

## LAND TENURE PROBLEM

by *Suthee Argasruke*

Man's natural home is the land. The land on which we live is our most important resource. As a matter of fact, a large share of the essentials of our civilization come from the land; neither nations nor individuals can survive without it. It follows, therefore, that every one has a vital stake in the permanent welfare of the country's productive land. There remains, however, the unalterable mathematical fact of a limited supply of land in the face of a continually increasing population, Thailand, in company with most Nations, has a land problem. One which will be difficult to solve.

Thailand has a long history of disputes over land titles. It appears that after the introduction of the democratic regime in B.E. 2475 (1932) many persons suffered as the result of certain wealthy persons, using their financial powers and other means, to take over the right of land from poor people who resorted to force to defend their rights. Even though the government tried to settle these disputes, no successful agreement could be reached.

On account of these problems it is better to indicate some administrative methods and techniques of the government to try settle those disputes. For example :

### **Of Direct Concern**

#### **(1) *Committee for Considering Disputes of Title to Land* : -**

On October 1, B.E. 2495 (1952), the Council of Ministers appointed a Committee to Settle the land disputes at Bangpli-Bangbor; but later it appeared that land disputes were also prevalent in other parts of the country. Therefore the council of Ministers resolved on August "Committee for Considering Dispute of Title to Land", and to give jurisdiction over disputes throughout the Kingdom.

This Committee has no authority provided by any law. Therefore it can only investigate and try to settle disputes by negotiation and compromise. In case any party to a dispute disagrees, the committee had no legal authority to enforce its decision.

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**(2) Committee for the Re-Examination of Title-Deeds Issuance : -**

Actually, there have also been cases in certain provinces where title-deeds to land have been issued to the person who, by dishonest means, have taken advantage of others who cleared the land and used it as a means of livelihood; so to revoke such fraudulent title-deeds, the Act on the Re-Examination of Title-Deeds Issuance was promulgated in B.E. 2496 (1953). By this Act the Committee was established; and the Act provides that whenever it appears that the issuance of title-deeds to land is not in accordance with justice i.e., causes distress or hardship to any interested persons in any locality, the Committee has the authority to re-examine or to order the re-examination of title-deeds issuance in geographical areas defined in Royal Decrees.

**(3) Committee for the Arrangement of Land for Social Justice : -**

It also appeared that in certain localities some persons had used their influence to intimidate others to leave their land unjustly, or had taken advantage of their ignorance to occupy land unjustly or by force, this brought about the Committee for Arrangement of Land for Social Justice.

According to this Act, whenever it appears that the owner or occupier of land expresses his intention to public authorities to sacrifice his land or whenever the original owner or occupier has abandoned his land because of being intimidated or by ignorance, or the present owner or occupier has acquired the land unjustly, no matter whether the case occurred before or after the day this Act came into force, the Committee has the power and duty to conduct a re-examination and inquiry, and, to dispose of the land to the proper people. In such a case, the Committee may also reserve the land for common use.

The creation of these committees to deal with the problems of land disputes, as noted above, originated in the intention of the government to help render justice to the poor who had lost possession of their land to certain wealthy persons on account of ignorance, intimidation or force. It was not necessary for these people to resort to the courts where the procedure were long and costly.

Practically speaking there were many problems which deterred its assigned duties such as under existing administrative methods and the instability of law enforcement that were the significant role which later made the state activities on trying to settle disputes of title to land to be null and void.

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Unfortunately on February 18, B.E. 2501 (1958) the Constitutional Tribunal gave its decision, according to provision 114 of the constitution of the Thai Kingdom of B.E. 2475 (1932), as amended in B.E. 2495 (1952), to the effect that these provisions of the Act on the Arrangement of Land for Social Justice amounted to instituting the Committee for the Arrangement of Land for Social Justice with the power of a court to try special cases and even to have more power than ordinary courts. These provisions were found contrary to Provisions 99, 101 and 102 of the Constitution and were declared null and void.

As a result, the Council of Ministers resolved on October 20, B.E. 2501 (1958) that the Committee for the Arrangement of Land for Social Justice discontinue its operations under this Act.

And in accordance with the same power given to the Committee for the Re-Examination of Title-Deeds Issuance in the Act on the Re-Examination of Title-Deeds Issuance of B.E. 2496 (1953) it was understood that the question regarding the legal validity of the decisions of the Committee for the Re-Examination of Title-Deeds Issuance would practically be the same (as the powers of the Committee for Arrangement of Land for Social Justice). Then the Council of Ministers resolved on January 24, B.E. 2504 (1961) that the Committee for the Re-Examination of Title-Deeds Issuance also discontinue its operations under the Act mentioned above.

Moreover, the Council of Ministers resolved at the same time to end the appointment of the Committee for Considering Disputes of Title to Land too. And the Ministry of Interior was assigned to find ways to help render justice to people who had submitted cases to the Committee, and matters still under the consideration of the Committee were ordered to be handed over to the Ministry of Interior.

From its inception to the end of January 24, B.E. 2504 (1961) there were 6,545 cases which had been submitted through the Office of the Re-Examination of Title-Deeds Issuance. Each Committee had accomplished its assigned duties as follows:—

The Committee for Considering Disputes of Title to Land had:

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| (1) examined and rejected for consideration.                    | 2,720 cases, |
| (2) Sent to the Ministry of Interior to handle according to law | 493 cases,   |
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(3) help petitioners receive Title documents to their land	316 cases,
(4) considered and rejected	167 cases,
(5) proceeded with the investigation	116 cases,
(6) compromises effected between the parties of dispute.	2 cases,

The committee for Re-Examination of Title-Deeds Issuance had ordered the revocation of original title-deeds 51 orders and the reissuance of new ones for 142 title-deeds to land for 2,569 rai of Land ( $2\frac{1}{2}$  rai = 1 acre).

The Committee for the Arrangement of Land for Social Justice had arranged for the provision of 264 plots of land involving 6,955 rai.

#### **(4) Comparison and Investigation of Disputes of Title to Land by the Authorities.**

This service is based on the Code of Land B.E. 2497 (1954) and the Administrative Locality Act, B.E. 2457 (1914); its jurisdiction is decentralized to local authorities. They have the responsibility to compare or to investigate some disputes of title to land; actually each of them can only investigate and try to settle disputes by negotiation or comparison. They do not have absolute power. In case any person to a dispute disagrees, they can not enforce their decision. Moreover, that person can submit the case to the Court of Justice for final judgement, so it manifests itself in that the people resort to the courts inspite of the fact that the procedures are long and costly.

#### **Of Indirect Concern**

Under this hypothesis to indicate administrative methods and techniques to settle disputes of title to land, certainly there are many activities indirectly concerned for example.

#### **(1) Land Allocation for the people according to the land-Code B.E. 2497 (1954).**

Since B.E. 2497 (1954) in 63 changvads a total of 15,772 plots of land, area 5,735 rai were allocated and were handed 76,805 plots of land, area 1,222,236.1 rai to the people. And there were 12 programs concerning other selection of large plots of land up to February 2, B.E. 2504 (1961) 130,423 rai in area.

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**(2) Land Allocation for the people according to Land Allocation for the People Act B.E. 2485 (1942).**

In accordance with this program of selfhelp-landsettlement under the responsibility of the Public Welfare Department from B.E. 2483 (1940) to B.E. 2503 (1960) selfhelp-landsettlements were founded. There were 738,148 rai allocated for 31,048 families, a total of 141,804 persons; only 509,013 rai of land has been perfectly utilized.

**(3) Land Business Transaction Service.**

The Land Business Transaction Service began its assigned duties in B.E. 2500 (1957) for the purpose of giving some convenience in land business transaction to the people by acting as a centre for clients and also to render consultation service for the people. As a consequence up to B.E. 2502 (1959) 234 persons wanted the centre to sell their 575 plots of land having an area of 4,270.9 rai and 16 persons wished to buy 16 plots of land having an area of 204.6 rai but finally agreements for only 10 persons having an area of 2.5 rai, valued at 1,181,000 Baht, were accomplished. And the centre rendered consultations and others services for 1,629 cases.

**(4) Land Survey and Classification.**

The Land Survey and Classification began in B.E. 2503 (1960) for the purpose of classifying land in order to better utilize and conserve national resources. In the first year it marked land reserved for protective forests in 60 Changvads. Other steps taken to date, deal primarily with work in accordance with the National Economic Development Programs (B.E. 2504-2506-2509).

**(5) Disposition of Land for Commercial Profit by Sale.**

This service is in accordance with the provisions of the Land Code B.E. 2497 (1954) in that the land-trader has to ask for permission before pursuing land trade. Unfortunately, up to the end of April B.E. 2504 (1961), there was no one asking for such permission, though certainly there are a lot of land trade.

In dealing with land problems and policies, many foreign countries trend toward managing land redistribution or land reform in order to gain the utmost utilization of land to provide for a continually increasing population e.g., land reform in Japan, Pakistan, and Egypt.

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However the disputes of title to land of Thailand are one problem that difficult solve. Even though the government has tried to settle the problem by appointing Committees to deal with it, it still exists. As for the opinion of the writer, the causes of disputes of title to land are not merely the result of certain wealthy persons using their financial powers and other means to take over the right of tenure of land from the poor, but may come other sources e.g.,

1. corruption,
2. its circumstance,
3. some defects in Recording of Rights and Legal Acts,
4. some loop holes in the consideration and for methods of judgement concerning laws or orders.

Where upon, the administrative methods and techniques were found contrary to the Constitution and declared null and void, it could not settle those disputes even during these days. For the purpose of change in the opinion of the writer, the government should issue an order repealing the undelimitation of rights in land, through the delimitation of the rights of ownership of land for residence, agriculture etc., at the present are deemed an unreasonable limitation impeding agricultural, industrial and commercial progress, and resulting in harm to the economy of the Country. It is found proper to revoke such provisions because few persons actually hold plots of land for extensive use in agriculture, industry or in commerce, but many of them hold many plots of land in order to gain a large profit by disposing their pieces of land if its price level is in a favorable position; this will be more harmful than the delimitation of rights in land. Anyway if this condition is allowed to continue in the years to come it will support feudalism which is contrary to the democratic idea. In the past world history indicated some popular up-risings which brought about death and sadness (such as the French Revolution in the Year 1789 and the Russian Revolution during the First World War; especially the Russian Revolution) also brought about communism which is now a cancerous growth upon humanity.

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