

J. Y. Interpretation No.236 (March 17, 1989) *

ISSUE: According to the legal requirements of Article 219 of the Land Act, shall the timely use of lands condemned in accordance with an approved plan be judged from the progress of use for the entire package of land or from the use of discrete parcels in a piecemeal fashion?

RELEVANT LAWS:

Articles 15, 23, 108-I (14) and 143-I of the Constitution (憲法第十五條、第二十三條、第一百零八條第一項第十四款、第一百四十三條第一項) ; Article 219 of the Land Act (土地法第二百十九條) .

KEYWORDS:

condemnation (徵收) , eminent domain (公用徵收) , not carry out the plan (不實行使用) .**

HOLDING: Article 219 of the Land Act prescribes: “If, after condemnation of privately owned land, a government agency does not use said land in accordance with an approved plan, or does not carry out the plan within a year, the original owner is entitled to buy back

解釋文：土地法第二百十九條規定：「徵收私有土地後，不依核准計畫使用，或於徵收完畢一年後不實行使用者，其原土地所有權人得照原徵收價額收回其土地。」所謂「不依核准計畫使用」或「不實行使用」，應依徵收目的所為土地使用之規劃，就所徵收之全

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his/her land by paying said agency the same amount he/she received as compensation. “Not use in accordance with an approved plan” or “not carry out the plan” shall be determined by the scheme of use to achieve the condemnation goal, taking the entire condemnation package as a whole into account. Where there is clear evidence to support a finding that the land in question belongs to an integral plan, the determination ought to be made discretely in order to conform to the legislative intent of eminent domain. The Precedent P.T. No.52 (Ad. Ct., 1979) and the Executive Order No.T.53 N.4534 (Executive Yuan, June 30, 1964) agree with the foregoing in spirit and are not contrary to Article 15 of the Constitution.

REASONING: The right of property shall be guaranteed to the people, which is made explicit in Article 15 of the Constitution, whereas the state can condemn private land for public purpose under the authority of Article 23, Article 108-I (14), and Article 143-I (first part) of the Constitution. After such condemnation, the condemner that has acquired the

部土地整體觀察之，在有明顯事實，足認屬於相關範圍者，不得為割裂之認定，始能符合公用徵收之立法本旨。行政法院六十八年判字第五十二號判例及行政院五十三年六月三十日台五十三內四五三四號令，即係本此意旨，與憲法第十五條並不牴觸。

解釋理由書：按人民之財產權應予保障，憲法第十五條定有明文。惟基於憲法第二十三條、第一百零八條第一項第十四款及第一百四十三條第一項前段規定之意旨，國家為公用之需要，得依法徵收人民之土地。土地徵收後，需用土地人，即應在一定期限內，依照核准計劃實行使用，以防止徵收權之濫用，而保障人民私有土地權益。故土地

land shall, within the specified time frame, use said land in accordance with an approved plan to prevent abuse of eminent domain and to protect private ownership. Hence, Section 219 of the Land Act prescribes: “After condemnation of private land, if the agency that acquired the land does not use said land in accordance with an approved plan, or does not carry out the plan within a year, the original owner is entitled to buy back his/her land by paying said agency the same amount he/she received as compensation. The aforementioned requirements “not use in accordance with an approved plan” or “not carry out the plan” shall be determined by the scheme of use to achieve the expropriation goal, taking the entire condemnation package as a whole into account. Where there is clear evidence to support a finding that the land in question belongs to an integral plan, the determination ought to be made discretely in order to conform to the legislative intent of eminent domain. The Precedent P.T. No.52 (Ad. Ct., 1979, erroneously cited as 1980 in the Final Judgment) states: “The stipulation -- not use in accordance with an

法第二百十九條規定：「徵收私有土地後，不依核准計劃使用，或於徵收完畢一年後不實行使用者，其原土地所有權人得照原徵收價額收回其土地」。上述規定所謂「不依核准計劃使用」或「不實行使用」，應依徵收目的所為土地使用之規劃，就所徵收之全部土地整體觀察之，在有明顯事實，足認屬於相關範圍者，不得為割裂之認定，始能符合公用徵收之立法本旨。行政法院六十八年判字第五十二號（行政法院確定判決誤為六十九年判字第五十二號）判例：「土地法第二百十九條所謂『徵收私有土地後，不依核准計劃使用』，係對於所徵收土地之整體不依原核准計劃使用而言，若就徵收之土地已按原核准計劃逐漸使用，雖尚未達到該土地之全部，但與不依核准計劃使用之情形有間，應無該條之適用。」及行政院五十三年六月三十日台五十三內四五三四號令：「需地機關是否已於徵收完畢一年後實行使用之認定，應以該項徵收土地之整體為準，而不能仍按徵收前之個別原所有權之各個地區以為認定已否實行使用之準據」各等語，即係本此意旨，與憲法第十五條並不牴觸。

approved plan after condemnation of private land -- prescribed in Article 219 of the Land Act is for violation of approved use of the entire condemnation package. Where the land has been put into use gradually in accordance with an approved plan but the process has not been completed, it cannot reasonably be deemed a violation for non-use and said Article shall have no application.” Executive Order No.T.53 N.4534 (Executive Yuan, June 30, 1964) states: “Whether the agency that acquired the land has carried out the plan within one year of condemnation shall be judged from the use of the entire condemnation package and not from the use of discrete parcels in a piecemeal fashion.” These statements are consistent with the spirit of the legislation and not contrary to Article 15 of the Constitution.

Whether the condemnation complies with legal requirements, as well as whether the size of the condemnation package exceeds the actual need are questions concerning the legality of condemnation action; and under what circumstances

至徵收土地是否符合法定要件，其徵收之範圍有無逾越必需之限度，乃該徵收處分是否違法之問題；就所徵收之土地，於如何情形下，為依核准計劃為整體之使用，乃具體案件事實認定事項；又原土地所有權人依土地法第二百

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the use of the condemned land is deemed an integral use of the approved plan is an ad hoc factual determination. The above-mentioned issues and the issue of whether there is a statute of limitation to preclude the original owner from reclaiming property under Article 219 of the Land Act are all beyond the scope of this Interpretation.

Justice Tieh-Cheng Liu filed dissenting opinion.

十九條主張收回其土地，有無期間之限制，均不在本件憲法解釋範圍內，併此說明。

本號解釋劉大法官鐵錚提出不同意見書。