

**OPERATIVE PART OF THE JUDGMENT**  
**(TRANSLATION)**

**Tashi Commercial Corporation vs. Thimphu Thromde**  
(Judgment No. Nyentho (Hung 19-17) dated 27/11/2019)

**Decision**

6.1. In accordance with court findings, Thimphu Thromde did not contest that the Plot No. I-22 and L-1 as G2- Green Space System in the matter of land ownership dispute between Thimphu Thromde and Tashi Commercial Corporation in 2013, wherein, the Court ruled that the land ownership title belongs to Tashi Commercial Corporation. After the Judgment was handed down in the matter of land ownership dispute between the parties in 2013, Thimphu Thromde should be barred from raising the new issue later as per Section 155 of the Civil and Criminal Procedure Code of Bhutan. Therefore, Thimphu Thromde's contention that the Plot No. I-22 and L-1 as G2- Green Space System is hereby dismissed and precluding the present case to comply the Court Directives as issued in the Judgment, Tashi Commercial Corporation is entitled to carry out the developmental activities in the aforementioned plots legally from the date of handing down of this judgment. Hence, in accordance with Section 111 (b) of the Civil and Criminal Procedure Code of Bhutan, the Judgment No. (Dangmang-19-59) dated 18/07/2019 of the Larger Bench, High Court is fully reversed.

6.2. In accordance with Section 111 (b) of the Civil and Criminal Code of Bhutan, this Court through its rulings has reversed the judgments of the lower courts, therefore, as per Section 97 of the Civil and Criminal Code of Bhutan, the Court orders that the litigation cost of Nu. 45,000/- (forty five thousand) deposited by the appellant at the revenue section of this Court vide receipt no. 402779 dated 14/08/2019 be handed back to the appellant.

**Court Order**

**A.** In accordance with Section 96 of the Civil and Criminal Procedure Code of Bhutan, the Court granted full opportunity to the parties to make their submissions by way of written depositions, documents on record, and the oral arguments. All their submissions were given most careful consideration. The Court orders that as per Thimphu Structure Plan

2002-2027, Revision 01, August 2004, the aforementioned plots owned by the Tashi Commercial Corporation does not fall under G2- Green Space System, rather it falls under Urban Core. Therefore, precluding the present case to comply the Court Directives as issued in the Judgment, Tashi Commercial Corporation is entitled to carry out the developmental activities in the aforementioned plots legally from the date of handing down of this judgment. Hence, the Judgment of the Larger Bench, High Court is fully reversed.

## **B. Court Directives:**

1. In accordance to Article 7(14) of the Constitution, the Government may acquire private land for public purposes on payment of fair compensation. In order to give effect to the Constitutional objective of providing fair compensation to the individuals whose land has been acquired by the Government, uniform procedure for acquisition and compensation must be in place. This will invariably ensure clarity and fairness in the process, check arbitrariness and create accountability on the authority concerned.

The current National Committee for Human Settlement was constituted based on executive order of Lhengye Zhungsthog. It was not constituted based on any one of the Acts passed by the Parliament. Therefore, it is felt necessary to have separate Act incorporating the provisions constitution of the committee and its responsibility.

2. In line with the above reasons and Article 21 Section 10 of the Constitution, the Government is hereby directed to move for the adoption/endorsement of a separate legislation apropos private land acquisition for public purposes. Such legislation must amongst others, include the following:
  - a. Lay down the procedure for private land acquisition; payment of compensation and award of substitute land;
  - b. Clearly define the term “fair compensation”. The rate of compensation must be equitable. The ongoing practice of calculating compensation based on PAVA Rate is both unfairly low and impracticable.
  - c. Establish a Committee which shall be the sole authority responsible for:
    - i. Identifying and acquiring private land for any public purpose;
    - ii. Compensating land owners through monetary payment as determined in the legislation.

- d. All the decisions taken by the Committee must be consensus-based in order to ensure greater credibility.
  - e. With regard to awarding of substitute land, since granting of state land to the citizens is a Royal Prerogative under Article 2(16)(b) of the Constitution and Section 189 of the Land Act, 2007, the Committee must be duty bound to seek Royal Command apropos awarding of substitute land.
  - f. Clearly stipulate the course of action apropos private land with any liability/mortgaged with the financial institutions.
  - g. Address all other matters pertaining to acquisition of private land for public purposes by the Government.
3. Non-uniformity and arbitrariness in payment of compensation and awarding of substitute land is against the fundamental right of an individual to own property as enshrined under Article 7(9) and the right not to be deprived of any property by acquisition or requisition except for public purpose (Eminent Domain) on payment of fair compensation in accordance with the provisions of the law, as enshrined in article 7(14).

C. The Court through its rulings has fully reversed the judgments of the Larger Bench, High Court, therefore, the Court orders that the litigation cost of Nu. 45,000/- (forty five thousand) deposited by the appellant at the revenue section of this Court vide receipt no. 402779 dated 14/08/2019 be handed back to the appellant.

Non-compliance of orders as enumerated in this judgment from either of the parties may result in finding civil and criminal sanctions in accordance with Sections 104 and 107 of the Civil and Criminal Procedure Code of Bhutan. Issued under the hand and seal of this Court on the first day of tenth month of earth female pig year corresponding to the twenty seventh day of the eleven month of two thousand and nineteen.

(Tshering Wangchuk)  
The Chief Justice of Bhutan

(Rinzin Penjor)  
Justice

(Tashi Chhozom)  
Justice

(Norbu Tshering)  
Justice

## **2. Dissenting Judgment**

In accordance with Section 95 (c) of the Civil and Criminal Procedure Code of Bhutan, 2001 and Dissenting Findings, the reasons of dissent are as follows:

The edifice of justice must be supported by the pillar of direct, relevant and admissible evidence. A Judge must base his/her decision on the evidence placed before him/her. The Court proceedings should be regulated by evidentiary rules to achieve a fair and just conclusion – the Judgment. The purpose of evidence is to establish and regulate the rules concerning the process of proof during the trials or civil proceedings in Courts, to finally bring the guilty to justice while setting the innocent free.

Therefore, it is imperative to correctly apply direct, relevant and admissible evidence in courts to achieve the aims of justice. Justice must not only be done but be seen to be done through fair trial as enshrined in our laws. The judiciary must work hard towards gaining public faith, trust and confidence in its criminal Justice system as His Majesty the King always commands, by rendering judgments that are fair and perceived to be fair.

The probative value, the sufficiency and the relative completeness of evidence produced before the Courts must be scrutinized and the Court decisions must be based on truth founded on evidence. Thus, the principal responsibility of courts is to conduct proper proceedings so as to hear and consider evidence.

Therefore, as contended by the Legal Representative of Thimphu Thromde that the Plot No I-22 and L-1 was identified in the G2-Green Space System prior to the land ownership dispute between Thimphu Thromde and Tashi Commercial Corporation in accordance with the Urban Design Proposal-Core which is based on Thimphu Structure Plan 2002-2027, Revision 01, August 2004 as approved by the Lhengye Zhungtshog on 3/2/2003. Further, the proposal of Jigme Dorji Wangchuck City Gateway was identified in those aforementioned plots. Therefore, the present issue is relevant to the earlier land ownership dispute between Thimphu Thromde and Tashi Commercial Corporation. Hence, the Court admits that the aforementioned two plots were identified as G2-Green Space System as per the Urban Design Proposal-Core which is based on Thimphu Structure Plan 2002-2027, Revision 01, August 2004 as approved by the Lhengye Zhungtshog on 3/2/2003.

As per Thimphu Structure Plan, Plot No. 4.9 is included in the Proposed Precinct Plan as shown in Record No.2, and therefore, the Court admits the Urban Design Proposal-Core. Further, Dedicated Plan for Urban Core is clearly included and G2-Green Space System is marked in that Urban Core area in Thimphu Structure Plan as per evidence 'E' presented to the Court. Therefore, the Court admits that plots in question were included within the G2-Green Space System from the beginning of Thimphu Structure Plan implementation.

In addition, not only the plots in question were identified as G2 Precinct in the Thimphu Structure Plan and Urban Design Proposal but also it is remarked as G2 Precinct in the Lagthram issued by National Land Commission to Tashi Commercial Corporation.

Therefore, as reasoned above, it is clear that Plot No I-22 and L-1 falls within G2-Green Space System. Hence, in accordance with Section 111(a) of the Civil and Criminal Procedure Code of Bhutan, the Judgment No. (Dangmang-19-59) dated 18/07/2019 of the Larger Bench, High Court is upheld and accordingly, appeal is dismissed as per Section 32.1 of the Civil and Criminal Procedure Code of Bhutan.

(Kuenlay Tshering)

Justice