Committee of Nakhon Si Thammarat Province (D1)*

*Mr. J1 (D2)*

*Mr. J2 (D3)*

*Mr. W (D4)*

*Mr. S1 (D5)*

*Mr. S1 (D6)*

The Plaintiff No.1 was informed by a village headman that the Defendants No.2 to No.6 falsely provided information to the Office of Provincial Agricultural Land Reform, Nakorn Sri Thammarat, and the Defendant No.1 took the information into consideration and granted the Defendants No.2 to No.6 permission for the use of five parcels of land which the Plaintiffs No.1 to No.3 possessed. The Plaintiffs could not acquire the disputed lands so they filed a case with the Administrative Court of the First Instance. According to the judgment of the Supreme Court of Justice which had the cause of action related to this case, the evidence of the Plaintiff No.1 was more reliable than the evidence of the Defendants No.2 to No.6. It could be concluded that the Defendants No.2 to No.6 did not use the disputed lands so they were not entitled to acquire the lands. Thus, the Supreme Administrative Court determined that the Defendants No.2 to No.6 were not a farmer who possessed a state land and operated agriculture in a land reform area so they were not entitled to use the disputed lands. As a result, the resolution of the Defendant No.1 granting permission for the use of land to the Defendants No.2 to No.6 was invalid. The Defendant No.1 abused its discretion by unlawfully issuing the order without adequate reason. The Supreme Administrative Court affirmed the judgment of the Administrative Court of First Instance to revoke the resolution of the Defendant No.1 in effect of the date of issuance and dismiss the plaint filed against the Defendants No.2 to No.6.

---

<sup>\*</sup> Summarized by Kitiwan Khantitirat, Bachelor of Laws (LL.B.), Chulalongkorn University, Master of Laws (LL.M.) in International Law, Thammasat University, Master of Laws (LL.M.), Georgetown 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:** *Land Agricultural Reform Act, B.E. 2518 (1975) : Section 30 paragraph one*

*Regulation of the Agricultural Land Reform Committee on Rules, Procedure and Requirements for Selecting Farmers Entitled to Acquire Land from Agricultural Land Reform, B.E. 2535 (1992): Clause 5 paragraph one and Clause 8 paragraph one (1)*

### **Judgment (Summary)**

The Plaintiffs No.1 to No.3 did not know that five parcels of state land which they possessed were in a land reform area so they did not file an application for permission for the use of land. The Plaintiff No.1 was informed by a village headman that the Defendants No.2 to No.6 falsely provided information to the Office of Provincial Agricultural Land Reform, Nakorn Sri Thammarat, and the Defendant No.1 took the information into consideration and granted the Defendants No.2 to No.6 permission for the use of the disputed lands. The Plaintiff No.1, thus, contested the decision of the Defendant No.1. The Plaintiffs No.1 to No.3 could not acquire the lands so they filed a case with the Administrative Court of First Instance requesting the Court to revoke the order of the Defendant No.1.

The Supreme Administrative Court held that the issue of the possession of state land in the land reform area in Nakhon Si Thammarat Province was raised by the Plaintiffs and the Defendants No.2 to No.6 in the Administrative Court of First Instance and was decided by the judgment of the Court. Moreover, the Defendants No.2 to No.6, who were affected by the judgment of the Administrative Court of First Instance, did not appeal against the Court decision. Therefore, the pertinent part of the judgment binding on them was final. The factual issue was also determined by the judgment of the Supreme Court of Justice which had the cause of action relating to this case. According to the judgment of the Supreme Court of Justice, the Defendants No.2 to No.6 presented witnesses - the Defendants No.2 to No.6, Mr. J, Mr. P1 and Mr. P2, Lieutenant W and Mr. S - to testify and provide explanation of documents and photos in the Court. The witnesses' testimonies were substantially inconsistent so they were not reliable. In addition, a surveyor testified to the Court that he conducted land surveying in the disputed lands for two times. In 2005, the

surveyor stated that the parcels of land were not used, according to the copy of the report of land surveying and map. He surveyed the lands for the second time in 2009 and found that the lands were flat like a rice field and there was no water channel or track, and confirmed that palm trees were not planted in the lands. His testimony was inconsistent with the testimonies provided by the Defendants No.2 to No.6. If palm trees were actually planted, there should be some trace left. The fact whether the Defendants No.2 to No.6 used the lands was uncertain and it could not be proved so local tax payment and permission to use and reside in a land in the national reserved forest area were not admissible as evidence to prove that the Defendants No.2 to No.6 used the disputed lands. In addition, the Plaintiff No.1 rebutted evidence given by the Defendants No.2 to No.6. She testified that the Defendants No.2 to No.6 had never used the lands. Mr. H who lived nearby the disputed lands and the village headman also gave a testimony supporting the evidence provided by the Plaintiff No.1. Therefore, the evidence of the Plaintiff No.1 was more reliable than the evidence of the Defendants No.2 to No.6. It could be concluded that the Defendants No.2 to No.6 were not entitled to acquire the disputed lands.

The Supreme Administrative Court concluded that the Defendants No.2 to No.6 were not a farmer who possessed a state land and operated agriculture in a land reform area so they were not entitled to acquire the disputed lands, under Section 30 paragraph one of the Land Agricultural Reform Act, B.E. 2518 (1975) amended by the Land Agricultural Reform Act (No.3), B.E. 2532 (1989), and Clause 5 paragraph one and Clause 8 paragraph one (1) of the Regulation of the Agricultural Land Reform Committee on Rules, Procedure and Requirements for Selecting Farmers Entitled to Acquire Land from Agricultural Land Reform, B.E. 2535 (1992). The fact presented that the Defendants No.2 to No.6 were not a possessor of the lands and did not exploit the lands but the Defendant No.1 approved a resolution to permit the Defendants No.2 to No.6 to use the lands in the land reform area. The Defendant No.1 abused its discretion by unlawfully issuing the order without adequate reason, pursuant to Section 9 paragraph one (1) of the Act on the Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). The Supreme Administrative Court affirmed the judgment of the Administrative Court of First Instance to revoke the resolution of the Defendant No.1 to grant permission to the Defendants No.2 to No.6 for the use of land in a reform land area in effect on the date of issuance of the order and dismiss the plaint filed against the Defendants No.2 to No.6.