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**J. Y. Interpretation No. 763 (May 4, 2018)\***

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**Obligation to Notify the Original Landowner of the Use of the Expropriated Land Case**

**Issue**

Is Article 219, Paragraph 1 of the Land Act, which does not require the competent authority to notify periodically the original landowner of the subsequent use of the expropriated land and, as a consequence, renders the original landowner unable to obtain sufficient information to exercise the right of redemption, inconsistent with the due process in administrative procedure required by the Constitution and unconstitutional for violation of Article 15 of the Constitution which guarantees the people's right to property?

**Holding**

[1] Article 219, Paragraph 1 of the Land Act provides that “the day following one year after the payment of expropriation compensation” shall be the starting point of statute of limitations for the redemption right. This provision does not require the competent authority of the governing municipality or county (city) to notify periodically the original landowner or to publicly announces the subsequent use of the expropriated land and, as a consequence, renders the original landowner unable to obtain sufficient information in a timely manner to determine whether to exercise the right of redemption. Thus, this provision is inconsistent with the due process in administrative procedure required by the Constitution. In this regard, it violates Article 15 of the Constitution which guarantees the people's right to property and shall be revised within two years

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\* Translation and note by Chung-Lin CHEN

from the date of publication of this Interpretation.

[2] From the date of publication of this Interpretation, if the statute of limitations for the original landowner's redemption right is still yet to pass, such statute of limitations is to be suspended. After the competent authority of the governing municipality or county (city) sends notifications or make public announcements in accordance with this Interpretation, the remaining period of the statute of limitations is to resume. Once the amended law is promulgated, such new law shall apply.

### **Reasoning**

[1] On December 20, 2011, petitioners Chin-Te LIU and Wei-Hsiang LIU applied to the Kaohsiung City Government for redemption of the land at issue in the original amount of expropriation compensation under Article 219 of the Land Act and Article 9 of the Land Expropriation Act. They alleged that Kaohsiung County Government (merged into Kaohsiung City Government on December 25, 2010) had publicly announced the expropriation of their lands located in Renwu Township of Kaohsiung County (hereinafter "the land") from March 2, 1989 to March 31 of the same year. However the land was not used within the prescribed period of time in accordance with the expropriation plan and not used for the undertaking intended under the expropriation project. After approval by the Ministry of the Interior, the Kaohsiung City Government rejected the petitioners' application on the ground that the petitioners' application was not filed within the statutory period of time for redemption application and not consistent with Article 219, Paragraph 1 of the Land Act (hereinafter "the Provision") and Article 83 of the Urban Planning Law. Both petitioners disagreed with the decision and filed an administrative appeal, which was rejected. Petitioners then initiated an administrative litigation, which was ruled against them by the Kaohsiung High Administrative Court Judgment 101-Su-399 (2013). On appeal, the Supreme

Administrative Court dismissed their appeal by Order 102-Cai-642 (2013) on the ground that they failed to specify how the original judgement was inconsistent with the law. Therefore, the final judgment should be the aforementioned judgment of the Kaohsiung High Administrative Court. Petitioners further asserted that the Provision applied in the final judgment was not consistent with Articles 15 of the Constitution and due process of law because it did not require the competent authority to notify the original landowners of the use of the expropriated land in a timely manner. As a result, the original landowners were unable to apply for redemption to which they are entitled. Based upon this ground, petitioners brought their case to this Court for constitutional interpretation. The final judgment found that the petitioners did not apply to redeem their land within the time limit set by Article 83 of the Urban Planning Law and the Provision for exercising the redemption right, and the land was actually used according to the approved project within the project period. Accordingly, the final judgment held that there was no such issue as whether petitioners can redeem their land. However, petitioners' claim that the Provision's failure to include the post-expropriation notification obligation, resulting in their inability to obtain sufficient information in a timely manner in order to determine whether to exercise their right of redemption, violates their right to property protected by the Constitution involves a constitutional principle of importance. Based on the precedents of this Court's interpretations (*see* J.Y. Interpretations Nos. 477, 747, 748 and 762), this petition satisfies the requirements set out in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act. This Court hereby grants review of this petition. This Court renders this Interpretation with the following reasons:

[2] Article 15 of the Constitution provides that people's right to property shall be guaranteed. The purpose of this Article is to ensure that owners of property may freely exercise their rights to use, profit by, and dispose of their property

during the existence of the property, and prevent infringements by the government or any third party. Thus, people may secure their resources of life on which the survival of individuals and the free development of personality rely (*see* J.Y. Interpretations Nos. 596, 709 and 732). At the same time, Article 143, Paragraph 1 of the Constitution expressly states that private ownership of land acquired by the people in accordance with law shall be protected and restricted by law. The State may expropriate the people's property according to the procedures prescribed by law when it is necessary for the purpose of public use or other public interests. However, the expropriation of land is the most severe means of infringement on the people's rights to property. Pursuant to the due process requirement under the Constitution, the State shall implement the most rigorous procedure. The procedural protection shall be provided not only before an expropriation (for example, the State shall hear the opinions of landowners and interested parties before the finalization of an expropriation plan, *see* J.Y. Interpretation No. 409), but also when an expropriation is carried out (for example, when carrying out an expropriation, the State shall be strictly required to implement the procedure of providing public announcements and written notifications in order to ensure that the owners of land or land improvements and the holders of other rights are aware of any relevant information, so that they may exercise their rights in a timely manner. Besides, compensation shall be made promptly, otherwise the approval of the expropriation shall no longer be in effect, *see* J.Y. Interpretations Nos. 516 and 731).

[3] Whether due process is also applied after the completion of land expropriation depends on whether the original landowners can still claim the protection of their constitutional right to property after the completion of expropriation. After a land is expropriated, the State has the obligation to ensure that the expropriated land is used for the purpose of public use or other public interests continuously in order to satisfy the strict requirement of necessity of

expropriation. Moreover, the party applying for land acquisition shall use the expropriated land according to the approved plan within a certain period of time, so that abuse of expropriation could be prevented and the people's private interests on land could be protected (*see* J.Y. Interpretation No. 236). Therefore, after expropriation, if the expropriated land is not used according to the approved plan or within the time limit, such expropriation loses its legitimacy and the cause leading to people's suffering special sacrifice for public interests will no longer exist. Based on the intention and purpose of the protection of the people's property rights under the Constitution, in principle, the original landowners may apply for the redemption of the expropriated land to protect their rights and interests. This right of redemption is an extension of the protection of constitutional property rights. It is landowners' right of claim under public law derived from the legal relationship of land expropriation and is protected under the constitutional property right. In order to ensure the realization of the redemption right, the State still bear certain obligations to provide procedural protection after expropriation.

[4] After the party applying for land acquisition acquires the ownership of expropriated land in accordance with law, the original land owner usually may not know and realize promptly whether the expropriated land is no longer needed or is not used within the time limit, leading to loss of necessity for the expropriation. Based on the due process in administrative procedure required by the Constitution, within certain period of time from the completion of expropriation, the competent authorities of the governing municipality or county (city) shall periodically notify the original landowners, enabling them to be aware of the status of subsequent use of the expropriated land in a timely manner. If any of the original landowners cannot be notified, the competent authority shall make a public announcement in accordance with law, so that they can apply for the redemption of the expropriated land in time.

[5] The Provision expressly provides that “[a]fter expropriation of a private land, the original landowner of the expropriated land may, within five years from the day following one year after the completion of the payment of expropriation compensation, apply to the land administration agency of the governing municipal or county (city) for redemption of expropriated land in the original amount of expropriation compensation, if either of the following conditions occurs: (1) failure to use the expropriated land according to the expropriation plan after one year following the completion of the payment of compensation; (2) failure to use the expropriated land for the undertaking which had received approval for the expropriation.” Although the Provision is the embodiment of the people’s redemption right under the Constitution, it simply stipulates “the day following one year after the completion of the payment of expropriation compensation” as the starting point of statute of limitations and does not require the State periodically notify the original landowner of, or publicly announces, the status of subsequent use of the expropriated land. As a result, the people are unable to obtain sufficient information in a timely manner in order to determine whether to exercise their right of redemption. Thus, the Provision is inconsistent with the due process in administrative procedure required by the Constitution. In this regard, it contravenes the meaning and spirit of the Article 15 of the Constitution which guarantees the people’s right to property. Concerned authorities shall review and revise the Provision based upon the meaning and spirit of this Interpretation within two years from the date of publication of this Interpretation. For balancing between the protection of the people’s right to property and the mandate of stability of legal relationship, the Provision, in creating the obligation of notification, shall stipulate a reasonable short period and a long period of statute of limitations respectively, according to whether the obligation of notification is fulfilled. As for how to organize the short period and long period of statute of limitations, it is within the scope of the legislature’s discretion.

[6] From the date of publication of this Interpretation, if the statute of limitations for the original landowner's redemption right is still yet to pass, such statute of limitations is to be suspended. After the competent authority of the governing municipality or county (city) sends notifications or make public announcements in accordance with this Interpretation, the remaining period of the statute of limitations is to resume. Once the amended law is promulgated, such new law shall apply.

[7] If the petitioners rely on this Interpretation to file for a retrial, certainly the Court should apply related laws to determine whether the case has merit. It is also worth noting that this Interpretation only applies to general expropriation and does not address zone expropriation. However, the right of redemption involves the stability of legal relationship of expropriated land and the protection of the original landowner's rights and interests. To ensure that the original landowner receive sufficient information to determine whether to exercise the right of redemption, the competent authority shall also examine other laws related to land expropriation (for example, Article 9 and 49 of the Land Expropriation Act and Article 83 of the Urban Planning Law) with respect to how to periodically notifies the original landowner or publicly announces the status of subsequent use of the expropriated land based on the meaning and intention of this Interpretation.

### **Background Note** by the Translator

In March 1989, Kaohsiung County Government publicly announced the expropriation of the petitioners Chin-Te Liu and Wei-Hsiang Liu's land located in Renwu Township of Kaohsiung County. According to Article 219, Paragraph 1 of the Land Act, the expropriated land has to be "used according to the expropriation plan one year after the completion of the payment of compensation" and "used for the undertaking which had received approval for the expropriation." Otherwise, the original landowner has the right to redeem the land "within five

years from the day following one year after the completion of the payment of expropriation compensation”. On December 20, 2011, the petitioners applied for redemption of the land. The Government rejected their application on the ground that the application was filed beyond the statute of limitations. After exhausting available judicial remedies, petitioners filed a petition to the Constitutional Court on May 16, 2017, claiming that the provision at issue was not consistent with Articles 15 of the Constitution and due process of law because it did not require that the competent authority proactively notify the original landowner the status of subsequent use of the expropriated land. In this Interpretation, J.Y. Interpretation No. 763, the Court hold that the lack of stipulating the obligation of notification indeed renders the provision at issue inconsistent with the due process in administrative procedure required by the Constitution and unconstitutional under the Article 15 of the Constitution which guarantees the people’s right to property.

Following J.Y. Interpretations Nos. 663, 709, 731 and 739, this Interpretation is made mainly in light of the due process in administrative procedure. In J.Y. Interpretation No. 663, the Court mentions the term “due process in administrative procedure” for the first time and resorts to this concept to impose constitutional procedural requirements on the taxation cases. A more influential development is J.Y. Interpretation No. 709, in which the Court elaborates this concept under the long-standing principle of “due process of law” and heavily relies on this concept to strikes down several provisions of the Urban Renewal Act, giving this concept a clearer constitutional foundation and more extensive applications. As to this Interpretation, the Court further applies this concept to address the question whether the procedural protection shall extend to cover the post-expropriation stage.

This Interpretation is also a case that further clarify and enrich the protection of the people’s property rights against the State’s power of eminent



domain. Early in 1989 in J.Y. Interpretation No. 236, the Court has recognized the right of redemption in Article 219 of the Land Act as a mechanism to prevent the abuse of eminent domain and protect the people's land rights and interests. Yet, before J.Y. Interpretation No. 763, another two decisions related to the right of redemption (J.Y. Interpretations Nos. 236 and 534) address only the issues of statutory interpretation and do not question the constitutionality of the statute. Rather, in J.Y. Interpretation No. 763, the Court clearly establishes the right of redemption as an extension of the protection of constitutional property rights. Based upon the right of redemption, this Interpretation further imposes another procedural requirement and accordingly strikes down the provision at issue.

It is also worth noting that the Constitutional Court appears to play a more active role in forming the constitutional boundary of the exercise of eminent domain in recent years. This Interpretation is just one of several examples. Other prominent examples, in addition to J.Y. Interpretations Nos. 709, 731, and 739 mentioned earlier, include J.Y. Interpretations Nos. 732, 743, and 747. Both J.Y. Interpretations Nos. 732 and 743 involve the constitutional restraint on land expropriated for private use. In J.Y. Interpretation No. 732, petitioners claim that the disputed provisions are unconstitutional for allowing competent authorities to expropriate the "adjacent lands," which are not necessary for the mass rapid transit system. The Court agrees. The Court indicates that, although the purposes of the provisions are to pursue justifiable public interests, the means adopted is neither a necessary means nor the least restrictive way to achieve those purposes. In J.Y. Interpretation No. 743, in response to the question whether competent authorities may expropriate lands for the mass rapid transit system and then use the lands for joint development under the same project, the Court holds that they may not. The Court stresses that the competent authority, after lawfully acquiring the lands by expropriation, is not the same as ordinary landowners. It is to be constrained by the specific purpose of constructing the mass rapid transit system

and may not use the lands for joint development. Therefore, the competent authority may not transfer the lands to a third party. As for J.Y. Interpretation No. 747, the issue involved is whether landowners may apply to the competent authority of land acquisition for expropriation of superficies, when the space above or below their lands is occupied to the extent beyond their social obligation to endure. The Court concludes that, to fulfil the constitutional mandate of property rights protection, the landowners shall be granted the right to request for such expropriation and compensation under such circumstances. Each of these Interpretations has its own implication on law. As a whole they represent a wave of judicial activism originated from a common social and political background. The social movements against the abuse of eminent domain and urban renewal, such as the “Unjust Taking Laws Shall Stop Right Now” movement triggered by the 2010 Dabu incident, have led to a fascinating story in which the civil society, legislature, and judiciary responds to each other. The story is still going on.