

J. Y. Interpretation No.350 (June 3, 1994) *

ISSUE: Are the provisions of the Guidelines for the Review of Recording of Superficies Acquired by Prescription, which require that the owner be specified at the time of application and that the application be dismissed even if finding out the name, address, etc., of the owner is impossible, consistent with the Constitution?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; J. Y. Interpretation No. 291 (司法院釋字第二九一號解釋) ; Articles 768 through 772 of the Civil Code (民法第七百六十八條、第七百六十九條、第七百七十條、第七百七十一條、第七百七十二條) ; Articles 48, Subparagraph 2, and 49, Paragraph 1, Subparagraph 4 of the Regulation Governing Land Registration (土地登記規則第四十八條第二款、第四十九條第一項第四款) ; Section 8, Paragraph 1 and 2, of the Guidelines for the Review of Recording of Superficies Acquired by Prescription (時效取得地上權登記審查要點第八點第一項、第二項) .

KEYWORDS:

property rights (財產權) , recording of superficies acquired by prescription (時效取得地上權之登記) , amending (補正) , impossibility (客觀上不能) . **

* Translated by Vincent C. Kuan.

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

HOLDING: Section 8, Paragraph 1 and 2, of the Guidelines for the Review of Recording of Superficies Acquired by Prescription as issued by the Ministry of the Interior per a letter dated August 17, 1988, provides that the current address of the landowner or supervisor shall be specified at the time of the application filed by the possessor. The foregoing provisions, which are necessary in order to protect the rights and interests of a landowner as the superficies is a kind of restrictive right over things that exist in relation to ownership, are not found to be in conflict with the Constitution. Nevertheless, according to Article 48, Subparagraph 2, and Article 49, Paragraph 1, Subparagraph 4, of the Regulation Governing Land Registration, if such information is not specified, an amendment thereof shall be made and, failing such amendment, the application for registration shall be dismissed. It is understood that the aforesaid Guidelines are supplemental to the said Regulation and that, when applied simultaneously, these provisions would prevent an applicant from completing the registration of his superfi-

解釋文：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八點第一項、第二項規定，占有人申請登記時，應填明土地所有權人之現在住址及登訪簿所載之住址。如土地所有人死亡者，應填明土地所有權人或管理人之姓名及住址等項，係因地上權為存在於所有權上之限制物權，該規定之本身乃保護土地所有權人之權益所必要，與憲法並無牴觸。惟如未予填明，依土地登記規則第四十八條第二款、第四十九條第一項第四款規定，應命補正，不補正者駁回其登記之申請。是前開要點乃為該規則之補充規定，二者結合適用，足使能確實證明在客觀上有不能查明所有權人或管理人之姓名、住址而為補正之情形者，因而無法完成其地上權之登記，即與憲法保障人民財產權之意旨有違，在此範圍內，應不予援用。

cies, who could not make such amendment even though he could prove the impossibility of finding out the name, address, etc., of the landowner or supervisor of the land. The foregoing provisions will then contradict the constitutional intent to protect the property rights of the people and, to such extent, shall not be applied.

REASONING: Articles 768 through 772 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 original right holder to better fulfill his social responsibility of making positive use of his property and by recognizing the value of the order established through long-term possession. This property right, being acquired by operation of law, shall be guaranteed by the Constitution. The foregoing has been made clear by this Yuan through Interpretation No. 291. Section 8, Paragraph 1 and 2, of the Guidelines for the Review of Recording of Superficies Acquired by Prescription as issued by the Ministry of the Interior per the Letter Ref.

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，業經本院釋字第二九一號解釋闡述甚明。內政部於七十七年八月十七日以臺內地字第六二一四六四號函頒之時效取得地上權登記審查要點第八點第一項、第二項規定：「占有人申請登記時，應填明土地所有權人之現在住址及登記簿所載之住址。如土地所有人死亡者，應填明其繼承人及該繼承人之現住址」；「土地所有權人為祭祀公業、寺廟或神明會，而其管理人已死亡，應俟管理人變更登記後，於申請書內填明新管理人之姓名、住址」，係因地上權為存在於所有

TNTT-621464 dated August 17, 1988, provides respectively, “The current address of the landowner and the one described in the recording and visitation book shall be specified at the time of the application filed by the possessor and that, in case of the death of the landowner, the name and current address of the heir to the landowner shall be specified.” “If the landowner is a sacrifice-offering association, a temple, or a house of worship, and the supervisor thereof is dead, the name and address of the new supervisor shall be specified in the application after the amendment to the registration of such supervisor is made.” The foregoing provisions, which are necessary in order to protect the rights and interests of a landowner as the superficies is a kind of restrictive right over things that exist in relation to ownership, are not found to be in conflict with the Constitution. Nevertheless, according to Article 48, Subparagraph 2, and Article 49, Paragraph 1, Subparagraph 4, of the Regulation Governing Land Registration, if such information is not specified, an amendment thereof shall be made and, failing such amendment, the applica-

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Justice Rui-Tang Chen filed dissenting opinion in part.

本號解釋陳大法官瑞堂提出部分不同意見書。