

J. Y. Interpretation No.128 (April 17, 1970) *

ISSUE: What remedy should be sought where a party is dissatisfied with the decision and mediation rendered by an administrative agency as to whether a farmland may be retrieved for purpose of self-cultivation?

RELEVANT LAWS:

Articles 6 and 19 of the Act Governing the Reduction of Farm Rent to 37.5 Percent (耕地三七五減租條例第六條、第十九條) ; Article 1 of the Administrative Appeal Act (訴願法第一條) ; Article 1 of the Administrative Proceedings Act (行政訴訟法第一條) .

KEYWORDS:

administrative decision (行政處分) , self-cultivation (自耕) , lease contract (租賃契約) , Suburban Community (Town, Precinct) Administration Office's Committee of Farm-land Lease (鄉鎮 (區) 公所耕地租佃委員會) , Regulation for the Registration of Lease of Farm Land (耕地租約登記辦法) .**

HOLDING: If the lessor or the lessee is not satisfied with the decision or settlement made by the administrative au-

解釋文：行政機關就耕地三七五減租條例第十九條所為耕地准否收回自耕之核定與調處，出租人承租人如有

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thority as to whether the lessor can retrieve his or her farmland for self-cultivation pursuant to Article 19 of the Act Governing the Reduction of Farm Rent to 37.5 Percent, he or she shall follow the administrative procedure for remedy.

REASONING: Article 19, Paragraph 1, of the Act Governing the Reduction of Farm Rent to 37.5 Percent provides that “when the term of a farmland lease contract expires, the lessor shall not retrieve his or her farmland for self-cultivation if any one of the following conditions applies”. Three conditions are specified where the lessor shall not take back his or her farmland. Whether the farmland can be retrieved by the lessor shall be reviewed by the Administration Office of the Suburban Community (Town, Precinct) according to Article 6, Paragraph 1, of the said Act and the respective Regulations for the Registration of Lease of Farm Land of the Taiwan Province and Taipei City made with authorization of Paragraph 2 of the same Article. Registration will be made after

不服，應循行政訟爭程序請求救濟。

解釋理由書：查耕地三七五減租條例第十九條第一項規定：「耕地租約期滿時，如有左列情形之一者，出租人不得收回自耕」，並列舉不得收回自耕之三款情形，其耕地准否收回自耕，乃應依同條例第六條第一項及由同條第二項授權訂定之臺灣省及臺北市有關耕地租約登記辦法之規定，由該管鄉鎮（區）（市）公所審查，報經縣市政府核備後，辦理登記，該管行政機關所為之審查核定，係屬行政處分；又依該條例第十九條第二項之規定，出租人如確不能維持其一家生活，而同時因出租人收回耕地，致承租人失其家庭生活依據者，鄉鎮（區）公所耕地租佃委員會所為之調處，既係對於耕地租約已滿期時准否收回自耕事件所為發生法律效果之單方行為，自亦係行政處分。且此項調處之對外行文，依同條例第三條授權所制定之臺灣省各縣（市）（局）鄉

approval of the county (city) government. The review and approval of the relevant administrative authority is an administrative decision. According to Article 19, Subparagraph 2, of the said Act, if the lessor actually can not make a living for his or her family, or if the lessor's retrieval of the farmland will result in the lessee's loss of economic support for his or her family, the conciliation shall be made by the Farmland Lease Committee of the Suburban Community (Town, Precinct). The decision made by the Committee is an administrative decision which is a unilateral administrative act with legal effects as to whether the lessor can retrieve his or her farmland when the term of the lease contract expires. In addition, according to Article 13 of the Organic Regulation of the Farmland Lease Committee of the Administration Office of County (City), (Bureau), Suburban Community (Town), (Precinct) of Taiwan and Article 13 of the Organic Regulation of the Farmland Lease Committee of the Precinct Administration Office of Taipei, which are stipulated with the authorization of Article 3 of the said Act, the external official correspondence regarding the

(鎮)(區)公所耕地租佃委員會組織規程第十三條，臺北市各區公所耕地租佃委員會組織規程第十三條之規定以鄉(鎮)或區公所之名義行之，足見此項調處應由鄉鎮區公所以行政機關之地位為之，其為行政處分，更為明顯。復查該條例第十九條第二項并無如同條例第二十六條第一項移由司法機關理之規定，故出租人或承租人對耕地准否收回自耕之核定與調處，如有不服，自應依訴願法第一條，行政訴訟法第一條循行政訟爭程序以提起訴願再訴願行政訴訟之程序請求救濟。

conciliation shall be made in the name of the Administration Office of the Suburban Community (Town) or Precinct. It is obvious that the conciliation is made by the Administration Office of the Suburban Community, Town or Precinct in the capacity as an administrative authority and therefore is a kind of administrative decision. Unlike Article 26, Paragraph 1, of the said Act, Article 19, Paragraph 2, of the said Act has no provision for transferring the case to the judiciary. Therefore, if the lessor or the lessee is not satisfied with the decision or conciliation as to whether the lessor can retrieve his or her farmland for self-cultivation, he or she shall follow the administrative remedy procedures by bringing administrative appeal, re-appeal, and administrative lawsuit pursuant to Article 1 of the Administrative Appeal Act and Article 1 of the Administrative Proceedings Act.

Justice Ji-Jong Wang filed dissenting opinion.

本號解釋王法官之侖提出不同意見書。