

LEGAL ISSUES OF REAL - ESTATE DEVELOPERS: THE CASE OF ASHTON ASOKE

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ABSTRACT

Legal issues of real-estate developers: The case of Ashton Asoke was to critically examine the decisions made by the Central Administrative Court and the Supreme Administrative Court, which resulted in the revocation of all permission documents pertaining to the Ashton Asoke condominium. It led to the demolition of the building with a total of 265 residential units due to lack of at least 12 meters long entrance and exit connected to public road. The ramifications of the verdict extended to other real estate developers who had a similar approach to Ashton Asoke, encompassing a minimum of 100 cases. To prevent the demolition of the project, it is imperative for the developers to possess a comprehensive understanding of the regulations and any alterations in the circumstances inside the public agency.

Keywords: Real Estate, Developers, Property Law, Administrative Act.

INTRODUCTION

The Central Administrative Court ruled on July 30, 2021, involving the Director of Wattana District, Bangkok Metropolis, the Governor of Bangkok Metropolis, and the Governor of the Mass Rapid Transit Authority of Thailand. The court's decision invalidated all governmental approvals related to the development of the Ashton Asoke Condominium Project. The ruling mentioned above has significantly influenced Ananda Development PCL (SET: ANAN), a highly regarded real estate developer listed on the Stock Exchange of Thailand. Ananda Development PCL has a strong track record in creating successful condominium brands, including Ashton, Ideo, Ideo Mobi, and Elio. Consequently, this ruling has raised numerous concerns among customers who have invested in condominium units within the Ashton Asoke Condominium Project.

On July 28, 2023, the highest administrative court affirmed the judgment of the lower administrative court to revoke the construction permission for the Ashton Asoke-Rama 9 project. The Mass Rapid Transit Authority of Thailand (MRTA), which planned to use the site for the first phase of a railway project, is involved in this case, which is considered significant in Thailand's real estate market. The lawsuit concerns the Mass Rapid Transit Authority of Thailand.

Hence, the author aimed to seize this occasion to scrutinize the ruling as mentioned earlier and highlight significant observations and contentious matters, as we anticipate the conclusive outcome of an important legal case pertaining to real estate in Thailand.

OBJECTIVES

1. To scrutinize the ruling as mentioned earlier and highlight significant observations and contentious matters.
2. To anticipate the conclusive outcome of an important legal case pertaining to real estate in Thailand.

REVIEW LITERATURE

Ashton Asoke

The Ashton Asoke is a condominium project that was created by Ananda Development Public Company Limited. The building of Ashton Asoke was successfully concluded in the year 2017. The Ashton Asoke is a high-rise building with 50 stories and accommodating a total of 295 residential units. These flats vary in size and layout, ranging from studio apartments to three-bedroom units. Located in the Khlong Toei Nuea district of Watthana, Ashton Asoke offers a range of amenities to its residents. These include a swimming pool, gymnasium, security services, car park, garden, sauna, concierge, library, hot tub, and office facilities.

The vicinity offers convenient access to transportation by its proximity to the MRT (Mass Rapid Transit) Sukhumvit public transit stations.

Backgrounds of Ashton Asoke's case

In the latter part of 2014, Ananda Development made a purchase of a parcel of property measuring around 3,600 square meters. This site is situated on the outbound side in close proximity to MRT Sukhumvit Station Gate 1 and Siam Association, which is connected to BTS Asoke Station near Terminal 21 Department Store. This particular region is considered a highly desirable location in Thailand, characterized by its elevated land value.

The legal proceedings were initiated when Mr. Srisuwan Junya and the local residents in the vicinity lodged a lawsuit against government entities, among others, the director of Wattana District, Bangkok Metropolis; the Governor of Bangkok Metropolis; and the Governor of the Mass Rapid Transit Authority of Thailand alleging that the contested land rightfully belonged to the Mass Rapid Transit Authority of Thailand (MRTA). It is noteworthy that the land in question was subject to public expropriation with the specific intention of constructing the MRT "Blue Line".

The developer, by means of its subsidiary, engaged in a contractual agreement with MRTA to utilize some parts of the contested region as the designated access and departure point for the Ashton Asoke Project. As the project was an extra-large building with the gross floor area greater than 30,000 square meters, Ananda developer (hereafter referred to as "the developer") completed the legal requirement by serving the land in question as the entrance and exit connected to public Road (Asoke Montri) for 13 meters in length. In consideration of the utilization of the site, the developer constructed

a parking facility for the Mass Rapid Transit Authority (MRTA) cost the developer around 97 million baht.

Consequently, the fact brought key questions leading to the main legal procedure in revoking all governmental authorizations with respect to the construction of Ashton Asoke Condominium Project. Therefore, this might be the first case that led to the demolition of the project.

Related regulation

1. The Ministry of Interior Regulation No. 33

The promulgation of the Ministerial Regulation is justified by the current proliferation of high-rise buildings and special large-scale buildings intended for residential or commercial use, which feature diverse additional structural components and equipment based on their intended occupancy. The regulation seeks to effectively regulate high-rise and extra-large buildings, primarily to ensure stability, safety, fire protection, public health, environmental preservation, urban planning, architecture, and transportation infrastructure, including the government's planning for public utility development. Consequently, the issuance of this Ministerial Regulation is deemed necessary.

Involving the case, Section 2 paragraph 2 of The Ministry of Interior Regulation No. 33 stated that ... *“For a lot which is used as a site of a high-rise building or extra-large building with total floor area of all the floors more than 30,000 square meters must have a side which is at least 12.00 meters long, be adjacent to and located along the public road which is at least 18.00 meters wide and such road must connect to another public road which is at least 18.00 meters wide.”*

According to section 2, paragraph 2, it is required that a high-rise building or an extra-large building be situated on a "site area" that is adjacent to a "public road" on at least one side. The boundary width of this public road must be a minimum of 18 meters. Furthermore, this public road must be connected to another public road that has the same or greater boundary width. The connection between the two public roads must have a boundary width of at least 18 meters at all points.

2. Administrative Law: Legal State

The concept being referred to is a legal doctrine that has its origins in the jurisprudence of the Netherlands and Germany within the framework of continental European legal thinking. The term can be rendered in English as "rule of law" or alternatively as "legal state," "state of law," "state of justice," or "state based on justice and integrity."

3. Central Administrative Court and Supreme Administrative court' s decision

3.1. Central Administrative Court's decision

3.1.1. Case No. Sor 19/2564 stated that there were keys question that raised in the case.

Firstly, it is necessary to ascertain whether the area in question meets the legal criteria to be classified as a public road as stipulated in Ministerial Regulation No. 33. The primary conclusion drawn by the court was that the specified area does not meet the criteria to be classified as a public road. The primary requirement regarding the utilization of the disputed area demonstrates MRTA's explicit

intention to grant the developer permission solely for the purpose of utilizing the site as an access and exit point for the project, connecting it to Asoke Montri Road. It is evident that MRTA does not intend to permit public access or passage through the disputed area. Hence, it might be argued that the contested area in question does not meet the criteria to be classified as a public road according to the guidelines outlined in Ministerial Regulation No.33.

The court reached the determination that the contested site area is not eligible to be considered as a component of the project's site in accordance with Ministerial Regulation No.33. This conclusion was based on the following justifications. The contested territory was initially subject to expropriation from its private proprietor for the purpose of facilitating the MRT project. The MRTA is legally obligated to adhere to the purpose of the expropriation. Despite the compensation owed to the Mass Rapid Transit Authority (MRTA), the utilization of the disputed area as the entry and departure points for the Ashton Asoke development did not serve the interests of the MRT enterprise. As a result, the MRTA engaged in an unlawful agreement with the developer. Therefore, it might be argued that the Consent Letter issued by the MRTA (Mass Rapid Transit Authority) was deemed to be in violation of the law and without the ability to be enforced. Therefore, it can be concluded that the disputed area does not meet the criteria to be considered as a component of the project's designated site area, as stipulated in Ministerial Regulation No.33. Subsequently, the court retroactively revoked all governmental authorizations that had granted permission for the development of the project.[8]

3.2 Supreme Administrative Court's decision

3.2.1 The court uphold the decision of Central Administrative

Court according to case no. AorSor 188/2566. The decision simply stated as follows. The allocation of MRTA land for utilization in projects is not permissible for either corporate or private entities. Consequently, governmental entities have constraints in their ability to grant construction permits, so rendering the license invalid from a legal standpoint. The aforementioned outcome is equivalent to the project's ultimate fate, which entails the possibility of demolition.[9]

METHODOLOGY

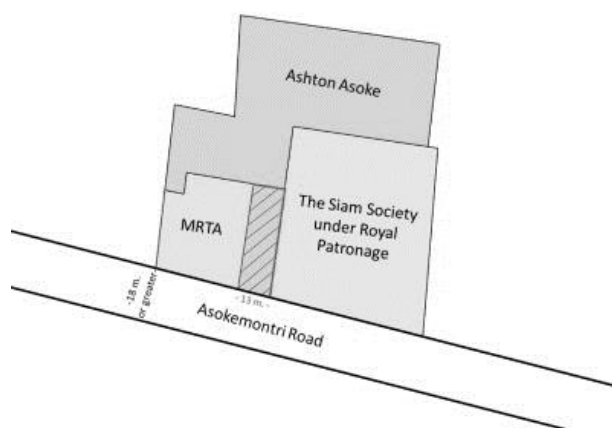
This study employed a qualitative methodology. The author obtained information from national and international publications, journals, books, and theses pertaining to property and land law. The primary focus of the study is the primary Thai laws pertaining to building control, Central Administrative Court decision along with Supreme Administrative Court decision.

RESULTS

The Ashton Asoke project and section 2 para.2 of The Ministry of Interior Regulation No. 33

With a gross floor area that was greater than 30,000 square meters, the Ashton Asoke meets the requirements to be classified as an extremely large building. As a result, the rule that was referenced earlier (section 2 paragraph 2) is applicable to the project.

Figure 1
Questioned area and surroundings [10]



The image above illustrates the presence of the "Disputed Site Area," represented by a central rectangular block, which acts as the only link between the Project's designated site area and Asoke Montri Road, a publicly accessible road. The breadth of the boundary, which is at least 18 meters, and the Disputed area. The ownership of the Site Area is attributed to the Mass Rapid Transit Authority of Thailand.

However, the land was expropriated from its private owner for the benefit of MRTA. In 2000, by the section 88 of MRTA Act B.E, 2543, the ownership of the disputed site transferred to MRTA. Consequently, the developer came to an agreement with MRTA on the use of questioned area as entrance and exit from Ashton Asoke. Letter of consent was received on February 23,2015.

Questioned area constitutes public road.

The court posited that the primary requirement for the utilization of the disputed area effectively demonstrates the intention of MRTA, which is to provide the developer permission solely for the purpose of utilizing the site as an entry and exit for the project, without any intention of permitting public access or passage through said area. Therefore, the area in question does not meet the criteria to be classified as a public road.

Questioned area as a part of Project's site area

The legal obligations of the Mass Rapid Transit Authority (MRTA) are outlined in Sections 7 and 9 of the Mass Rapid Transit Authority Act. These provisions stipulate that the MRTA is required to exclusively engage in activities that are directly related to the Mass Rapid Transit (MRT) industry. Unfortunately, the consent issued by the MRTA to offer exclusive privileges to the developer for the project has been ruled to be in breach of the law.

As a result, the permission letter displayed a lack of enforceability. Subsequently, the developer's request to utilize the disputed area as the designated ingress and egress points for the project site was declined. As per Regulation No. 33 issued by the Ministry of Interior, the absence of a contested region resulted in a situation where there was no segment of the project's site area, measuring a minimum length of 12 meters, that was adjacent to Asoke Montri Road. The project, therefore, did not comply with the fundamental criterion.

Effects of the decision

Due to the exclusion of the disputed area from the designated project site, all governmental authorizations were rescinded, impeding the progress of the construction endeavor.

Consequently, retroactive effects were observed in various domains. According to property developers, the Ashton Asoke case, which resulted in the revocation of the condominium's construction permit, is expected to have ramifications for developers who rely on debt instruments and loans for financing purposes. Based on available reports, lenders are demonstrating a heightened level of caution in reaction to this observed pattern.

According to Anuphong Assavabhokhin, the CEO of AP Thailand, a developer that is publicly traded on the Stock Exchange of Thailand (SET), the consequences of this particular situation have had a notable influence on financial institutions. As a result, these institutions have become more cautious when it comes to providing credit to real estate firms. The user has not provided any text to rework in an academic manner. The user did not provide any text to rewrite.

Noble Development Plc faced repercussions from the court's verdict, as consumers raised concerns over the similarities between their properties and the Ashton Asoke case. This added to the existing challenges faced by the developers and buyers of Ashton Asoke.

Thongchai Busrapan, the co-chief executive of Noble Development, stated that the company ensured compliance with the original physical conditions of the lands during the preparation and submission of an environmental impact assessment study and a construction permit. There were no alterations, modifications, or relocations performed during this operation.

The speaker expressed that the Ashton Asoke case necessitated the provision of explanations to many parties, including the media, customers, financial institutions, and the credit rating agency Tris Rating.

As per Mr. Thongchai's analysis, the ramifications of this specific case on the Thai property industry are noteworthy, mostly attributed to the cooperative dynamics exhibited in the venture between a local developer and an international investor.

CONCLUSION AND FUTURE WORK

As decided by supreme administrative court, there was revocation of all authorization of the project construction which led to demolition of the Ashton Asoke condominium. According to a statement issued by Ananda MF Asia Asoke Co Ltd, the organization responsible for the project, they are now exploring potential solutions that encompass the following options:

1. The corporation has the option to enhance their proposal for construction clearance by acquiring additional contiguous land to serve as the new primary entrance for the project.
2. The corporation may request the Public Works Department of the Bangkok Metropolitan Administration (BMA) to submit a proposal to the Public Works and Town & Country Planning Department of the Interior Ministry, with the aim of seeking a Cabinet resolution to alter the relevant legislation.
3. The corporation may request the Mass Rapid Transit Authority of Thailand to approach the Transport Ministry in order to pursue a Cabinet resolution for the amendment of the relevant law.
4. The company has the option to collaborate with the former proprietors of land parcels on which the project was erected, in order to approach the Metropolitan Rapid Transit Authority (MRTA) with a request for retrospective authorization of public access to the plot. This would facilitate the construction of a significant project subsequent to the acquisition of neighboring land for the purpose of constructing an underground railway station.
5. The corporation has the option to submit a fresh petition to the Central Administrative Court in

order to reassess the case in light of new evidence that has altered the circumstances pertaining to the legal dispute.

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