should that the legislature do that? The structure of constitutional reasoning also matters. The dissenting opinions suggested that the law itself is constitutional and that the problem is that the Diet continues to leave children who could not be recognized as Japanese citizens. This is persuasive in its way. To be sure, most law professors agree with the conclusion. But, the theoretical difficulties which the case made clear should be considered in the future. This kind of litigation is a litmus test for policy-making by the judiciary and further developments are expected.

2. Administrative Law

Xs v. Hamamatsu City
Supreme Court.G,B. September 10, 2008
Case No.(gyo-hi) 397 of 2005
2020 SAIBANSHO JIHO 21; 1280 HANREI TAIMUZU 60

Summary:

The approval decision for a plan of land readjustment project is relevant to "an action constituting exercise of police power" of art 3.2 of the Administrative Litigation Act, and in this case, it is admitted for appellants to raise the suit asking for the quashing of the approval decision for this plan for a land readjustment project

Reference:

Land Readjustment Act Art 6. 1, Art 52. 1 Art 54 Art 55. 9 Art 76 Art 85 Art 140.

Facts:

This case was one concerning an approval decision about a plan for a land readjustment enterprise which Hamamatsu City(appellee, defendant) carried out, The appellants Xs(plaintiffs) who had estates on the site of the land readjustment enterprise area brought the case before the court asking it to quash the approval decision of the plan.

As a part of the railroad continuative two-level crossover enterprise of

the section from Shin-Hamamatsu Station to Nishi-Kajima Station on the Nishi-Kajima Line, Hamamatsu City planned a land readjustment enterprise around Kamijima Station in order to improve the public facilities around Kamijima Station (below, this land readjustment enterprise is refered to as "this enterprise"), and based on the Land Readjustment Act Art 52. 1, in November 7, 2003, applied to the Shizuoka prefectural governor for approval for the outline with a design of the plan of this enterprise and received the approval from the governor on November 17, 2003. So Hamamatsu City made and promulgated the approval decision of the plan for this enterprise on November 25, 2003.

Appellants Xs had estates on the site of this enterprise area, and brought the case before the court, asking for it to quash the approval dispositions about the plan of this enterprise, for the reason this enterprise does not serve the purpose of improving public facilities and promoting the use of estates laid down by the Land Readjustment Act.

The Tokyo High Court (the original court) dismissed Xs's appeal for the following reason. A plan for a land readjustment enterprise just decides basic matters about a land readjustment enterprise generally and abstractly, and it has only the character of a "blue print" for a land readjustment enterprise, so it cannot always be determined what kind of fluctuation is exerted on interested parties' rights by this plan. The restriction against the construction which derived from the proclamation of this plan is just a collateral restriction which the act invests to the promulgation, and such a restriction cannot be said to be a restriction against the interested parties' rights which arise from the approval decision or the promulgation of this plan.

Accordingly, the approval decision for a plan of land readjustment project is not relevant to "an action constituting the exercise of police power" of art 3.2 of the Administrative Litigation Act, so this suit asking for quashing of the approval decision for the plan of this enterprise is unlawful.

Opinion:

A land readjustment project is, once the approval decision for the plan of this project (below, the approval decision of the plan of a land readjustment enterprise is referred to as "the approval decision of the plan") was

made, advanced in detail according to the plan as far as there are no special circumstances, …and the disposition of substitute land is executed necessarily. The restriction against the construction is laid down with legal binding force in order to prevent the concrete enterprise based on an approval decision for the plan from causing obstacles. Furthermore, the person who has an estate on the site of this enterprise area has imposed on him a restriction against the construction continuously until the day which the disposition of the substitute land is executed.

Therefore, the person who has the estate on the site of this enterprise area is inevitably forced to be in the position the disposition of substitute land is executed in proportion to the procedure of a land readjustment project with restrictions. By its meaning, he can be said to be in a position which suffers a direct legal influence, so it should not to be said that the legal influence which is derived from the approval decision of the plan is just general and abstract influence.

Certainly, the person who received the disposition of substitute land may be admitted to bring a suit asking for the quashing of the disposition of substitute land. However, when in the phase of the disposition of substitute land the disposition is quashed, the whole of a land readjustment enterprise can fall into remarkable disorder. Thus, if the person who has an estate on the site of the enterprise insists on the illegality of the plan of the enterprise, and the insistence is admitted in the phase of the suit action to quash the disposition of a substitute, there is a high possibility that a "Ji-joh Hanketsu"(in Japan, this judgment works similarly to a declaratory judgment, namely, when a court thinks that quashing a disposition will not accord with public welfare, the court may reject the charge, but must declare the illegality of the disposition,(Art. 31 of the Administrative Litigation Act))will be applied, for the reason that to quash the disposition of substitute land does not accord with public welfare. So when in the phase of the disposition of substitute land, the action to quash the disposition is left, it is difficult to say that enough relief of the harm which the rights of the land owner suffer is achieved. Then, in the case of the legality of the plan for a land readjustment enterprise, it is rational that to leave the suit for the action to quash to the approval decision of the plan for a land readjustment enterprise in the phase of the approval decision of the plan for a land readjustment enterprise is needed for the effective

relief of the right.

According to the above, it can be said that the approval decision for the plan of a land readjustment enterprise which is carried out by the principal local authorities brings a fluctuation to the legal status of a land owner in an area of the enterprise, and is object of complaint actions. Thus, the approval decision for the plan of a land readjustment enterprise in this case is relevant to an administrative disposition which is to be the object of complaint actions under article 3 of the Administrative Litigation Act.

Editorial Note:

In the case that a principal local authority intends to carry out a land readjustment enterprise, the principal local authority must lay down the rules and the plan for the enterprise (Land Readjustment Act Art. 52. 1), and, when the plan of a land readjustment enterprise is laid down, the prefectural governor of the local authority must promulgate the terms and area and so on of the enterprise without delay (Land Readjustment Act Art. 55. 9).

After the promulgation, the person who intends to alter the form of the enterprise area must get the governor's confirmation (Land Readjustment Act Art. 76. 1), and when there is a person who was violated this rule, a governor may command a restoration order to offenders (Land Readjustment Act Art. 76. 1), in addition, the person who offends this order is inflicted a punishment (Land Readjustment Act Art. 140)

That is, though the plan for a land readjustment enterprise is just the plan which lays down the basic matter, like the area, cost, term etc, of the land readjustment enterprise (Land Readjustment Act Art. 6. 1 and Art. 54), once the approval decision for the plan is made and promulgated, the person who has an estate on the enterprise area is restricted in the exercise of his land -use right as a matter of fact.

And yet, the judicial precedents have charged, like the original court (Tokyo High Court), that the approval decision for the plan of a land readjustment enterprise is not the object of the actions to quash of article 3 of the Administrative Litigation Act (see Supreme Court.G,B. February 23, 1966). So, in spite of the actual disadvantage, the person has been forced to be in the situation that he cannot be admitted to raise a suit asking for

the quashing of the approval decision for a plan of land readjustment project until the disposition of substitute land is made.

However, it is possible to regard the approval decision or the promulgation of the plan of a land readjustment enterprise as one of the administrative dispositions, in addition, when admitting the actions to quash at the stage of the following individual administrative dispositions, like the disposition of substitute land, it also becomes too late from the point of view of residential environment preservation. Thus the conventional judicial precedents which regarded a plan for a land readjustment enterprise as a "blue print" of a land readjustment enterprise and regarded the disadvantage which the person who has an estate on the enterprise area suffers as a collateral restriction of the promulgation of the plan have been criticized as causing the delay of relief.

This judgment changed the conventional judicial precedent about the approval decision for the plan of land readjustment project after 42 years, and charged that the approval decision for a plan of land readjustment project is relevant to an administrative disposition and is the object of the complaint actions.

Thus far, on the one hand, concerning the urban redevelopment project, there were the judicial precedents which charged that the promulgation of the plan for a plan of an urban redevelopment project is the object of the action to quash. on the other hand, there were the judicial precedents which charged that the approval decision for a plan of a land readjustment project is not the object of the action to quash. So it was unclear when actions for public projects could be raised.

This judgment acknowledges that the approval decision for a plan of a land readjustment project, as well as an urban redevelopment project, is relevant to an administrative disposition, and is the epoch-making judgment in the respect that this judgment made it clearer that the act which indicates the starting of a public project is relevant to administrative disposition.

At present, about 1,400 land readjustment projects are in progress all over the country, and there were 142 suits asking for the quashing of the land readjustment project in the last decade. By this judgment, it become possible to raise the suit about the land readjustment project in an earlier phase than before, and it is expected that there is a possibility that a big

influence will be exerted on resident movements against urban reconstruction enterprises.

3. Law of Property and Obligations

X v. Y
Supreme Court 1st P.B., April 24, 2008
Case No. (ju) 1632 of 2006
62 (5) Minshu 1178; 1458 Saibansyo Jiho 5; 2008 Hanrei Jiho 86; 1271 Hanrei Taimuzu 86; 227 Saiko Saibabsho Saibanshu Minji 685

Summary:

1. Where an operation is performed in the course of team-approach medical care, the person who is generally responsible for team-approach medical care has, under the rule of reason, the obligation to give consideration to ensure that the patient and his/her family are given an adequate explanation on the necessity, content, risk, etc. of the operation.
2. Where an operation was performed in the course of team-approach medical care and the person generally responsible for team-approach medical care entrusted the doctor in charge of the patient to give an explanation to the patient and his/her family about the operation, if the doctor in charge had sufficient knowledge and experience for giving the explanation, and the generally responsible person instructed and supervised the doctor as appropriate, the generally responsible person should not be held liable for a tort of breaching the obligation of explanation even where the explanation given by the doctor in charge was inadequate.

Reference:

Art. 709 of Civil Code

Facts:

At the hospital affiliated with the school of medicine of University A (hereinafter: the Hospital), a patient B, who was hospitalized for aortic valve insufficiency, received an operation for aortic valve replacement