

J. Y. Interpretation No.409 (July 5, 1996) *

ISSUE: Does Article 208 of the Land Act, which though it stipulates the requirements and procedures for expropriation, yet fails to be concrete and specific, conflict with the intent and purpose of the Constitution's protection of the people's property rights?

RELEVANT LAWS:

Articles 15, 23, 108 and 143, Paragraph 1, of the Constitution (憲法第十五條、第二十三條、第一百零八條、第一百四十三條第一項) ; Articles 208, 219, 222 - 235 of the Land Act (土地法第二百零八條、第二百零九條、第二百二十二條至第二百三十五條) ; Article 48 of the Urban Planning Act (都市計畫法第四十八條) ; Article 49 of the Enforcement Act of the Land Act (土地法施行法第四十九條) .

KEYWORDS:

public necessity (公用需要) , public utilities (公共利益) , expropriation (徵收) , principle of proportionality (比例原則) .**

HOLDING: It is obvious from Article 23 and Article 143, Paragraph 1, of the Constitution that the state, for public necessity, can, according to law, re-

解釋文：人民之財產權應受國家保障，惟國家因公用需要得依法限制人民土地所有權或取得人民之土地，此觀憲法第二十三條及第一百四十三條第

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strict people's land ownership or expropriate their land, even though the people's property rights are guaranteed by the state. Typically, where the state invokes public necessity, it expropriates privately owned land and pays what it considers to be fair compensation. The requirements and procedures of expropriation, however, have not been provided for in the Constitution. However, Article 108, Paragraph 1, Subparagraph 14, of the Constitution has delegated these for regulation by the Legislature. Article 208, Subparagraph 9, of the Land Act, and Article 48 of the Urban Planning Act are in essence general clauses stipulating the purpose and end use of eminent domain. This does not mean that the state can arbitrarily expropriate land once the above purpose and end use have been declared. The state should still be restricted by the principle of proportionality implied in the relevant provisions of the Land Act and Article 49 of the Enforcement Act of the Land Act. Therefore, the above Article 208, Subparagraph 9, of the Land Act and Article 48 of the Urban Planning Act are not inconsistent with the spirit of constitutional

一項之規定自明。徵收私有土地，給予相當補償，即為達成公用需要手段之一種，而徵收土地之要件及程序，憲法並未規定，係委由法律予以規範，此亦有憲法第一百零八條第一項第十四款可資依據。土地法第二百零八條第九款及都市計畫法第四十八條係就徵收土地之目的及用途所為之概括規定，但並非謂合於上述目的及用途者，即可任意實施徵收，仍應受土地法相關規定及土地法施行法第四十九條比例原則之限制。是上開土地法第二百零八條第九款及都市計畫法第四十八條，與憲法保障人民財產權之意旨尚無牴觸。然徵收土地究對人民財產權發生嚴重影響，法律就徵收之各項要件，自應詳加規定，前述土地法第二百零八條各款用語有欠具體明確，徵收程序之相關規定亦不盡周全，有關機關應檢討修正，併此指明。

protection of the people's property rights. As the expropriation of land is by its very nature a significant encroachment on the people's property rights, the requirements of expropriation should be comprehensively laid out in the relevant laws. The language of various subparagraphs of the above-mentioned Article 208 of the Land Act is ambiguous, and the provisions of the expropriation procedure are not satisfactory. We herein recommend that the relevant organizations should review them and make the necessary amendments.

REASONING: Article 15 of the Constitution provides that the property right shall be guaranteed to the people. However, it is obvious from Article 23 and Article 143, Paragraph 1, of the Constitution that the state, for public necessity, can, according to law, restrict people's land ownership or take their land. Typically, where the state invokes public necessity, it expropriates privately owned land and pays what it considers to be fair compensation. The requirements and procedures of expropriation have not been provided for in the Constitution. How-

解釋理由書：人民之財產權應予保障，憲法第十五條定有明文。惟國家因公用需要得依法限制人民土地所有權或取得人民之土地，此觀憲法第二十三條及第一百四十三條第一項之規定自明。徵收私有土地，給予相當補償，即為達成公用需要手段之一種，而徵收土地之要件及程序，憲法並未規定，係委由法律予以規範，此亦有憲法第一百零八條第一項第十四款可資依據（並參照本院釋字第二三六號解釋）。土地法第二百零八條規定：「國家因左列公共事業之需要得依本法之規定，徵收私有土地。但徵收之範圍，應以其事業所必需

ever, Article 108, Paragraph 1, Subparagraph 14, of the Constitution has delegated these for regulation by the legislature (See J.Y. Interpretation No. 236). Article 208 of the Land Act provides that: “the state, where the following public undertakings so require, may, according to law, expropriate privately owned land to the extent necessitated by these public undertakings: 1) military facilities; 2) transportation enterprises; 3) public utilities; 4) water resources; 5) public health; 6) government organizations, local self-governments and other public buildings; 7) educational, academic or charitable organizations; 8) state-owned enterprise, and 9) governmental projects undertaken for the public interest. The first sentence of Article 48 of the Urban Planning Act provides that “relevant organizations or undertakings should, according to law, expropriate the land which has been designated as reserve land for public facilities to be used by public utilities.” Both provisions are in essence general clauses stipulating the purpose and end use of eminent domain. This does not mean that the state can arbitrarily expropriate land because it

者為限：一、國防設備。二、交通事業。三、公用事業。四、水利事業。五、公共衛生。六、政府機關、地方自治機關及其他公共建築。七、教育學術及慈善事業。八、國營事業。九、其他由政府興辦以公共利益為目的之事業」，都市計畫法第四十八條前段規定：「本法指定之公共設施保留地，供公用事業設施之用者，由各該事業機構依法予以徵收」，均係就徵收土地之目的及用途所為之概括規定，但並非謂合於上述目的及用途者，即可任意實施徵收，仍應受土地法相關規定及土地法施行法第四十九條：「徵收土地於不妨礙徵收目的之範圍內，應就損失最少之地方為之，並應儘量避免耕地」之限制。又土地法第二百二十二條至第二百三十五條之規定，為辦理徵收必須遵守之程序。且徵收補償發給完竣後一定期間內，土地未依計畫開始使用者，或未依核准徵收原定興辦事業使用者，原土地所有權人復得依同法第二百十九條行使收回權。是上開土地法第二百零八條第九款及都市計畫法第四十八條前段，旨在揭櫫徵收土地之用途應以興辦公共利益為目的之公共事業或公用事業之必要者為限，與憲法保障人民財產權之意旨尚無牴觸。

has declared a purpose and end use covered by these two articles. The state should still be restricted by the principle of proportionality implied in the relevant provisions of the Land Act and Article 49 of the Enforcement Act of the Land Act, which provides that “To the extent consistent with the aims of the expropriation, the expropriation should be conducted in such a way as to cause the minimum possible damage and to avoid encroachment upon agricultural land.” The procedure provided in Articles 222 to 235 of the Land Act has to be followed when the state does expropriate land. Furthermore, according to Article 219 of the same Act, the original owners are entitled to buy back any land which has been expropriated but has not been used by an undertaking which has received approval for the expropriation, during a specific period of time after receiving compensation. The aims of the above Article 208, Subparagraph 9, of the Land Act and the first sentence of Article 48 of the Urban Planning Act are to provide that where land is expropriated, its end use should be restricted to the necessity for constructing public

utilities or public undertakings in the public interest. Thus, neither provision is inconsistent with the spirit of constitutional protection of the people's property rights.

As the expropriation of land is by its very nature a significant encroachment on people's property rights, the requirements and procedures of expropriation should be comprehensively laid out in the relevant laws. Purposes and end uses should be specified, and standards for balancing public interests and justifying emergency expropriation should be provided in legislation. Otherwise, the administrative organizations which manage the expropriation process and the judicial organizations which have to review the legality of any expropriation will have no benchmark by which to assess their deliberations. In particular, to balance public and private interests and to improve the transparency of decision-making, the opinions and comments of landowners and relevant persons should be heard before the finalization of an expropriation plan. The language of various subparagraphs of the above Article 208 of the Land Act is ambiguous and

徵收土地對人民財產權發生嚴重影響，舉凡徵收土地之各項要件及應踐行之程序，法律規定應不厭其詳。有關徵收目的及用途之明確具體、衡量公益之標準以及徵收急迫性因素等，均應由法律予以明定，俾行政主管機關處理徵收事件及司法機關為適法性審查有所依據。尤其於徵收計畫確定前，應聽取土地所有權人及利害關係人之意見，俾公益考量與私益維護得以兼顧，且有促進決策之透明化作用。土地法第二百零八條各款用語有欠具體明確，徵收程序之規定亦不盡周全，有關機關應本諸上開意旨檢討修正，併此指明。

the provisions of the expropriation procedure are not satisfactory. We herein recommend that the relevant organizations should review them and make the necessary amendments.