

b. Administrative Law

A case in which standing in an action for dissolution of a development license was approved.

Decision by the Third Petty Bench of the Supreme Court on January 28, 1997. A case demanding determination of standing according to article 9 of the Administrative Litigation Law. 51 *Minshū* 250, 1592 *Hanrei Jihō* 34, 931 *Hanrei Times* 117.

[Reference: Urban Planning Law, Article 33, section 1, clause 7; Administrative Case Litigation Law, Article 9.]

[Facts]

In February 1992, the mayor of Kawasaki City authorized a plan for development according to article 29 of the Urban Planning Law. Inhabitants in the neighborhood of the planned site brought an action for dissolution of the license for development. Both district and high courts found that they didn't have standing to sue, so the inhabitants brought an appeal to the Supreme Court.

[Opinion of the Court]

Article 9 of the Administrative Case Litigation Law certifying standing provides that only "persons having legal interests" should be authorized to bring an action for cancellation of an administrative disposition. "[P]ersons having legal interests" means (natural or juristic) persons whose rights or interests protected by law may be violated by administrative disposition. When administrative articles providing for the disposition in question are construed as intended to protect the concrete interests of unspecified recipients not only as general public interests, but also as concrete interests of specified recipients, the interests of unspecified recipients should be interpreted as legally-guaranteed ones. Those whose legally-protected interests are violated (or are ultimately violated) by administrative disposition should be qualified to have standing to sue for dissolution of the disposition. Whether the article is designed to protect concrete interests of specified persons or not must be decided after due consideration of inten-

tion, purpose of the article, content and nature of interests the article aims to protect through the administrative disposition.

According to article 33, section 1, clause 7, when the area destined for redevelopment involves a site in danger of landslide, the granting of development license is conditioned upon whether the plan contains suitable safety measures. Launching the development action without suitable safety measures has the potential of bringing about a landslide not only in a developed site, but also in surrounding areas. Under these circumstances, the article insures the safety of inhabitants living outside the developed sites who may be directly injured by the landslide, as well as the general public interest in having a suitable urban environment free from the danger of a landslide. This way of thinking leads to the conclusion that inhabitants living in the area likely to be harmed directly by the landslide, with legal interests permitting them to appeal for the cancellation of the disposition, should have standing to sue for dissolution of the administrative disposition.

[Comments]

This is the first judgment made by the Supreme Court to approve standing of neighbors to appeal for dissolution of a development license. The matter of standing is a condition precedent to litigation. That is why the courts never enter into a substantive proceeding until they approve standing for the dissolution of an administrative disposition. In Japan, it is not easy for people other than the party at whom the administrative disposition is aimed to be qualified as having standing for dissolution of the disposition in question.

At one time, the Supreme Court had fixed a very rigid standard for standing. The Court thought that a plaintiff should have an interest protected by a statutory provision. Even when inferior courts tried to loosen the standard and broaden the opportunity for administrative litigation, the Supreme Court never approved mitigation of the standard for fear of too much litigation. However, since the latter half of the 1980's, the Supreme Court has changed its position and loosened the standard. The judgement in question is an extension of the change.

In academic circles, the theory of "interest deserving legal protection" predominates. It insists on measuring the standard in view of the

substantiality of expected damage rather than on the objective of the legal system. The Supreme Court, in contrast, has maintained the theory of “interest protected by a statutory provision”, putting emphasis on the object of certain provisions. However, the Supreme Court’s decision in the instant case has undoubtedly approached the “interests deserving legal protection” theory in its substance.

Prof. SHIGEYUKI SUDOH
TAKATOSHI MUNENO

2. Law of Property and Obligations

- 1. A case in which foreseeability and responsibility for landslides in a golf course after formation of a golf club membership contract were decided with respect to the club management company, which had first entered into the contract. (A case to which the Changed Circumstances Rule (*jijō henkō*) was held to be inapplicable.)**

Decision by the Third Petty Bench of the Supreme Court on July 1, 1997. Case No, (o) 255 of 1996. A case in which plaintiffs claim the existence of a golf club membership should be confirmed. 51-6 *Minshu* 2452; 1617 *Hanrei jihō* 64; 953 *Hanrei Taimuzu* 99.

[Reference: Civil Code, Article 1 (2) and Vol.3 Chap.2.]

[Facts]

X and others (plaintiffs, *kōso* respondents, *jōkoku* appellants) acquired membership in this golf club through a contract with Company A, which managed this golf course, or through transfer from other members. Later the business of this golf course was transferred from Company A to Company B, and from Company B to Y (defendant, *kōso* appellant, *jōkoku* respondents). Y took over the rights and duties of the membership contract in the relation to X and others. Landslides, which have occurred frequently since the opening of this golf