

J. Y. Interpretation No.374 (March 17, 1995) *

ISSUE: Is it constitutional for courts to dismiss a civil case brought by a contesting landowner who did not dispute on site during a land survey but who did contest the survey results without success within the period of public notice?

RELEVANT LAWS:

Articles 15 and 16 of the Constitution (憲法第十五條、第十六條) ; Articles 46-1 to 46-3 of the Land Act (土地法第四十六條之一、第四十六條之二、第四十六條之三) ; Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act (司法院大法官審理案件法第五條第一項第二款) ; Article 3 of the Standard Act for the Laws and Rules (中央法規標準法第三條) ; The Resolution of the 8th Supreme Court Civil Law Convention (April 22, 1986) (最高法院七十五年四月二十二日第八次民事庭會議決議) .

KEYWORDS:

land-ownership map (地籍圖) , property rights (財產權) , right of instituting legal proceedings (訴訟權) . **

HOLDING: The re-surveying of a land-ownership map pursuant to Articles 46-1 to 46-3 of the Land Act is purely a

解釋文：依土地法第四十六條之一至第四十六條之三之規定所為地籍圖重測，純為地政機關基於職權提供土

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

technical service ex officio provided by the land administration office. The purpose of this service is to utilize a census and survey to reflect the scope of the people's original ownership on the land-ownership map correctly and completely. It does not expand or diminish the scope of the people's private rights. Therefore, when a landowner according to law brings a civil case contesting a boundary before the courts, the courts should not, based on the reason that there is obviously no basis for him/her to ask that the boundary be redrawn to correct his/her earlier mistake in identifying the boundary, dismiss the case, but should, based on the examination of the evidence, substantially review the case, even though the bordering landowners, having been notified by the land administration office, were on site to identify the boundary jointly and no dispute arose when the land administration office did the survey. This is necessary because the land administration office according to law has to register the change of land boundary based on the survey once the period of public notice of the survey result expires, even though the landowner, in

地測量技術上之服務，將人民原有土地所有權範圍，利用地籍調查及測量等方法，將其完整正確反映於地籍圖，初無增減人民私權之效力。故縱令相鄰土地所有權人於重新實施地籍測量時，均於地政機關通知之期限內到場指界，毫無爭議，地政機關依照規定，已依其共同指定之界址重新實施地籍測量。則於測量結果公告期間內即令土地所有權人以指界錯誤為由，提出異議，測量結果於該公告期間屆滿後即行確定，地政機關應據以辦理土地標示變更登記。惟有爭執之土地所有權人尚得依法提起民事訴訟請求解決，法院應就兩造之爭執，依調查證據之結果予以認定，不得以原先指界有誤，訴請另定界址為顯無理由，為其敗訴之判決。最高法院七十五年四月二十二日第八次民事庭會議決議(一)略謂：為貫徹土地法整理地籍之土地政策，免滋紛擾，不許原指界之當事人又主張其原先指界有誤，訴請另定界址，應認其起訴顯無理由云云，與上開意旨不符，有違憲法保障人民財產權及訴訟權之規定，應不予適用。

order to correct his/her earlier mistake made on site, contests the result within the period of public notice. The Resolution of the 8th Supreme Court Civil Law Convention (April 22, 1986), Part I, essentially states that to implement the policy for clarifying the scope of landownership in the Land Act thoroughly and to avoid any interruption, the landowner who identifies the boundary earlier on site should not be allowed to ask that the boundary be redrawn later and the civil suit brought by him/her should be dismissed as frivolous. Said Resolution, being inconsistent with the above holding and in violation of the constitutional rules protecting the people's property rights and the right to institute legal proceedings, shall no longer apply.

REASONING: Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act provides that when an individual whose constitutional right was infringed upon and whose remedies provided by law for such infringement have been exhausted has questions on the constitutionality of the statute or regulation relied upon by the

解釋理由書：司法院大法官審理案件法第五條第一項第二款規定，人民於其憲法上所保障之權利，遭受不法侵害，經依法定程序提起訴訟，對於確定終局裁判所適用之法律或命令發生牴觸憲法之疑義者，得聲請解釋憲法。其中所稱命令，並不以形式意義之命令或使用法定名稱（如中央法規標準法第三條之規定）者為限，凡中央或地方機關

court of last resort in its final judgment, he may make petition for interpretation of the Constitution. This Council has repeatedly ruled (See J.Y. Interpretations Nos. 216, 238 and 336) that the regulation mentioned in the provision should not be confined to the regulation in the formal sense or to some legal titles (e.g., Article 3 of the Standard Act for the Laws and Rules). The administrative rules or opinions on applying the law (e.g., opinion letters by relevant agencies) ex officio promulgated by the central or local governments could be the objects for judicial review if they are invoked by the judges in the final judgment, although they have no legal binding force on the independent judges. According to current laws, the judicial branch, except in concrete cases, may express its legal opinions in precedents and resolutions. It is an established practice that the precedents whose constitutionality is challenged by the people have been deemed as regulations mentioned above and have been reviewed by this Council (See J.Y. Interpretations Nos. 154, 177, 185, 243, 271, 368 and 372). Although the Resolutions made by the Supreme Court

依其職權所發布之規章或對法規適用所表示之見解（如主管機關就法規所為之函釋），雖對於獨立審判之法官並無法律上之拘束力，若經法官於確定終局裁判所引用者，即屬前開法條所指之命令，得為違憲審查之對象，迭經本院著有解釋在案（釋字第二一六號、第二三八號、第三三六號等號解釋）。至於司法機關在具體個案之外，表示其適用法律之見解者，依現行制度有判例及決議二種。判例經人民指摘違憲者，視同命令予以審查，已行之有年（參照釋字第一五四號、第一七七號、第一八五號、第二四三號、第二七一號、第三六八號及第三七二號等解釋），最高法院之決議原僅供院內法官辦案之參考，並無必然之拘束力，與判例雖不能等量齊觀，惟決議之製作既有法令依據（法院組織法第七十八條及最高法院處務規程第三十二條），又為代表最高法院之法律見解，如經法官於裁判上援用時，自亦應認與命令相當，許人民依首開法律之規定，聲請本院解釋，合先說明。

have only consultative, not legally binding, force on judges and therefore cannot be seen as equal to the Precedents, due to the fact that they are made according to law (See Article 78 of the Court Organic Act and Article 32 of the Regulation Governing the Operational Procedures of the Supreme Court) and represent the legal opinions of the Supreme Court, they shall be deemed equivalent to the regulations mentioned above if they are invoked by judges in judgments, and thus subject to review by this Council once the people make petition for interpretation.

Article 15 of the Constitution provides that the right of property shall be guaranteed to the people. Article 16 of the Constitution also explicitly provides that the people shall have the right to institute legal proceedings. Accordingly, when a person whose property rights have been infringed institutes legal proceedings to seek remedies, the concerned court qua a judiciary organization should *ex officio* make the judgment to resolve the dispute, based on the examination of evidence and rules of experience and reasoning. The re-

憲法第十五條規定，人民之財產權應予保障。又人民有訴訟之權，憲法第十六條亦有明文規定。人民財產權遭受侵害，循訴訟途徑謀求救濟，受理之法院，應依其權限，本於調查證據之結果，依經驗法則及論理法則等，就其爭執予以裁判，發揮司法功能，方符憲法上開條文之意旨。依土地法第四十六條之一至第四十六條之三之規定所為地籍圖重測，係地政機關基於職權提供土地測量技術上之服務，就人民原有土地所有權範圍，利用地籍調查及測量等方法，將其完整正確反映於地籍圖，初無

surveying of a land-ownership map pursuant to Articles 46-1 to 46-3 of the Land Act is purely a technical service ex officio provided by the land administration office. The purpose of this service is to utilize a census and survey to reflect the scope of the people's original ownership on the land-ownership map correctly and completely. It does not expand or diminish the scope of the people's private rights. Therefore, when a landowner according to law brings a civil case before the courts contesting a boundary, the courts should not, based on the reason that there is obviously no basis for him/her to ask that the boundary be redrawn to correct his/her earlier mistake in identifying the boundary, dismiss the case, but should, based on the examination of the evidence, substantially review the case, even though the bordering landowners, having been notified by the land administration office, were on site to identify the boundary jointly, and no dispute arose when the land administration office did the survey. This is necessary because the land administration office according to law has to make the change in registration of land boundary based on the

增減人民私權之效力。故相鄰土地所有權人於重新實施原籍測量時，均於地政機關通知之期限內到場指界而無爭議者，地政機關應依其共同指定之界址重新實施地籍測量。縱令土地所有權人於測量結果公告期間以指界錯誤為由，提出異議，測量結果於該公告期間屆滿後即行確定，地政機關應據以辦理土地標示變更登記。惟有爭執之土地所有權人尚得依法提起民事訴訟請求解決，法院應就兩造之爭執，依調查證據之結果予以認定，不得以原先指界有誤，訴請另定界址為顯無理由，為其敗訴之判決。最高法院七十五年四月二十二日第八次民事庭會議決議(一)略稱：相鄰土地所有人於重新實施地籍測量時，均於地政機關通知之期限內到場指界，毫無爭議，地政機關依照規定，已依其共同指定之界址重新實施地籍測量。於測量結果公告後，自不許土地所有權人主張其原先指界有誤，訴請另定界址等語，與上開意旨不符，有違憲法保障人民財產權及訴訟權之規定，應不予適用。

survey once the period of public notice of the survey result expires, even though the landowner, in order to correct his/her earlier mistake made on site, contests the result within the period of public notice. The Resolution of the 8th Supreme Court Civil Law Convention (April 22, 1986), Part I, essentially states that to implement the policy for clarifying the scope of landownership in the Land Act thoroughly and to avoid any interruption, the landowner who identifies the boundary earlier on site should not be allowed to ask that the boundary be redrawn later and the civil suit brought by him/her should be dismissed as frivolous. Said Resolution, being inconsistent with the above holding and in violation of the constitutional rules protecting the people's property rights and the right to institute legal proceedings shall no longer apply.

Justice Jyun-Hsiung Su filed dissenting opinion in part.

Justice Chi-Nan Chen filed dissenting opinion.

Justice Sen-Yen Sun filed dissenting opinion.

本號解釋蘇大法官俊雄提出部分不同意見書；陳大法官計男、孫大法官森焱與林大法官永謀分別提出不同意見書。

Justice Young-Mou Lin filed dissenting
opinion.