

Liability of a Municipality for a Wrongful Act Committed by
Private Entities that were Hired for the Construction of Utility Systems*

Supreme Administrative Court Judgment No. A. 194/2559, dated 3rd February B.E. 2559 (2016)

Mr. P (P) et al.

v.

Songkhla City Municipality (D1),

B Limited Partnership (D2), and Mr. T (D3)

Municipality has power and duties to provide a drainage system and a wastewater treatment system within the area of municipality pursuant to Section 56 of Municipalities Act, B.E. 2496 (1953). By hiring private entities to do so, the municipality entrusted such power and duties to private entities according to Section 22 of Act Determining Plan and Procedures in Decentralizations to the Local Administrative Organization, B.E. 2542 (1999). Since the private entities were professional construction service providers and there was a consulting firm supervising the project, they must perform services with great care in accordance with professional ethics by using any measures to prevent and avoid causing damage to surrounding properties. When the private entities failed to exercise such care resulting in damage to a third party's building, the Municipality as an administrative agency that delegated its power and duties to that private entities shall be liable for the consequence of such wrongful act.

Legal Principles : *Wrongful Act*

Administrative Court Procedure : *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999): Section 9 paragraph one (3)*

Legal Provisions : *Municipalities Act, B.E. 2496 (1953): Section 56*

Act Determining Plan and Procedures in Decentralizations to the Local Administrative Organization, B.E. 2542 (1999): Section 22

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Judgment (Summary)

The Plaintiffs claimed that they were the co-owners of land, title deed number 1443, with a 3-storey house. Defendant no.1 hired Defendant no.2, which had Defendant no.3 as the managing partner and partner with unlimited liability, to build a drainage system and a wastewater treatment system for Defendant no.1. During the construction, employees of Defendant no.2 and Defendant no.3 willfully or negligently used drilling method for underground pipe installation along Nakhonnok Street which caused damage to the Plaintiffs' house – walls were cracked, beams were collapsed and there were many cracks in the building. The Plaintiffs notified the Defendants to jointly make compensation for the damage suffered but the Defendants neglected to do so. Therefore, the Plaintiffs filed this case requesting that the Court order the Defendants to jointly pay compensation including interest to the Plaintiffs.

The Supreme Administrative Court held that, while constructing the drainage system and the wastewater treatment system for Defendant no.1, Defendant no.2 used heavy equipment to drill deep holes in the ground and install steel sheet piles. The vibration from such operation caused damage to the Plaintiffs' house, which was located near the construction site. Defendant no.2 and Defendant no.3 were well aware that the Plaintiff's house was located on the shore of Songkhla Lake, and that the vibration during drilling operation will cause structural damage to the Plaintiffs' building. Moreover, it appeared that there were neither cracks nor problems in the house before the construction of the drainage system. An expert witness also confirmed that the cause of damage in the Plaintiff's house was the construction that involved drilling. Since Defendant no.2 and Defendant no.3 were professional construction service providers and there was a consulting firm supervising the project, they must perform services with great care in accordance with professional ethics by using other methods or any preventive measures to avoid causing damage to the Plaintiffs. When Defendant no.2 and Defendant no.3 failed to exercise such care while carrying out the construction works resulting in damage to the Plaintiffs' building, Defendant no.2 and Defendant no.3 were deemed to commit a wrongful act against the Plaintiffs.

Defendant no.1 was an administrative agency having power and duties to provide a drainage system and a wastewater treatment system within the area of Songkhla City Municipality pursuant to Section 56 of Municipalities Act, B.E. 2496 (1953). By hiring Defendant no.2 to construct the drainage system and the wastewater treatment system, Defendant no.1 entrusted such power and duties to a private entity according to Section 22 of Act Determining Plan and Procedures in Decentralizations to the Local Administrative

Organization, B.E. 2542 (1999). When the Plaintiff's building was damaged due to the construction undertaken by Defendant no.2, the contractor, Defendant no.1 as the administrative agency that entrusted a private entity with its power and duties was liable for the consequence of the wrongful act committed by that private entity. Hence, Defendant no.1 was liable to pay compensation to the Plaintiffs.

As for Defendant no.2 and Defendant no.3, even though they were not state officials but it was deemed that they had jointly committed the wrongful act with Defendant no.1 which was an administrative agency. Thus, the Court has power to order Defendant no.2 and Defendant no.3 to jointly pay compensation to the Plaintiffs. However, in this case, the Administrative Court of First Instance ordered only Defendant no.1 to pay compensation to the Plaintiffs and dismissed the claim as to Defendant no.2 and Defendant no.3, but the Plaintiffs did not appeal. Issues related to Defendant no.2 and Defendant no.3, therefore, became final. Although Defendant no.1 may file an appeal arguing that it was not liable for damages as the harm was caused by Defendant no.2 and Defendant no.3 and may ask the Court to dismiss the case, Defendant no.1 may not request the Court to order other defendants to pay compensation to the Plaintiffs. Consequently, the Court cannot order Defendant no.2 and Defendant no.3 to jointly pay compensation to the Plaintiffs as Defendant no.1 requested. Nonetheless, Defendant no.1 may exercise the right to recourse against Defendant no.2 and Defendant no.3.

The Supreme Administrative Court upheld the judgment of the Administrative Court of First Instance.