

## CASE LAW DRAFT NO. 19/2024

### **On the determination of land prices at the time of land allocation for resettlement with land use fees in the resolution of administrative cases**

*Approved by the Judges' Council of the Supreme People's Court on [date] [month] 2024 and published under Decision No. [number]/QĐ-CA on [date] [month] 2024 by the Chief Justice of the Supreme People's Court.*

#### **Source of the Case Law:**

The Appellate Judgment No. 336/2023/HC-PT dated September 14<sup>th</sup>, 2023, on "Administrative Decision Complaints in the Field of Land Management" by the High People's Court in Đà Nẵng, between the plaintiff, Mr. Nguyễn Sơn H, and the defendant, the People's Committee of B City.

#### **Location of the Case Law's Content:**

Paragraphs 6, 7 and 8 of the "Court's Opinion" section.

#### **Summary of the Case Law:**

##### ***- Factual Background:***

The competent state authority issued a decision approving the compensation and support plan for those whose land was expropriated in a project. However, this decision was partially annulled by a court judgment due to incorrect compensation and support for one type of land for an expropriated individual. Subsequently, the competent state authority issued a decision to allocate resettlement land, with land use fees for this individual, but calculated the land price at the time of land allocation, which was higher than the land price for other expropriated individuals in the same project, who received resettlement land based on the land price at the time the compensation and support plan was initially approved.

##### ***- Legal Resolution:***

In this case, the Court must determine that the resettlement land price this individual must pay to the state is the land price at the time of issuing the decision approving the initial compensation and support plan, to ensure fairness with other expropriated individuals receiving resettlement land in the same project.

**Relevant Legal Provisions:**

- Clause 2, Article 106 of the Land Law 2013;
- Clause 2, Article 3 and Article 143 of the Law on Administrative Procedures.

**Keywords:**

"Resettlement land allocation with land use fees"; "fault by the People's Committee"; "time of determining land price".

**CASE DETAILS**

In the complaint and during the litigation process, Mr. Đỗ Anh T, the authorized representative of the plaintiff, stated the following:

The State planned to construct the E Irrigation Reservoir project in T Ward, B City, Đắk Lắk Province. To implement this plan, the People's Committee of B City, Đắk Lắk Province, issued Decision No. 8829/QĐ-UBND on December 22<sup>nd</sup>, 2020, to expropriate an area of 245.5m<sup>2</sup>, Plot No. 32, Map Sheet No. 32, located at 26B A Street, Neighborhood 8, T Ward, B City, Đắk Lắk Province, belonging to Mr. Nguyễn Sơn H.

On December 22<sup>nd</sup>, 2020, the People's Committee of B City, Đắk Lắk Province, issued Decision No. 8803/QĐ-UBND to approve the compensation and support plan when the state expropriated land for the E Irrigation Reservoir project in T Ward, B City, Đắk Lắk Province, in batch 26. Mr. Nguyễn Sơn H was compensated according to the agricultural land category. Disagreeing with

this decision, Mr. H filed a lawsuit. In Appellate Judgment No. 304/2021/HC-PT dated December 31<sup>st</sup>, 2021, the High People's Court in Đà Nẵng partially annulled Decision No. 8803/QĐ-UBND.

On October 20<sup>th</sup>, 2022, the People's Committee of B City, Đắk Lắk Province issued Decision No. 8903/QĐ-UBND on allocating resettlement land to Mr. H, including two plots of land with land use fees: Plot No. 418 and 569 (Old Plot: LK3-3 and Old Plot: LK8-17), Map Sheet No. 80 (old independent sheet), with areas of 100m<sup>2</sup> and 99m<sup>2</sup>. Mr. H must pay a land use fee of VND 13,200,000/m<sup>2</sup> for the 100m<sup>2</sup> plot and VND 11,000,000/m<sup>2</sup> for the 99m<sup>2</sup> plot. Mr. H claims that Decision No. 8903/QĐ-UBND and Decision No. 2022/QĐ-UBND dated April 5<sup>th</sup>, 2022, of the People's Committee of B City, Đắk Lắk Province, on approving the land price for resettlement land allocation and land allocation with land use fees without auction for households in 2022 at the resettlement area, infringed upon his legitimate rights. Therefore, Mr. H requests the Court to annul part of Decision No. 8903/QĐ-UBND and Decision No. 2022/QĐ-UBND. He demands that the People's Committee of B City, Đắk Lắk Province, re-approve the land price for Plot No. 418 (Old Plot: LK3-3); Map Sheet No. 80 (old independent sheet), with an area of 100m<sup>2</sup> according to the 2020 land price of VND 6,600,000/m<sup>2</sup> and Plot No. 569 (Old Plot: LK8-17), Map Sheet No. 80 (old independent sheet) with an area of 99m<sup>2</sup> according to the 2020 land price of VND 5,500,000/m<sup>2</sup> for Mr. H's family.

The authorized representative of the defendant, the People's Committee of B City, Mr. Lê Đại T, stated the following:

Based on Clause 1, Article 1 of Decision 27/2019/QĐ-UBND dated December 19<sup>th</sup>, 2019, of the People's Committee of Đắk Lắk Province on amending and supplementing some regulations related to compensation, support, and resettlement during eminent domain in the province's decisions: "Every year, the district and city People's Committees are responsible for developing and submitting specific land prices at resettlement sites to the

provincial People's Committee for approval. For resettlement projects that have just completed infrastructure construction within the year, the district People's Committee develops specific land prices at the new resettlement site and submits them to the provincial People's Committee for additional approval."

On December 29<sup>th</sup>, 2021, the People's Committee of Đắk Lắk Province issued Decision 3750/QĐ-UBND on authorizing the approval of specific land prices for calculating compensation during eminent domain; authorizing land expropriation and approving compensation, support, and resettlement plans. Accordingly, the city People's Committee is authorized to approve specific land prices for allocating resettlement land to households during eminent domain.

In 2022, the city People's Committee, based on the city's resettlement land fund, conducted field surveys, collected information, and based on the Land Price Table in B City issued with Decision No. 22/2020/QĐ-UBND dated July 3<sup>rd</sup>, 2020, and Decision No. 30/2020/QĐ-UBND dated October 20<sup>th</sup>, 2020, of the People's Committee of Đắk Lắk Province, the city People's Committee developed specific land prices for each plot at resettlement areas in B City.

Based on Point b, Clause 4, Article 114 of the 2013 Land Law:

"4. Specific land prices are used as a basis in the following cases:

b) Calculating land use fees when the state allocates land with land use fees without auctioning land use rights; recognizing land use rights, allowing land use purpose changes for organizations that must pay land use fees."

The issuance of specific land prices by the People's Committee of B City in Decision No. 2022/QĐ-UBND dated April 5<sup>th</sup>, 2022, on approving land prices for resettlement land allocation, allocating land with land use fees without auction for households in 2022 at resettlement areas in B City, was implemented according to the guidelines in Circular No. 36/2014/TT-BTNMT dated June 30<sup>th</sup>, 2014, of the Ministry of Natural Resources and Environment

and the regulations in Decision No. 22/2020/QĐ-UBND dated July 3<sup>rd</sup>, 2020, and Decision No. 30/2020/QĐ-UBND dated October 20<sup>th</sup>, 2020, of the People's Committee of Đắk Lắk Province.

Mr. Nguyễn Sơn H's household requests the approval of land prices for Plot No. 418 (former Plot No. LK3-3), Map Sheet No. 80 at VND 6,600,000/m<sup>2</sup> and Plot No. 569 (former Plot No. LK8-17), Map Sheet No. 80 at VND 5,500,000/m<sup>2</sup>, which does not comply with current legal regulations. Based on the above grounds, the People's Court of Đắk Lắk Province is requested not to accept Mr. Nguyễn Sơn H's lawsuit.

In the First-instance Administrative Judgment No. 66/2023/HC-ST dated May 15<sup>th</sup>, 2023, the People's Court of Đắk Lắk Province decided:

"Pursuant to Article 30(1), Article 32(4), point a of Article 193(2), and Article 206(1) of the Administrative Procedure Law 2015; based on Article 66, Article 112, 113, and 114 of the Land Law 2013; Decree No. 44/2014/NĐ-CP dated May 15<sup>th</sup>, 2014 by the Government on land prices; Resolution No. 326/2016/UBTVQH14 dated December 30<sup>th</sup>, 2016 of the Standing Committee of the National Assembly on court fees and charges.

It is hereby order:

The plaintiff's (Mr. Nguyễn Sơn H's) lawsuit requesting the annulment of part of Decision No. 8903/QĐ-UBND dated October 20<sup>th</sup>, 2022 of the People's Committee of B City, Đắk Lắk Province regarding the allocation of land to Mr. Nguyễn Sơn H, and request the annulment of part of Decision No. 2022/QĐ-UBND dated April 5<sup>th</sup>, 2022 of the People's Committee of B City, Đắk Lắk Province concerning 'approval of land prices for resettlement land allocation, land allocation with land use fees without auction for households in 2022 in resettlement areas within B City, Đắk Lắk Province, is dismissed.

The People's Committee of B City, Đắk Lắk Province is obliged to re-approve the land prices for Plot No. 418 (former Plot No. LK3-3), Map

Sheet No. 80 (old independent sheet), with an area of 100m<sup>2</sup> at the land price of VND 6,600,000/m<sup>2</sup> in 2020 and Plot No. 569 (former Plot No. LK8-17), Map Sheet No. 80 (old independent sheet), with an area of 99m<sup>2</sup> at the land price of VND 5,500,000/m<sup>2</sup> for Mr. H's family."

Additionally, the first-instance court also ruled on court fees and notified the litigants of their rights to appeal in accordance with legal provisions.

On May 18<sup>th</sup>, 2023, Mr. Đỗ Anh T, authorized representative of Mr. Nguyễn Sơn H, filed an appeal requesting the appellate court to amend the First-instance Administrative Judgment in the direction of accepting Mr. Nguyễn Sơn H's lawsuit.

At the appellate hearing: Mr. Đỗ Anh T submitted a request for absentee trial, indicating an intention to maintain the appeal.

The representative of the People's Procuracy of Đà Nẵng High People's Court stated the following opinion: During the case proceedings, regarding procedural matters, the Appellate Panel and the clerk complied with the provisions of the Administrative Procedure Law; the first-instance court's rejection of Mr. Nguyễn Sơn H's lawsuit was in accordance with legal regulations. The appellate court is requested not to accept the appeal of Mr. Đỗ Anh T (authorized representative of Mr. Nguyễn Sơn H).

### **COURT'S OPINION:**

Following a thorough review of the evidence, cross-examination results, opinions from the Procurator and involved parties, the Appellate Panel has reached the following conclusions:

[1] Neither Mr. Đỗ Anh T nor Mr. Lê Đại Thắng were present during the second appellate hearing. As written requests for absentee trials were submitted by both parties, and all relevant statements were already included in the case file, the proceedings continued without their presence in accordance with

established procedures.

[2] Regarding the procedural matters: Decision No. 8903/QĐ-UBND dated October 20<sup>th</sup>, 2022, issued by the People's Committee of B City concerning land allocation to Mr. Nguyễn Sơn H, falls under the category of administrative decisions in State land management. As a result, the matter falls within the court's jurisdiction for administrative litigation per Article 30(1) of the Administrative Procedure Law. The initial acceptance and resolution of this case by the People's Court of Đắk Lắk Province were consistent with Article 32 of the aforementioned law. However, based on Article 143, the appellate court will suspend further resolution of the case due to the first-instance court's involvement.

[3] Mr. Nguyễn Sơn H filed his administrative lawsuit against Decision No. 8903/QĐ-UBND on November 2<sup>nd</sup>, 2022, which falls within the established time frame for such actions.

[4] Decision No. 2022/QĐ-UBND dated April 5<sup>th</sup>, 2022, issued by the People's Committee of B City regarding land price approval for resettlement and land allocation, applies to all households within the designated area. As it establishes a general land price and doesn't target a specific individual, it qualifies as a legal normative document. This document doesn't create, modify, restrict, or terminate rights or obligations for agencies, organizations, or individuals. Therefore, per Article 3(2) of the Administrative Procedure Law, Decision No. 2022/QĐ-UBND is exempt from administrative litigation. While the first-instance court accepted the lawsuit regarding this decision, the appellate court will suspend its resolution in accordance with Article 143 due to the first-instance court's involvement.

[5] Regarding Decision No. 8903/QĐ-UBND: The People's Committee of B City allocated two plots of land in the Residential Area of Ward 7, District D, City B for residential use to Mr. Nguyễn Sơn H, residing in Ward D, City C. These plots were allocated through a process of land allocation with land use

fees without auction of land use rights. The land use fees were determined based on the specific prices outlined in Decision No. 2022/QĐ-UBND dated April 5<sup>th</sup>, 2022, issued by the People's Committee of B City.

[6] Article 156(1) of the 2015 Law on Promulgation of Legal Normative Documents specifies that such documents apply to actions occurring during their validity period. It also allows for retroactive application in specific situations. In this case, the People's Committee of City B used the land prices in effect at the time of issuing Decision No. 8903/QĐ-UBND in 2022, referencing Decision No. 2022/QĐ-UBND to determine Mr. Nguyễn Sơn H's land use fees. This application is considered lawful.

[7] However, the resettlement land allocation to Mr. Nguyễn Sơn H stems from the condemnation of his previous land holding (Plot No. 32, Map Sheet No. 32 at No. 26B, Street A, Ward T, City B) for the construction of the E Irrigation Reservoir under Decision No. 8829/QĐ-UBND dated December 22nd, 2020. The initial compensation and support offered by the People's Committee of City B for the expropriated land (245.5m<sup>2</sup>) were based on agricultural land prices. Mr. Nguyễn Sơn H disagreed with this categorization and filed an administrative lawsuit. The High People's Court in Da Nang, in Appellate Administrative Judgment No. 304/2021/HC-PT dated December 31<sup>st</sup>, 2021, ruled in favor of Mr. Nguyễn Sơn H, requiring the People's Committee of City B to compensate, support, and resettle him based on urban residential land prices.

[8] Therefore, If the People's Committee of City B had correctly followed legal procedures for compensation, support, and resettlement when the State expropriated Mr. Nguyễn Sơn H's land, he would have received resettlement land with land use fees calculated using 2020 land prices, aligning with other households whose land was similarly condemned for the E Irrigation Reservoir project. However, due to the committee's initial error in compensation and support, Mr. Nguyễn Sơn H's resettlement land allocation occurred in 2022,



resulting in the application of higher land prices. To ensure fairness between Mr. Nguyễn Sơn H and other affected households, the appellate court finds it necessary to amend the first-instance administrative judgment in favor of Mr. Nguyễn Sơn H's lawsuit.

[9] Regarding court fees: As Mr. Nguyễn Sơn H's appeal is successful, he will not be responsible for appellate administrative court fees.

In light of the foregoing,

**IT IS DECIDED:**

Pursuant to Article 241(2) of the Administrative Procedure Law:

Mr. Nguyễn Sơn H's appeal is accepted. The first-instance administrative judgment No. 66/2023/HC-ST dated May 15<sup>th</sup>, 2023 of the People's Court of Đắk Lắk Province is amended as follows:

Applying Article 106(2) of the 2013 Land Law:

1. Mr. Nguyễn Sơn H's request to partially annul Decision No. 8903/QD-UBND dated October 20<sup>th</sup>, 2022 of the People's Committee of City B, Đắk Lắk Province, regarding land use fee collection according to specific land prices in Decision No. 2022/QD-UBND dated April 5<sup>th</sup>, 2022 of the People's Committee of City B, is granted.

Applying Articles 123, 143 of the Administrative Procedure Law:

2. The proceedings of Mr. Nguyễn Sơn H's lawsuit against Decision No. 2022/QD-UBND dated April 5<sup>th</sup>, 2022 of the People's Committee of City B, Đắk Lắk Province, concerning the approval of land prices for resettlement and land allocation with land use fees without auction for households in 2022 in resettlement areas in City B, Đắk Lắk Province, is suspended.

Applying Article 1, Article 32 Resolution No. 326/2016/UBTVQH14 dated December 30, 2016 of the Standing Committee of the National Assembly

on the level of collection, exemption, reduction, remission, management, and use of court fees and administrative fees:

3. Mr. Nguyễn Sơn H is exempted from bearing appellate administrative court costs. The interim payment of appellate administrative court costs of VND 300,000 as per Receipt No. 0002135 dated May 26<sup>th</sup>, 2023 at the Civil Execution Department of Đắk Lắk Province will be refunded to Mr. Nguyễn Sơn H.

4. All other decisions of the first-instance administrative judgment not appealed or protested against shall take effect upon expiration of the appeal/protest period.

5. This appellate administrative judgment shall have legal effect from the date of pronouncement.

#### **CONTENT OF THE CASE LAW:**

*“[6] Article 156(1) of the 2015 Law on Promulgation of Legal Normative Documents specifies that such documents apply to actions occurring during their validity period. It also allows for retroactive application in specific situations. In this case, the People's Committee of City B used the land prices in effect at the time of issuing Decision No. 8903/QĐ-UBND in 2022, referencing Decision No. 2022/QĐ-UBND to determine Mr. Nguyễn Sơn H's land use fees. This application is considered lawful.*

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*[8] Therefore, If the People's Committee of City B had correctly followed legal procedures for compensation, support, and resettlement when the State expropriated Mr. Nguyễn Sơn H's land, he would have received resettlement land with land use fees calculated using 2020 land prices, aligning with other households whose land was similarly condemned for the E Irrigation Reservoir project. However, due to the committee's initial error in compensation and support, Mr. Nguyễn Sơn H's resettlement land allocation occurred in 2022, resulting in the application of higher land prices. To ensure fairness between Mr. Nguyễn Sơn H and other affected households, the appellate court finds it necessary to amend the first-instance administrative judgment in favor of Mr. Nguyễn Sơn H's lawsuit.”*

## **THE RATIONALE FOR THE CASE LAW DRAFT’S PROPOSAL**

The proper valuation of land for administrative fees in the context of land management appeals is a recurring challenge. Land prices fluctuate significantly over time, leading to discrepancies between the valuation time used for fee collection and the initial approval date of the relevant administrative decision. This inconsistency can lead to prolonged litigation and potentially infringe upon citizen's rights.

To illustrate this point, consider a recent case involving the expropriation of land for an irrigation reservoir project by a district People's Committee. Following the condemnation, the committee was responsible for compensating, supporting, and resettling affected citizens, including land use fee payments. Ideally, the resettlement land allocation fees should have been based on the land prices approved at the time of the initial land condemnation.

However, in this specific case, the People's Committee incorrectly categorized Mr. H's land as agricultural instead of urban residential. This error led Mr. H to file a lawsuit, which was partially successful in annulling the original compensation and support decision.

While the court rightfully rectified the committee's mistake, a new challenge arose. The People's Committee issued a revised decision for resettlement land allocation with land use fees. However, they based the price on the current land values, which were significantly higher (twice as high) compared to the prices used for other resettled citizens under the same project at the time of the initial condemnation plan approval.

This discrepancy disproportionately impacted Mr. H's rights and interests. Recognizing this, the High People's Court in Đà Nẵng ruled that the resettlement land price for Mr. H should be based on the land values approved during the initial condemnation plan – ensuring fairness and consistency with other project-affected citizens.

This case exemplifies the frequent occurrence of valuation time disputes in land management appeals. Establishing clear legal precedents on this issue is crucial to ensure consistent and equitable application of the law in resolving similar situations moving forward.