

LEGAL CONTROL OF ADVERSE ECONOMIC IMPACTS FROM THE EEC PROJECT: FOCUSING ON LAND PROBLEM^{*}

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Abstract

The EEC project, Thailand's special economic zone needs to gain land from people by expropriation for developing the project. Both the Constitution B.E. 2560 and Immovable Property Expropriation and Acquisition Act B.E. 2562 require that 'just compensation' must be paid to the landowner in expropriation, yet the problem is the assessed compensation is contrary to the Constitution and causes unfairness to the landowner because compensation is always lower than the market price and does not reflect the real market values of the property. Also, the provision concerning list of person with the rights to get compensation is also not clear enough to provide fairness to the affected people. Besides, the principle of just compensation is not included in the guideline which sets the preliminary price for the expropriation. However, unlike Thai law, the United States, European Convention on Human Rights, and Malaysian expropriation laws mainly focus on the real market value and provide more protection to redress the damages by giving compensation for non-pecuniary damage in case of severe mental suffering, and compensation for

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loss of goodwill to compensate the business loss resulted from the expropriation. From the comparative study, as a huge project which can generate high income to the State and affect lots of people, this article proposes that EEC should focus more on the just compensation in order to establish fairness in the society. Besides, the removal of some unfair factors and the addition of some beneficial factors are also recommended.

Keywords: E.E.C. Project, Expropriation, Compensation

1. Introduction

According to the Eastern Special Development Zone Act B.E. 2561, or can be shortly called the EEC Act, it has brought several changes in law and structure into the selected provinces. The outstanding controversial issue among changes is the change of urban planning from an ordinary community into a welcoming hub for investment and business. Some areas in the selected provinces have to be changed in land use plan, such as from the community to the industrial area. From the change of land use, people who normally live there are inevitably lose their lands by the compulsory acquisition from the state, yet they will get paid back in terms of money for their losses of land.¹

The change of urban planning of the EEC project brings about the land expropriation of Thai people to support business and investment for not only local investment but also foreign one. Yet, the compensation still cannot satisfy such dispossessed people as it is not enough to redress their losses. In order to make the State's development sustainable, the author realizes the importance of development without leaving someone behind. The development in terms of economy should be done in a balance and justified, together with the protection of people's rights and quality of life. Therefore, the author would like to study the principles behind the factors and criteria of a just compensation for people in expropriation cases in order to balance and create fairness between the economic and business development from the Special Economic Zone and the protection of people's right.

2. Principles and Existing Laws in Thailand

Concerning Human Rights, the principle of equality is general but fundamental since it guarantees that people in equal circumstances are treated the same way under the law and practice, irrespective of discrimination such as race, color, gender, religion, age, disability or

¹ The Immovable Property Expropriation and Acquisition Act B.E. 2562 (2019) s 40

nationality.² One of the Human Rights that human being shall enjoy is the economic right, since it guarantees people to meet their conditions and their needs, such as right to education, right to housing, or the right to work.³ However, such rights are all connected to access to land, since land is a crucial condition that human rights mainly need. Land is the limited natural resource and that could bring about problems in landlessness and inequality among people.⁴ As a limited resource, when the government needs to do compulsory land acquisition, the government should develop the whole society to establish balance between public and private interest.⁵ Moreover, to consider the compensation for expropriation, the principle of land valuation assessment for land expropriation differs from the principle for the land in the open market's principle. In open market, the price of goods will be 'market value' which satisfies both the willing buyer and the willing seller, but for the expropriation, landlords are not voluntary to sell the land, so the compensation should redress people more by including special value in considering the compensation, such as market values, severance damage, injurious affection, consequential damage, and betterment.⁶

² Icelandic Human Rights Centre, 'The Right to Equality and Non-Discrimination' (*Humanrights*) <<http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-equality-and-non-discrimination>> accessed 12 July 2019

³ National Economic & Social Rights Initiative, 'Economic and Social Rights' (*NESRI*) <<https://www.nesri.org/human-rights/economic-and-social-rights>> accessed 11 June 2019

⁴ Elisabeth Wickeri and Anil Kalhan, 'Land Rights Issues in International Human Rights Law' (2010) 4(10) *Institute for Human Rights and Business*

⁵ Phan Trung Hien, 'Striking the Right Balance between the Public and Private Interests in Compulsory Acquisition of Land in Vietnam' (2015) Chiang Mai University Conference Paper No. 39

⁶ Subhaporn Sittikorn, 'Property owner satisfaction with compensation for expropriation of residential property: A case study of Ram Intra-Ad Narong expressway' (Housing Development thesis, Chulalongkorn University 1997)

In Thai law, there are two legislations concerning such problem of compensation for expropriation as follows:

2.1 Constitution of the Kingdom of Thailand B.E. 2560

The core of the compensation and expropriation in the constitution is in Section 37 in the first paragraph of the Constitution. It clearly explains that in expropriation of immovable property, it should be done only for the purpose of public utility, and fair compensation shall be paid in due time. The constitution also shows that the protection in Human rights and rule of law are guaranteed under Thai law. Due to the fact that the Constitution is the highest law in the State, as a result, other legislations cannot be made contrary and related legislations should be made accordingly.

2.2 Immovable Property Expropriation and Acquisition Act B.E. 2562

This Act describes in details of expropriation process, including compensation and factors to be considered.

Factors in consideration for compensation are mainly mentioned in Section 20 of the Act, including this following issues:

1. Market price of the expropriated land
2. Appraisal price of the land which the government has set for the collection of land and building tax
3. Appraisal price of the land for the transaction and juristic act fee
4. Nature and location of the land
5. Rationale and purpose of expropriation⁷

However, the research found that there are problems happened in practical term of valuation assessment because the appraisal value set by the committee is quite low and less than the market price in open market, and that will cause injustice for people whose land are expropriated since they will get paid lower than the price that they will get from selling in

⁷ The Immovable Property Expropriation and Acquisition Act B.E. 2562 (2019) s 20

open market. The difference between appraisal price set by the government and the market price in open market are shown in the following table.

Area	Appraisal price from Treasury Department			Market value from the Agency for Real Estate Affairs		
	2555	2559	% increase Per year	2555	2559	% increase Per year
Silom	850,000	1,000,000	4.1	1,100,000	1,600,000	9.8
Siam	700,000	900,000	6.5	1,400,000	1,900,000	11.1
Sathorn	700,000	750,000	1.7	1,000,000	1,400,000	8.7
Yaowarat	700,000	700,000	0	850,000	1,200,000	7.1
Sukhumvit	500,000	650,000	6.8	1,000,000	1,850,000	16.6
Asoke	400,000	550,000	8.3	800,000	1,000,000	5.7
Chareonkru	400,000	500,000	5.7	700,000	1,000,000	9.3
Thonglor	350,000	420,000	4.7	600,000	1,100,000	16.4
Ratchada	350,000	400,000	3.4	400,000	600,000	10.7

Source: Kittikom Pojanee, ‘The appraisal value vs the real value’ <www.ddproperty.com/คู่มือซื้อขาย/ราคาประเมิน-vs-ราคาขายจริง-ต้องรู้ก่อนตั้งราคาขายที่ดิน-8573> accessed 13 August 2019

The compensation concerning such factors shall be paid to the owner of expropriated land, owner or a tenement or other structure existing on the land, owner of a perennial plant located on the land, a lessee or sub-lessee of the land, person who lose benefit of using roads, installing water pipes or other similar items through expropriated land, and owner who resides or perform commerce or lawful business on expropriated land and gets damages from being removed.⁸ However, the provision only broadly mentions list of persons who are entitled to the compensation, but there is no clear explanation whether such compensation shall be paid to only one person in each subsection or can be distributed to many different each persons from different subsections in Section 40 of the Act. If it can be

⁸ The Immovable Property Act B.E. 2562 (n 1)

paid only to one person from only one subsection, it means if there is more than one person who is affected by expropriation, not every person shall be paid and some might be left unfair without getting compensation.

3. Foreign Laws

In the United States of America, the expropriation is known as 'Eminent Domain' and it is implied by the Fifth Amendment clause covering compensation. When the power of eminent domain is exercised, it can be done only by giving compensation to the party whose property is taken or whose use and enjoyment is interfered with. A full and adequate compensation, but not excessive, shall be paid.⁹ Just compensation is set by using the market price, for the willing seller and willing buyer, as a criteria. Just compensation is also measured by reference to the uses which the property is suitable for, with regard to the existing business, the desires of the community or reasonably expected in the immediate future, but imaginary uses of its proprietor are excluded. Besides, for the damage which is resulted on the business from expropriation can also be redressed, such as the loss of profit or the loss of goodwill of the business.¹⁰

For the European Convention on Human Rights and the European Court on Human Rights, the right to property is mentioned in Article 1 of the Protocol No.1. The European Convention on Human Rights guarantees the right to peaceful enjoyment of possessions in all states party to the Convention. If the Court finds a violation of the right, just satisfaction can be awarded, including payment of compensation.¹¹ One of the distinctive parts in legal principles made by the European Court of Human Rights is that the Court gives protection to the right of the property not only the

⁹ Will Kenton, 'Expropriation' (*Investopedia*, 2 May 2019)

<<https://www.investopedia.com/terms/e/expropriation.asp>> accessed 1 July 2019

¹⁰ American Jurisprudence (2 edn, Vol. 27, New York: Lawyers Cooperative Publishing 1966) 83-86

¹¹ Barbra Fontana, 'Damage Awards for Human Rights Violations in the European and Inter-American Courts of Human Rights' (1991) 31(4/6) Santa Clara L. Rev. 1127

compensation for the financial damage, but also for non-pecuniary damage from the expropriation. However, the non-pecuniary can be paid only in certain cases under Court's discretion, such as severe mental suffering for over ten years.¹²

In Malaysia, right of an individual property is guaranteed in the Constitution as well as the government's right to acquire land for adequate compensation. Land acquisition can be done only for public purpose, and in order to determine whether it is public purpose or not, it is necessary to consider that the acquisition serves general interest of the community or not.¹³ The precedent court decision explained that compensation is the amount of money which the owner would have got if he sold the land in an open market, including other losses resulted from the consequence of land acquisition, in order to place the dispossessed owner in the same position with neither worse nor better situation.¹⁴

4. Conclusion and Suggestions

In conclusion, the expropriation process brings problems, conflicts, and dissatisfaction to people in the expropriated area. While expropriation by the government forces people to leave their hometowns and properties, the compensation which people get in exchange with their sacrifice is still not considered as a just compensation, which the land or immovable property's owners are entitled to get compensated. The Constitution of the Kingdom of Thailand and Immovable Property Expropriation and Acquisition Act are the legislations concerning such problem of compensation, yet some provisions still seem unclear and unjust that can bring about

¹² Bailii 'European Court of Human Rights; Mazelie v France - 5356/04 [2010] ECHR 1446' (Bailii, 15 September 2010)

<<https://www.bailii.org/eu/cases/ECHR/2010/1446.html>> accessed 9 August 2019

¹³ *S. Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204

¹⁴ Anuar Alias and M D Nasir Daud, 'Payment of Adequate Compensation for Land Acquisition in Malaysia' (2006) 12(3) Pacific Rim Property Research Journal

problems of unjust compensation and inequality in the society. Unjust compensation which will be granted to the dispossessed owner is lower than real value of the immovable property due to the fact that the provisions concerning factors in considering compensation cause problems in practical term. Some factors are not included in certain cases of court decision, while some factors lower the overall assessed price of compensation.

Therefore, the author would like to suggest as follows. Firstly, remove the appraisal price for paying tax and fee from the legal criteria and factors to consider the compensation from expropriation in Section 20 of the Immoveable Property Expropriation and Acquisition Act B.E. 2562, because they do not reflect the market value in reality and they also pull down the compensation to be more unjust. Secondly, the author suggests that the purpose of expropriation, in this context is the EEC context, Section 20 subsection 5 should be the main factor in the process to consider the compensation from expropriation, due to the fact that EEC is such a giant project that can induce huge amount of investment fund from foreign investment to the State. Such benefits should firstly be distributed to affected people in the EEC area since they sacrificed themselves for the project and they are negatively affected. Sharing benefits conforms to the principle of balance of interests and also help reduce the gap between the rich and the poor that causes inequality in the society. Thirdly, persons with the right to compensation according to Section 40 of the Immoveable Property Expropriation and Acquisition Act B.E. 2562 should be identified more clearly in the provision itself that persons who are entitled to get compensated can be more than one person which their rights originated from different subsection at the same time, in order to adjust Section 40 of the Act to be conform to Section 37 of the Constitution B.E. 2560. Fourthly, the consideration of the Thai Supreme Administrative Court in expropriation cases and the committee who set the compensation should mainly consider Section 37 of the Constitution about the just compensation. Fifth, the author would like to suggest the addition of goodwill and non-pecuniary

damage to be included in the factors for the consideration of compensation, since the author found it is interesting from the research in foreign laws. The addition of suggested factors might make the law become more effective in paying just compensation to redress people's losses from expropriation.

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