

A building permit does NOT = ownership in Thailand

You might have heard something like the following all too common assertion: “*in Thailand the party named in a building permit is considered to be the owner of that building.*” To have heard such may have been particularly disturbing to many foreigners who are allowed to legally own buildings in Thailand. Some of you may have wondered: is the contractor who applied for the building permit to build and who then built my house “legally considered” to be its owner? But is such an assertion accurate? In order for the statement in question to be correct, there must be some *legal* basis for a building permit to create ownership rights in a building. We begin then by investigating the legal nature of a building permit.

The issuance of a building permit is legally an “*administrative order*”. An administrative order is defined as “an exercising of powers under the law by the competent officers with an effect of creating legal relations between persons in such a way to create, change, transfer, reserve, suspend, or which renders an effect to the status of rights or duties of a person, whether it be permanent or temporary, such as, ordering, permission, approval, decision of appeal, certification, and acceptance of registration, but excluding an issuance of rules.”^[1]

The relevant law for the issuance of a building permit administrative order is the Building Control Act B.E. (“**BCA**”). What power does the competent officer exercise under the BCA in issuing a building permit and to what effect? The administrative procedure is as follows. The applicant submits the application documents to the local administrative office. After a site visit and a verification of the application documents (*e.g.* construction drawings and specifications, etc.) and review of whether or not the contemplated structure is legally permissible, the local administrative office *must* either issue the building permit, or deny the issuance thereof and inform the applicant in writing with the reasons for the non-issuance, within forty-five days from the date of the application.^[2] Thus, the legal effect of this administrative order is

merely the legal permission to a person to build a certain structure on a defined plot of land and that is all it is.

What then is the relevant law that actually does create ownership rights? And more particularly, how does one actually legally own a building? Ownership rights are created through the Civil and Commercial Code (“CCC”). Sections 137ff and 1308ff of the CCC describe what ownership rights exist and how ownership rights can be acquired by law. In the case *immovable* property, Section 139 CCC states that it is “land and things fixed permanently to land or forming a body therewith...[i.e., e.g. buildings]”. The CCC therefore provides that the land owner “automatically” by law becomes the owner of any structure permanently affixed to his land. However, it is also legally possible to own a structure on another person’s land. Preferably, this is accomplished by the registration of a “superficies”^[3] which is the legal right of ownership of a structure on land owned by someone else and it is the legal instrument intended by the Code to create such a right of ownership.

Note however, that even though property ownership is generally established and detailed in the CCC, the building permit is not mentioned. It is understood that on a practical level, it is recommended to receive the building permit in one’s name. The land department currently refuses to register certain rights if the applicant does not have the building permit in his name. Which is, in our opinion, an historical accident^[4] that has, unfortunately, developed into an administrative practice and which is a practical reality for the time being but which is equally without legal foundation. Therefore, no building owner who has established legal ownership rights of a building through the construction of a structure on land under a superficies arrangement should be concerned if another person’s name is in the relevant building permit. Such person will not be able to establish any ownership rights to such structure through that building permit. Even if current land department practice might be an obstacle to a future sale or lease registration, the courts will follow the CCC and decide the ownership independent from the building permit.

Thus, what does the building permit have to do with legal ownership of a building?

Answer: nothing and to think it does is a fundamental misunderstand of the law.

[1] Section 5 (1) of the Administrative Procedures Act B.E. 2539 (1996).

[2] Note however, the BCA also allows the local administrative office to extend the forty-five day deadline for up to two additional forty-five day periods for any reasonable cause; if so, the local administrative office is required to notify the applicant in writing of the cause for the extension(s).

[3] See Section 1410 ff

[4] The confusion of the land department might also result from unfortunate wording in the building permit form itself. The building permit form labels the applicant as “*the owner*” of the building. However, the BCA itself never uses this language only and ever referring instead to the “*permit grantee*”.

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