

J. Y. Interpretation No.425 ( April 11, 1997 ) \*

**ISSUE:** Does Article 16 of the Supplemental Regulation on Laws and Regulations of Eminent Domain providing that the validity of eminent domain shall not be affected if the government fails to pay the compensation therefor due to its pending petition for the interpretation of law conflict with the purpose and intent of the said law, thus contravening the constitutional protection of property rights as enunciated in Article 15 of Constitution?

**RELEVANT LAWS:**

Article 15 of Constitution (憲法第十五條) ; J. Y. Interpretation Nos. 110 and 400 (司法院釋字第一一〇號、第四〇〇號解釋) ; Articles 231, 233 and 235 of the Land Act (土地法第二百三十一條、第二百三十三條及二百三十五條) ; Article 16 of the Supplemental Regulation on Laws and Regulations of Eminent Domain (土地徵收法令補充規定第十六條) ; T. N. T. No. 661991, Ministry of the Interior, January 5, 1989 (內政部七十八年一月五日台內字第六六一九九一號令) .

**KEYWORDS:**

eminent domain (土地徵收) , reasonable compensation (合理補償) , special sacrifice (特別犧牲) .\*\*

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\* Translated by Jer-Shenq Shieh.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

**HOLDING:** Eminent domain means that the government takes constitutionally protected private property for public use according to legal procedure. Such expropriation and its procedural law must meet the principle of proportionality (*Verhältnismäßigkeitsprinzip*), and fair compensation must be paid within a reasonable period. Before compensation is delivered or legally deposited, the owner of the condemned property still holds the title of the property. However, eminent domain, for said owner, is a special sacrifice for the public interest, so the delivery of compensation should not be delayed too long. Based on this intent, Article 233 of the Land Act stipulates that compensation must be paid within 15 days after the expiration of the post period. This legally preset period must be strictly abided by (See Interpretation No. 110), unless the property owner disagrees with the compensation, and submits his petition legally to the land authority concerned within the post period, and the authority concerned submits it for an appraisal decision, or appraisal meeting, or the property owner agrees to the delayed delivery.

**解釋文：**土地徵收，係國家因公共事業之需要，對人民受憲法保障之財產權，經由法定程序予以剝奪之謂。規定此項徵收及其程序之法律必須符合必要性原則，並應於相當期間內給予合理之補償。被徵收土地之所有權人於補償費發給或經合法提存前雖仍保有該土地之所有權，惟土地徵收對被徵收土地之所有權人而言，係為公共利益所受特別犧牲，是補償費之發給不宜遷延過久。本此意旨，土地法第二百三十三條明定補償費應於「公告期滿後十五日內」發給。此法定期間除對徵收補償有異議，已依法於公告期間內向該管地政機關提出，並經該機關提交評定或評議或經土地所有權人同意延期繳交者外，應嚴格遵守（參照本院釋字第一一〇號解釋）。內政部中華民國七十八年一月五日台內字第六六一九九一號令發布之「土地徵收法令補充規定」，係主管機關基於職權，為執行土地法之規定所訂定，其中第十六條規定：「政府徵收土地，於請求法律解釋期間，致未於公告期滿十五日內發放補償地價，應無徵收無效之疑義」，與土地法第二百三十三條之規定未盡相符，於憲法保障人民財產權之意旨亦屬有違，其與本解釋意旨不符部分，應不予適用。

The Supplemental Regulation on Laws and Regulations of Eminent Domain (T. N. T. No. 661991, Ministry of the Interior, January 5, 1989) are stipulated by the authority concerned based on its authority to enforce the Land Act. Article 16 of the Regulation, which provides that “in taking private property, due to the request of interpretation of law, at the interim period, if the government does not deliver the compensation at the end of the post, it will not be considered an invalid expropriation” does not accord fully with the intent of Article 233 of the Land Act and violates the intent of the constitutional protection of private property. Those portions of said Regulation, which do not accord with the intent of this Interpretation, shall no longer be applied.

**REASONING:** Eminent domain means that the government takes constitutionally protected private property for public use according to legal procedure. Such expropriation and its procedural law must meet the principle of proportionality (*Verhältnismäßigkeitsprinzip*), and fair compensation must be paid within a rea-

**解釋理由書：**土地徵收，係國家因公共事業之需要，對人民受憲法保障之財產權，經由法定程序予以剝奪之謂。規定此項徵收及其程序之法律必須符合必要性原則，並應於相當期間內給予合理之補償，方符憲法保障人民財產權之意旨，前經本院釋字第四〇〇號解釋在案。土地法第二百三十五條前段及

sonable period, and it will then accord with the intent of constitutional protection of private property. This issue was interpreted by this Yuan before in Interpretation No. 400. The first sentences of Article 235 and Article 231 of the Land Act provide that “the rights and duties of the owner of the condemned property to his land will continue until such compensation be paid in full, and before compensation is paid in full, said property owner has the right to continue to use his land,” and “the condemner should not enter the condemned land to begin work until the land price and other compensation are paid in full,” and they express that the title change of the condemned property would not be effectuated until compensation is paid in full. However, eminent domain, for the owner of the condemned property, is a special sacrifice for the public interest, so the delivery of compensation should not be delayed too long. Based on this intent, the first sentence of Article 233 of the Land Act stipulates that such condemned land price and other compensation must be paid within 15 days after the expiration of the post period. This

第二百三十一條前段雖規定：「被徵收土地之所有權人，對於其土地之權利義務，於應受之補償發給完竣時終止，在補償費未發給完竣以前，有繼續使用該土地之權」；「需用土地人應俟補償地價及其他補償費發給完竣後，方得進入被徵收土地內工作」，明示物權變動之效力，須待補償費發給完畢始行發生。惟土地徵收對被徵收土地之所有權人而言，係為公共利益所受特別犧牲，是補償費之發給不宜遷延過久。本此意旨，土地法第二百三十三條前段規定：「徵收土地應補償之地價及其他補償費，應於公告期滿後十五日內發給之」。此項法定期間，自應嚴格遵守，業經本院釋字第一一〇號解釋解釋文第二項釋示：「需用土地人不於公告期滿完竣後十五日內將應補償地價及其他補償費額繳交主管地政機關發給完竣者，依照本院院字第二七〇四號解釋，其徵收土地核准案固應從此失其效力。但於上開期間內，因對補償之估定有異議，而由該管縣市地政機關依法提交標準地價評議委員會評定，或經土地所有人同意延期繳交有案者，不在此限」，從而土地徵收補償費之發給，除對徵收補償有異議，已依法於公告期間內向該管地政機關提出，並經該機關提交評定或評議或經土

legally preset period must be strictly abided by, and it was interpreted in the second paragraph of the holding of Interpretation No. 110 of this Yuan, which holds: if the condemner does not submit the payment of the land price and other compensation to the land authority concerned and the authority then delivers it to the property owner within 15 days after the expiration of the post period, according to Interpretation No. 2704 of this Yuan, such eminent domain case would be void thereafter; however, at the post period, if the property owner disagrees with the appraisal of compensation, and the municipal land authority concerned legally submits it to the Standard Land Value Determination Committee for an appraisal decision, or the property owner agrees to the delayed delivery, then the expropriation case would not be considered void. Therefore, the delay of delivery of compensation is a per se infringement of private property rights, unless the property owner disagrees with the compensation, and submits his petition legally to the land authority concerned within the post period, and the authority concerned sub-

地所有人同意延期繳交者外，如有延誤，自屬對人民財產權之侵害。行政機關基於職權，執行法律，雖得訂定命令補充法律之規定，惟其內容須符合法律意旨。內政部七十八年一月五日台內字第六六一九九一號令發布之「土地徵收法令補充規定」第十六條：「政府徵收土地，於請求法律解釋期間，致未於公告期滿十五日內發放補償地價，應無徵收無效疑義」，與土地法第二百三十三條強制規定未盡相符，有違憲法第十五條保障人民財產權之意旨，於本解釋不符部分，應不予適用。

mits it for an appraisal decision, or appraisal meeting, or the property owner agrees to the delayed delivery. The administrative agency, based on its authority to enforce the law, can stipulate orders to complement the law, but their content must accord with the intent of the law. Article 16 of the Supplemental Regulation on Laws and Regulations of Eminent Domain (T. N. T. No. 661991, Ministry of the Interior, January 5, 1989), which provides that “in taking private property, due to the request of the interpretation of law, at the interim period, if the government does not deliver the compensation at the end of the post, it will not be considered an invalid expropriation” does not accord fully with the intent of Article 233 of the Land Act and violates the intent of protection of private property of Article 15 of the Constitution. Those portions of said Regulation which do not accord with the intent of this Interpretation shall no longer be applied.