

J. Y. Interpretation No.448 (February 27, 1998) *

ISSUE: Where under the dual system of litigation adopted by the Constitution, the administrative court shall have jurisdiction over cases involving disputes between the people and government agencies over rights and obligations, which court shall have the jurisdiction when the dispute arises from the government agency's sale and/or lease of a public property for and on behalf of the Treasury?

RELEVANT LAWS:

Articles 16 and 77 of the Constitution (憲法第十六條、第七十七條); J. Y. Interpretation No. 297 (司法院釋字第二九七號解釋); Supreme Administrative Court's Precedents P. T. 270 (Supreme Administrative Court, 1969) and T. T. 159 (Supreme Administrative Court, 1972) (行政法院五十八年判字第二七〇號及六十一年裁字第一五九號判例); Regulation Governing the Lease of State-owned Arable Land in Taiwan Provinces (臺灣省公有耕地放租辦法) .

KEYWORDS:

dual system of litigation (二元訴訟制度), public property (公有財產), the Treasury (國庫), administrative court (行政法院), court of general jurisdiction (普通法院), unilateral administrative action (單方行政行為), non-administrative act (非行政處分), division of the power of adjudication (審判權劃分), public powers (公權力), public law (公法), private law (私法), act of contract (契約行為), preemption right ((公有地)優先承購權) .**

* Translated by Raymond T. Chu.

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

HOLDING: Article 77 of the Constitution provides that “the Judicial Yuan (“Judiciary”) shall be the highest judicial organ of the State in charge of the trial of civil, criminal, and administrative cases, and the imposition of disciplinary measures against public functionaries.” Hence, civil cases are distinguishable from administrative litigations in the administration of justice. Moreover, while the people have the right of instituting legal proceedings under Article 16 of the Constitution, it is left to law to prescribe what court has jurisdiction over the suit and how the proceeding should be conducted. This has been clearly expounded in our Interpretation No. 297. Under the existing law, trials of civil and administrative cases are conducted in separate courts of different nature under a dual system of litigation. All disputes arising out of legal relations in the area of the public law are tried by administrative courts, and controversies arising out of relations under private laws are tried at courts of general jurisdiction. Where an administrative agency engages in the sale or lease of a public property for and on behalf of the

解釋文：司法院為國家最高司法機關，掌理民事、刑事、行政訴訟之審判及公務員之懲戒，憲法第七十七條定有明文，可知民事與行政訴訟之審判有別。又依憲法第十六條人民固有訴訟之權，惟訴訟應由如何之法院受理及進行，應由法律定之，業經本院釋字第二九七號解釋在案。我國關於行政訴訟與民事訴訟之審判，依現行法律之規定，係採二元訴訟制度，分由不同性質之法院審理。關於因公法關係所生之爭議，由行政法院審判，因私法關係所生之爭執，則由普通法院審判。行政機關代表國庫出售或出租公有財產，並非行使公權力對外發生法律上效果之單方行政行為，即非行政處分，而屬私法上契約行為，當事人若對之爭執，自應循民事訴訟程序解決。行政法院五十八年判字第二七〇號判例及六十一年裁字第一五九號判例，均旨在說明行政機關代表國庫出售或出租公有財產所發生之爭議，應由普通法院審判，符合現行法律劃分審判權之規定，無損於人民訴訟權之行使，與憲法並無牴觸。

Treasury, the activity is not a unilateral administrative act taken in exercising the public power vested in the agency, with external legal consequence. Rather, it is a non-administrative act; that is, an act of contract in the area of private law. Any dispute between the parties arising out of or in connection with such sale or lease must therefore be resolved through the procedure of civil litigation. The Supreme Administrative Court's Precedents P. T. 270 (Supreme Administrative Court, 1969) and T. T. 159 (Supreme Administrative Court, 1972) are both intended to explain that any dispute arising out of or in connection with the sale or lease of public property by an administrative agency for and on behalf of the Treasury must be tried by a ordinary court, and are consistent with the existing law with respect to the division of the power of adjudication, without causing detriment to the people's exercise of their right of instituting legal proceedings, and are thus not in conflict with the Constitution.

REASONING: Article 77 of the Constitution provides that “the Judicial

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Yuan (“Judiciary”) shall be the highest judicial organ of the State in charge of the trial of civil, criminal, and administrative cases, and imposition of disciplinary measures against public functionaries.” Hence, civil cases are distinguishable from administrative litigations in the administration of justice. Moreover, while the people have the right of instituting legal proceedings under Article 16 of the Constitution, it is left to law to prescribe what court has jurisdiction over the suit and how the proceeding should be conducted. This has been clearly expounded in our Interpretation No. 297. Under the existing law, trials of civil and administrative cases are conducted in separate courts of different nature under a dual system of litigation handled respectively by the administrative courts and the courts of general jurisdiction. All disputes arising out of legal relations in the area of the public law are tried by administrative courts, and controversies arising out of relations under private laws are tried at courts of general jurisdiction. No confusion is allowed in their respective duties and functions. Where an administrative agency engages

訟之審判及公務員之懲戒，憲法第七十七條定有明文，可知民事與行政訴訟之審判有別。又依憲法第十六條人民固有訴訟之權，惟訴訟應由如何之法院受理及進行，應由法律定之，業經本院釋字第二九七號解釋在案。我國關於行政訴訟與民事訴訟之審判，依現行法律之規定，係採二元訴訟制度，行政訴訟與民事訴訟分由不同性質之行政法院及普通法院審理。關於因公法關係所生之爭議，由行政法院審判，因私法關係所生之爭執，則由普通法院審判，各有所司，不容混淆。行政機關代表國庫出售或出租公有財產，並非行使公權力對外發生法律上效果之單方行政行為，即非行政處分，而屬私法上契約行為，當事人若對之爭執，自應循民事訴訟程序解決。行政法院五十八年判字第二七〇號判例謂：「行政機關代表國庫處分官產，係私法上契約行為，人民對此有所爭執，無論主張租用抑或主張應由其優先承購，均應提起民事訴訟以求解決，不得藉行政爭訟程序，請求救濟」；又同院六十一年裁字第一五九號判例謂：「查行政官署依臺灣省公有耕地放租辦法，將公地放租與人民，雖係基於公法為國家處理公務，但其與人民間就該公有土地所發生之租賃關係，仍屬私法上

in the sale or lease of a public property for and on behalf of the Treasury, it is not a unilateral administrative act taken in exercising the public power vested in the agency, with external legal consequence. Rather, it is a non-administrative act; that is, an act of contract in the area of private law. Any dispute between the parties arising out of or in connection with such sale or lease must therefore be resolved through the procedure of civil litigation. The Supreme Administrative Court's Precedent P. T. 270 (Supreme Administrative Court, 1969) holds: "Where an administrative agency disposes of a public property on behalf of the Treasury, it is an act of contract in the area of private law. A person who is in dispute over such sale or lease, regardless of whether he is claiming a lease or claiming that he is entitled to a preemption right, may only institute a civil litigation for resolving the dispute, rather than seeking remedy through the procedure of administrative litigation." Additionally, it is held by the Supreme Administrative Court in its Precedent T. T. 159 (Supreme Administrative Court, 1972): "While the action of

之契約關係，如被告官署因查明原告未自任耕作，經以通知撤銷原告承租權，解除原租賃契約，即係基於私法關係以出租人之地位向原告所為之意思表示，並非基於公法關係以官署地位向原告所為之行政處分，不得循行政爭訟程序以求救濟」，均旨在說明行政機關代表國庫出售或出租公有財產所發生之爭議，應由普通法院審判，符合現行法律劃分審判權之規定，無損於人民訴訟權之行使，與憲法並無牴觸。

an administrative agency in leasing to a citizen a tract of State-owned land under the Regulation Governing the Lease of State-owned Arable Land in Taiwan Provinces is an act under public law for the purpose of performing its duties on behalf of the State, the relation of lease between the agency and the citizen over the State-owned land is a contractual relation in the area of private law. If the defendant agency, upon finding that the land at issue is not being cultivated by the plaintiff, rescinds the lease upon a notice to cancel the plaintiff's right to rent the land, it is a manifestation of intention expressed by such agency in the capacity of a lessor to the plaintiff based on their relation under private law, rather than an administrative act done by the defendant in its capacity as a government agency and addressed to the plaintiff. Hence, no remedy may be sought pursuant to the procedure of administrative litigation." Both decisions are intended to explain that any dispute arising out of or in connection with the sale or lease of public property by an administrative agency for and on behalf of the Treasury must be tried by a ordinary

court, and are consistent with the existing law with respect to the division of the power of adjudication, without causing detriment to the people's exercise of their right of instituting legal proceedings, and are thus not in conflict with the Constitution.