The Iba Site Case

S. Shiina*

Outline of the Dispute

The Iba site was an important manifold archaeological site from the middle Yayoi era (bronze age, first century) through the Heian era (tenth century). It is believed that it is the site of a transit town along the ancient arterial road and there were several local government buildings in the old town of Iba after the fifth century.

The Iba site was found in 1949 and designated as the prefectural historic site by the Sizuoka Prefectural Board of Education in 1954. The City of Hamamatsu, where the site was located, had been designated by the Prefectural Board of Education as the custodial body of the site. Hamamatsu Municipal Government had purchased the lands of the site one after another under the pretext of ensuring the protection of the site. But these lands were left overgrown with weeds. In the latter half of the 1960s, Hamamatsu Municipal Government set up plans to develop the circumference of the Hamamatsu Station and the land including Iba site was decided upon as the substitute for the operation field of the Japan Railway Corporation. In spite of a nationwide movement demanding the preservation of the site, and notwithstanding the results of a series of archaeological excavations, which resulted in the discovery of many official documents written on strip wooden boards ('Mokkan'), the Board of Education decided to annul the designation in 1974 and the site has been destroyed. Representative members of a conservationist group filed a lawfuit demanding the withdrawal of the decision.

Decision of the Tokyo Court of Appeal (summary)

(1) Art. 9 of the Administrative Proceedings Act prescribes that an 'action to annul an administrative decision may be properly instituted only by a person who has a legal interest in the annulment of the decision. The question of a person with such a legal interest should be restricted, if not otherwise prescribed, to those people who will be, or might surely be, infringed as to their rights or other legally protected interests, by that decision. And, the words 'legally protected interests' should be construed as those interests which are protected through the fact that administrative statutes set the

* Professor in Tokyo, Japan.

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restriction on the uses of administrative powers for the purpose of protecting the subjective interests of citizens, and these interests should be distinguished from those interests which some people enjoy by chance through the fact that administrative statutes set the restriction on uses of administrative powers for any other purpose, especially for that of realizing the public welfare.

(2) There exists no text in the Sizuoka Prefectural Regulation or National Statutes for the Preservation of Cultural Properties with the aim of protecting the preservation and utilization of the designated site as the subjective interests of citizens or scientists. And interests of citizens or scientists in the preservation and the utilization of designated sites are reflective or *de facto* through the fact that the Board of Education or the Commissioner of the Agency for Cultural Affairs is realizing the public welfare by applying those regulations or statutes. The Court cannot admit those interests as legally protected interests of a particular citizen or a scientist.

(3) Appellants claim that 'legally protected interests' should include not only 'statutory protected interests' but also 'interests which deserve legal protection', and that, in order to ascertain whether appellants have these interests or not, the Court should take into account characteristics of interests which appellants have enjoyed through the designation of the Iba site as an historic site, characteristics and degree of disadvantages for appellants arising from the annulment of the designation, lack of effective remedies other than the action to obtain annulment, maturity of the dispute, or degree of illegality of the administrative decision. But, by examining the logical construction of art. 9 of the Administrative Proceedings Act, the Court deems it difficult that 'interests which deserve legal protection' can be included in 'legally protected interests'.

(4) Appellants claim that they are eligible to file the lawsuit to obtain the annulment of this decision on behalf of the whole citizen as the trustee to preserve the cultural properties. But, it is difficult to admit their representative standing to sue because there is not such prescription in the current legal system in Japan as to allow them representative status.

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