

## J. Y. Interpretation No.291 ( February 28, 1992 ) \*

**ISSUE:** Is the Guidelines for Review on the Registration of Superficies Acquired by Prescription constitutional in requiring that an applicant for recordation of superficies for a building constructed on land of another person must file documents to prove that the building is a “legitimate one”?

**RELEVANT LAWS:**

Article 15 of the Constitution ( 憲法第十五條 ) ; Articles 768 through 772 and Article 876 of the Civil Code ( 民法第七百六十八條至第七百七十二條、第八百七十六條 ) ; Article 70, Paragraphs 1 and 2 of the Regulation Governing Land Registration ( 土地登記規則第七十條第一項、第二項 ) ; Guidelines for Review of Recording of Superficies Acquired by Prescription, Ministry of Interior, August 17, 1988, Section 5, Paragraph 1 ( 內政部七十七年八月十七日發布時效取得地上權登記審查要點第五點第一項 ) .

**KEYWORDS:**

positive ( acquisitive ) prescription ( 取得時效 ) , fulfillment of the prescription ( 時效完成 ) , legitimate building ( 合法建物 ) , recordation ( recording ) of superficies ( 地上權登記 ) , owner of superficies ( 地上權人 ) , building occupation permit ( 建築物使用執照 ) , office of hsiang, township, city, or precinct ( 鄉、鎮、市、區公所 ) , construction regulation ( 建築管理 ) .\*\*

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\* Translated by Raymond T. Chu.

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

**HOLDING:** The acquisitive prescription system is intended for the public interest, and a property right acquired under this system is protected by the Constitution. The Guidelines for Review on the Registration of Superficies Acquired by Prescription issued by the Ministry of Interior per letter dated August 17, 1988, set forth in Section 5, Paragraph 1, that “a person making use of land for the purpose of [owning] a building thereon shall produce the certificates required by Article 70 of the Regulation Governing Land Registration to show that the building is a legitimate building,” making it impossible for a person who, having taken longtime possession of the private land owned by another person, would otherwise be legally entitled to acquire superficies over the land by prescription, to have the recordation of his superficies perfected because of his inability to produce the required certificates in respect of such legitimate building. Such rule is contrary to the purpose of the Constitution in protecting the people’s property rights and must be rendered inoperative. Incidentally, where a dispute arises over the rent or

**解釋文：**取得時效制度，係為公益而設，依此制度取得之財產權應為憲法所保障。內政部於中華民國七十七年八月十七日函頒之時效取得地上權登記審查要點第五點第一項規定：「以建物為目的使用土地者，應依土地登記規則第七十條提出該建物係合法建物之證明文件」，使長期占有他人私有土地，本得依法因時效取得地上權之人，因無從提出該項合法建物之證明文件，致無法完成其地上權之登記，與憲法保障人民財產權之意旨不符，此部分應停止適用。至於因取得時效完成而經登記為地上權人者，其與土地所有權人間如就地租事項有所爭議，應由法院裁判之，併此說明。

other matters in connection with the lease of the land between the owner and the person who is recorded as an owner of superficies over such land upon fulfillment of the acquisitive prescription, the case must be submitted to a decision of the court.

**REASONING:** Articles 768 through Article 772 inclusive of the Civil Code with respect to the acquisition of ownership or other property rights by reason of prescription are intended to promote the public interest by encouraging the owner of the original right to better fulfill his social responsibility of positive utilization of his property and recognizing the value of the order established by long-time possession. This property right, being acquired by operation of law, must be protected by the Constitution. The right of claim to have a superficies acquired upon fulfillment of prescription over the private land owned by others recorded for the purpose of owning a building on such land has no relation with the issue of whether or not the building constructed on the land owned by others is a “legitimate

**解釋理由書：**民法第七百六十八條至第七百七十二條關於因時效而取得所有權或其他財產權之規定，乃為促使原權利人善盡積極利用其財產之社會責任，並尊重長期占有之既成秩序，以增進公共利益而設。此項依法律規定而取得之財產權，應為憲法所保障。以有建築物為目的而因時效完成取得他人私有土地之地上權登記請求權，與該建於他人土地上之建築物，是否為「合法建物」無關。如非「合法建物」，應依有關建築管理法規處理。而地上權之登記與建築物之登記，亦屬兩事。關於土地登記規則第七十條第一項規定應提出使用執照；第二項規定：「實施建築管理前建造之建物，無使用執照者，如建物與基地同屬一人所有者，應提出建築主管機關或鄉鎮市區公所之證明文件或實施建築管理前繳納房屋稅、水電費之憑證。建物與基地非屬同一人所有者，並

building.” If the building is not a “legitimate building,” the case must be dealt with pursuant to applicable construction laws and regulations. And the recordation of superficies is an entirely different matter from the recordation of the interests in a building. As regards the building occupation permit required by the Regulation Governing Land Registration, Article 70, Paragraph 1, and the provision of the second paragraph of the same article that “with respect to a building constructed before the implementation of the construction regulation regime for which no building occupation permit was issued, the applicant shall produce documentary evidence issued by the authority in charge of the construction or by the office of the hsiang, township, city, or precinct or evidence of payment of the house tax and water and electricity bills made before the implementation of the construction regulation regime if the building and the land on which the building sits belong to the same owner; and in addition thereto, the applicant must produce documentary evidence to support his use of the land if the building and the land on which the

另附使用基地之證明文件。」係指「合法建物」之登記而言。內政部於中華民國七十七年八月十七日函頒之時效取得地上權登記審查要點，其第五點將此「合法建物」登記之規定，移用於地上權之登記，而於其第一項為「以建物為目的使用土地者，應依土地登記規則第七十條提出該建物係合法建物之證明文件」之規定，使已證明係以行使地上權之意思而長期和平繼續占有他人私有土地，本得依法因時效取得地上權之占有人，因無從提出該項合法建物之證明文件，致無法完成其地上權之登記，與憲法保障人民財產權之意旨不符，此部分應停止適用。至因時效完成而經登記為地上權人者，土地所有權人既未喪失其所有權，而仍須承受稅捐等之負擔，為平衡雙方權益，參照民法第八百七十六條之法理，當事人如就地租事項有所爭議，應由法院裁判之，併此說明。

building sits do not belong to the same owner,” are texts whose provisions are meant to refer to the recordation of “legitimate buildings.” This “legitimate building” requirement is adopted by the Guidelines for Review on the Registration of Superficies Acquired by Prescription issued by the Ministry of Interior per letter dated August 17, 1988, and transplanted into the system of recordation of superficieses to prescribe in Section 5, Paragraph 1, thereof that “a person making use of land for the purpose of [owning] a building thereon shall produce the certificates required by Article 70 of the Regulation Governing Land Registration to show that the building is a legitimate building,” making it impossible for a person who, having taken longtime peaceful and continuous possession of the private land owned by another person with proven intent to exercise superficieses thereon, would otherwise be legally entitled to acquire superficieses over the land by prescription, to have the recordation of his superficieses perfected because of his inability to produce the required certificates in respect of such legitimate building. Such rule is con-

trary to the purpose of the Constitution in protecting the people's property rights and must be rendered inoperative. Incidentally, it must be noted that where a person is recorded as the owner of a superficies upon fulfillment of the acquisitive prescription, the owner of the land is not deprived of his title to the land and is thus continuously liable to payment of all tax and dues thereon. For this reason, if a dispute arises between them over the rent or other matters in connection with the lease of the land, the case, in the light of the general principle of law as embodied in Article 876 of the Civil Code, must be submitted to a decision of the court to ensure a balance of interests between the parties.

Justice Chung-Sheng Lee filed dissenting opinion.

本號解釋李大法官鐘聲提出不同意見書。