

## J. Y. Interpretation No.115 (September 16, 1966) \*

**ISSUE:** Should the disputes arising from the implementation of the Land-to-the-Tiller Act be settled through administrative procedures?

### **RELEVANT LAWS:**

Article 17 and 21 of the Land-to-the-Tiller Act (實施耕者有其田條例第十七條、第二十一條) ; the Administrative Proceedings Act (行政訴訟法) ; the Administrative Appeal Act (訴願法) .

### **KEYWORDS:**

Land-to-the-Tiller Act (實施耕者有其田條例) , administrative procedures (行政救濟程序) , civil litigation (民事訴訟) , ordinary court (普通法院) . \*\*

**HOLDING:** A person who suffered adverse interest as a result of ownership transfer by the Land-to-the-Tiller Act should seek relief through administrative procedures. He or she may not, on a torts ground, file a civil litigation to demand a return of land. The judgment made by an ordinary court contrary to the judgment of an administrative court in this matter is

**解釋文：**政府依實施耕者有其田條例所為之耕地徵收與放領，人民僅得依行政救濟程序請求救濟，不得以其權利受有損害為理由，提起民事訴訟，請求返還土地。普通法院對此事件所為之相反判決，不得執行。

\* Translated by Robert Huai-Ching Tsai.

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

not enforceable.

**REASONING:** The condemnation or release of farmland by the government based on the Land-to-the-Tiller Act is an exercise of public authority. If the land-owner, tiller, or other interested parties objected to the proceeding, they should apply for a review and correction in accordance with Article 17, Paragraph 1, Subparagraph 2, and Article 21, Subparagraph 3, of the same Act, regardless of the forms and reasons of contention. If, after the government review, the person is still not satisfied, he or she should institute an administrative appeal, re-appeal, and administrative action based on Article 1 of the Administrative Appeal Act, and Article 1 of the Administrative Proceedings Act. He or she may not, on a torts ground, file a civil litigation to demand a return of land. The judgment made by an ordinary court contrary to the judgment of an administrative court in this matter is not enforceable.

Justice Ji-Jong Wang filed dissenting opinion, in which Justice Jou-Kang Jing joined.

**解釋理由書：**政府依實施耕者有其田條例所為之耕地徵收或放領，均係基於公權力之行為。耕地所有權人或承領人及各利害關係人認為有錯誤時，不問其錯誤之形態與原因，俱應分別依同條例第十七條第一項第二款、第二十一條第三款申請更正。對政府就更正申請所為之核定，如仍有不服，應依訴願法第一條、行政訴訟法第一條，循行政訴訟爭程序以提起訴願再訴願及行政訴訟，藉圖救濟。自不得更以其權利受有損害為理由，向普通法院提起民事訴訟，請求返還土地。普通法院對此事件所為之相反判決不得執行。

本號解釋王大法官之棕與景大法官佐綱共同提出不同意見書。