

J. Y. Interpretation No.408 (July 5, 1996) *

ISSUE: Is the Ministry of the Interior directive constitutional in stipulating that no occupant of a tilling land may acquire superficies thereon and apply for registration of such by prescription?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Article 832 of the Civil Code (民法第八百三十二條) ; Article 82 of the Land Act (土地法第八十二條) ; Article 3, Subparagraph 11, of the Agricultural Development Act (農業發展條例第三條第十一款) ; Paragraph 3, Subparagraph 2, of the Guidelines for the Review of Recording of Superficies Acquired by Prescription (時效取得地上權登記審查要點第三點第二款) .

KEYWORDS:

superficies (地上權) , prescription (時效) .**

HOLDING: According to Article 832 of the Civil Code, a superficies is the right to use the land of another person with the object of owning thereon a structure, other work, bamboo stand or trees. Therefore, land with superficies must be suitable for the construction of premises,

解釋文：民法第八百三十二條規定，稱地上權者，謂以在他人土地上有建築物，或其他工作物，或竹木為目的而使用其土地之權。故設定地上權之土地，以適於建築房屋或設置其他工作物或種植竹林者為限。其因時效取得地上權而請求登記者亦同。土地法第八

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installation of other work, the planting of bamboo or trees. The same applies where superficies over the land is secured by virtue of the statute of limitation and registration of the superficies being sought. According to the first sentence of Article 82 of the Land Act, land specifically zoned shall not be used for other purposes. Land considered as tilling land under Article 3, Subparagraph 11, of the Agricultural Development Act is not suitable for registration of superficies by nature. According to Paragraph 3, Subparagraph 2, of the Guidelines for the Review of Recording of Superficies Acquired by Prescription, as promulgated by the Ministry of Interior on August 17, 1988, per Letter No. Tai-Nei-Ti-Tze-621464, no occupant of tilling land may apply for registration of superficies secured by virtue of the statute of limitation. Neither the above-cited provision of the Agricultural Development Act nor the Guidelines contradict the intent of the Constitution, which is to protect the people's property rights.

REASONING: According to Article 832 of the Civil Code, superficies

十二條前段規定，凡編為某種使用地之土地，不得供其他用途之使用。占有土地屬農業發展條例第三條第十一款所稱之耕地者，性質上既不適於設定地上權，內政部於中華民國七十七年八月十七日以台內地字第六二一四六四號函訂頒時效取得地上權登記審查要點第三點第二款規定占有人占有上開耕地者，不得申請時效取得地上權登記，與憲法保障人民財產權之意旨，尚無牴觸。

解釋理由書：民法第八百三十二條規定，稱地上權者，謂以在他人土

is the right to use the land of another person with the object of owning thereon a structure, other work, bamboo stand or trees. Therefore, land with superficies must be suitable for the construction of premises, installation of other work, or the planting of bamboo or trees. The so-called planting of bamboo or trees does not include the cultivation of plants on another's land for the purpose of regular gain. (See Interpretation No. Yuan-tze 738) According to the first sentence of Article 82 of the Land Act, land specifically zoned shall not be used for other purposes. According to Article 3, Subparagraph 11, of the Agricultural Development Act, the term "tilling land" means land for agriculture and animal husbandry as zoned in accordance with the Zoning Act; an agricultural area, rice paddy or dry farmland in a reservation area as zoned in accordance with the Urban Planning Act; agricultural land zoned by the Land Act; or rice paddy or dry farmland not expressly zoned by law but in the land registers. Since tilling land is only to be used for farming, it is not to be used for the construction of premises, installation of other

地上有建築物，或其他工作物，或竹木為目的而使用其土地之權。故設定地上權之土地，以適於建築房屋或設置其他工作物，或種植竹林者為限。所謂種植竹林不包括以定期收穫為目的而施人工於土地，以栽培植物之情形（參看院字第七三八號解釋）。依土地法第八十二條前段規定，凡編為某種使用地之土地，不得供其他用途之使用。農業發展條例第三條第十一款規定，耕地係指農業用地中，依區域計畫法編定之農牧用地、或依都市計畫法編為農業區、保護區之田、旱地目土地，或依土地法編定之農業用地，或未依法編定而土地登記簿所記載田、旱地目之土地。耕地既僅供耕作之用，自不適於建築房屋或設置其他工作物，亦不適於種植竹木而供林地之用，性質上即不符設定地上權之要件，亦無從依時效取得地上權而請求登記為地上權人。內政部於中華民國七十七年八月十七日以台內地字第六二一四六四號函訂頒時效取得地上權登記審查要點第三點第二款規定，占有人占有上開耕地者，不得申請時效取得地上權登記，與憲法保障人民財產權之意旨，尚無牴觸。

work, or the planting of bamboo or trees. By nature, therefore, such land does not conform to the requirements for the establishment of superficies. Accordingly, no application for registration of a superficies can be made by virtue of the superficies being acquired upon the expiration of the statute of limitation. According to Paragraph 3, Subparagraph 2, of the Guidelines for the Review of Recording of Superficies Acquired by Prescription, as promulgated by the Ministry of Interior on August 17, 1988, per Letter No. Tai-Nei- Ti-Tze-621464, no occupant of tilling land may apply for registration of superficies secured by virtue of the statute of limitation. Such Guidelines do not contradict the intent of the Constitution, which is to protect the people's property rights.

Justice Jyun-Hsiung Su filed dissenting opinion.

本號解釋蘇大法官俊雄提出不同意見書。