

Municipal Ordinance Prescribing the Location of the Storage Containing Hazardous or  
Chemical Substance that may be Hazardous to Health<sup>\*</sup>

Supreme Administrative Court Judgment No. A.E. 5/2562, dated 23<sup>rd</sup> May B.E. 2562 (2019)

*Mrs. S (P)*

v.

*Mayor of Kud Din Ji Subdistrict Municipality (D1)*

*Kud Din Ji Subdistrict Municipality (D2)*

By the virtue of Section 32 (2) of the Public Health Act, B.E.2535 (1992), the municipal government had the power to issue the Municipal Ordinance prescribing the storage containing hazardous or chemical substances which might be hazardous to health should be located not less than 500 meters far away from the community. This was the solution to the complaints of people in that area regarding the smell of the chemical substances from the operation of the business. Also, it was the provision relating to the supervision of the hygiene condition of the establishment and the preventive measure for health in relation to health hazardous business which was within the discretion of the Mayor to do accordingly. When the provisions of such Municipal Ordinance was not contrary to or inconsistent with the Ministerial Regulation Prescribing Rules, Procedures, and Measures on Control of Health Hazardous Establishment, B.E. 2545 (2002), the provision prescribing the location of the storage should not be less than 500 meters far away from the community was therefore lawful.

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**Legal Principles**: *Unlawful Act by State Officials, Issuance of a By-Law*

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

**Legal Provisions** : *Public Health Act, B.E.2535 (1992) : Section 6, Section 7, Section 32 (2), and Section 73 paragraph one*

*Ministerial Regulation Prescribing Rules, Procedures, and Measures on Control of Health Hazardous Establishment, B.E. 2545 (2002) : Clause 3*

*Notification of the Ministry of Public Health at 5/2538 entitled Activities and Operations Hazardous to Health dated the 27<sup>th</sup> Day of June B.E. 2538 (1995) : Clause 5*

*Municipal Ordinance of Kud Din Ji Subdistrict Municipality entitled Control of Health Hazardous Business, B.E. 2553 (2010) : Clause 6 (1) and Clause 28*

### **Judgment (Summary)**

The Plaintiff claimed that the Plaintiff had been doing the business of selling fertilizer and pesticide as a retail trade and later changed to wholesale trade. The Plaintiff's establishment was the one-floor commercial building, amount 11 units. In April B.E. 2553, there was an accident during transportation of the herbicide causing foul smell spreading to neighboring houses; therefore, the nearby neighbors filed the complaints to several agencies for the remedies. Afterward, Mayor of Kud Din Ji Subdistrict Municipality (Defendant No.1), by virtue of the Municipal Ordinance of Kud Din Ji Subdistrict Municipality entitled Control of Health Hazardous Business, B.E. 2553 (2010), ordered the Plaintiff to move the storage containing fertilizer and agricultural chemical substance 500 meters far away from the community. Nevertheless, the Plaintiff argued that the new storage required a long-term construction and a large amount of money; furthermore, most of the areas were within the land reform areas (Sor. Por. Koh.) which could not be used for the location of the storage. Therefore, the Plaintiff was of the opinion that Clause 6 of the said Municipal Ordinance was unlawful, lacked of correct reasons and principles, and caused unnecessary and excessive burden to the Plaintiff and other entrepreneurs. The Plaintiff also mentioned that Clause 28 of the mentioned Municipal Ordinance was prescribed the incorrect penalties. In addition, such Municipal Ordinance had a significant impact on public interest, yet there was not a thorough public hearing process before the issuance thereof. Subsequently, the Plaintiff filed a case with Administrative Court requesting the Court to revoke the mentioned Municipal Ordinance.

The Supreme Administrative Court held that after considering the provisions prescribed in Section 6, Section 7, and Section 32 (2) of the Public Health Act, B.E.2535 (1992), it could be seen that the dispute in this case was the matter regarding the activities

and operations hazardous to health; therefore, the power of the local government to issue local regulations should be in compliance with Section 32 (2) of the said Act and should not be contrary to or inconsistent with the Ministerial Regulation Prescribing Rules, Procedures, and Measures on Control of Health Hazardous Establishment, B.E. 2545 (2002), except there was a necessity or special reason for the locality. Given the fact that according to the Notification of the Ministry of Public Health at 5/2538 entitled Activities and Operations Hazardous to Health dated the 27<sup>th</sup> Day of June B.E. 2538 (1995), the Plaintiff had been doing the business of selling fertilizer and pesticide which was an activities and operations hazardous to health. Afterward, there was an accident during transportation of the herbicide causing foul smell spreading to neighboring; in consequence, there was a complaint to Defendant No.1 resulting in the issuance of the Municipal Ordinance of Kud Din Ji Subdistrict Municipality entitled Control of Health Hazardous Business, B.E. 2553 (2010). Clause 6 (1) of such Municipal Ordinance provided that the establishment for Health Hazardous Business was required to distribute hazardous or chemical substances at place of sale exhibiting only the sample product and/or the place of sale should be controlled in compliance with the Public Health Act, B.E.2535 (1992); it further prescribed that the storage should be located not less than 500 meters far away from the school, religious place, market, community, archaeological site, and other places.

These provisions could be deemed as the term relating to the supervision of the hygiene condition of the establishment and the preventive measure for health in relation to health hazardous business which was a copy of the provision in Clause 3 of the above-mentioned Ministerial Regulation. The said provisions specified the distance between the storage location and the community due to the complaints regarding the smell of the chemical substances from operating this business; furthermore, as the establishment was in the community or the market, if the hazardous substances were allowed to be stored in that place, it would cause danger to people's health and nuisance. Hence, Defendant No.2 had the discretion to specify the location of the storage by considering the characteristic and type of the business which might be hazardous to health according to Clause 3 of the said Ministerial Regulation. By the virtue of Section 32 of the Public Health Act, B.E.2535 (1992), Defendant No.2 had the power to issue Clause 6 (1) of the said Municipal Ordinance prescribing the location of the storage containing hazardous or chemical substances which might be hazardous to health. Moreover, this provision was not contrary to or inconsistent with the above-mentioned Ministerial Regulation; thus it was deemed that Clause 6 (1) thereof was lawful.

In addition, when Defendant No.2 issued Clause 28 of the said Municipal Ordinance provided that anyone violating the provision of Clause 6 and Clause 8 should be punished in accordance with Section 73 paragraph one of the Public Health Act, B.E.2535 (1992), Defendant No.2 had the power to issues such Clause by the virtue of Section 32 (2)

of the said Act. Hence, Defendant No.2 prescribing the penalties under Clause 28 was in compliance with Section 73 paragraph one which provided that any person violating the local regulations issued under the provisions of Section 20 (5), Section 32 (2), Section 35 (1) or (4), or Section 40 (2) or (3) shall be punished by imprisonment not exceeding six months or a fine of not exceeding fifty thousand baht, or both. It was deemed that the provision of the mentioned Municipal Ordinance prescribing the penalties was lawful, as well.