SPC Guiding Case No. 11: Case of Yang Yanhu et al. for Embezzlement

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Keywords

Criminal / crime of embezzlement / convenience of position / fraudulent acquisition of land use rights

Holding

1. "Taking advantage of the convenience of position" in the crime of embezzlement means taking advantage of the power and convenient conditions of one's position to take charge of, manage, or handle public property, including not only taking advantage of the positional convenience of personally taking charge of or managing public property, but also taking advantage of the positional convenience of other state functionaries who are subordinate to one's position.

2. Land use rights have property interests, fall within the scope of "public property" in Article 382, paragraph 1 of the Criminal Law, and may be the object of embezzlement.

Basic Facts

The defendant Yang Yanhu served as a member of the Standing Committee of the Yiwu Municipal Committee of Zhejiang Province from August 1996, as Deputy Director of the Standing Committee of the Yiwu Municipal People's Congress from March 2003, and, from August 2000, concurrently as Deputy Leader of the construction leading group and Commander of the headquarters for the China Small Commodity City Futian Market (renamed the China Yiwu International Trade City, "the International Trade City," in March 2003), presiding over the overall work of the headquarters. In 2002, upon learning that Gonghe Village, Choucheng Subdistrict, Yiwu City, would be included in the scope of demolition and old-village reconstruction, Yang Yanhu decided to purchase an old house in the village and, taking advantage of the convenience of his position, fraudulently obtain illegal benefits during demolition and resettlement. Yang Yanhu then conspired with the defendants Wang Yuefang (Yang Yanhu's sister-in-law) and Zheng Xinchao (Wang Yuefang's husband). Wang and Zheng acted on their behalf and, through Wang XX of Gonghe Village, purchased three old houses of Zhao XX in the name of Wang Yuefang (the registered area on the property certificate was 61.87 square meters, with a certificate issue date of August 3, 1998). Under the local demolition and old-village reconstruction policy, whether Zhao XX had the old houses made no difference to the area of resettlement land he would receive, and in fact Zhao XX received land resettlement as a person without a house. In March and April 2003, to have the land occupied by the three old houses confirmed in Wang Yuefang's name, under Yang Yanhu's instigation and arrangement, Zheng Xinchao again went through Wang XX of Gonghe Village to have the village committee and its members issue a false certificate that the three old houses had been built by Wang Yuefang in 1983. Yang Yanhu took advantage of the convenience of his position to request Wu XX, the deputy commander of the International Trade City Construction Headquarters in charge of land confirmation work and Deputy Director of the Yiwu Municipal Bureau of Land and Resources, and the personnel of the headquarters' confirmation and approval section, to give consideration to Wang Yuefang's demolition, resettlement, and land confirmation. The International Trade City Construction Headquarters then reviewed and confirmed the house purchased by Wang Yuefang as an old house with village certification but no property certificate, submitted it to the Yiwu Municipal Bureau of Land and Resources for confirmation, and, based on the measurement results, determined its occupied

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land area as 64.7 square meters.

Thereafter, the defendant Yang Yanhu conspired with Zheng Xinchao, Wang Yuefang, and others, and, on the basis that Yang Yanhu's father-in-law Wang XX Xiang could obtain confirmation of 25.5 square meters of land in the demolition of Gonghe Village, fabricated in January 2005 an application report signed by Wang Yuefang and others, falsely stating that "Wang XX Xiang and Wang Yuefang jointly own three and a half houses occupying 90.2 square meters of land; the two divided the family property in 1986, with Wang XX Xiang receiving 36.1 square meters and Wang Yuefang receiving 54.1 square meters; the relevant departments erroneously confirmed 25.5 square meters for Wang XX Xiang's house and 64 square meters for Wang Yuefang's house," and requesting that the Yiwu Municipal Bureau of Land and Resources make a correction. Subsequently, Yang Yanhu took advantage of the convenience of his position to instruct the staff of the International Trade City Construction Headquarters to affix the headquarters' seal to confirm the application report, and caused the application report to be recognized by the Yiwu Municipal Bureau of Land and Resources and the Yiwu Municipal Government, thereby enabling Wang Yuefang and Wang XX Xiang to obtain approval for 72 and 54 square meters respectively (126 square meters in total) of construction land. Based on Wang XX Xiang's confirmed land area, he should have obtained approval for only 36 square meters of construction land, and the remaining 90 square meters were illegal gains. In May 2005, after paying a site selection fee of RMB 245,520, Yang Yanhu and others obtained, in the International Trade City demolition and resettlement area, demolition and resettlement compensation of 72 square meters of land for two storefronts (after the case was discovered, the use rights to the 72 square meters of land were frozen in accordance with the law). Before being used for resettlement, the land parcel had been expropriated by the state and converted to construction land, and was state-owned allocated land. Upon appraisal, the value of the land use rights per square meter at the site was RMB 35,270. The 90 square meters of construction land illegally obtained by Yang Yanhu and others, converted according to the local demolition and resettlement provisions, equaled 72 square meters of land for storefronts in the demolition and resettlement area, worth RMB 2,539,440, and after deducting the RMB 245,520 they paid, the actual illegal gains were RMB 2,293,920.

In addition, from 2001 to 2007, the defendant Yang Yanhu took advantage of the convenience of his position to seek benefits for others in contracting projects, demolition and resettlement, and state-owned land transfer, and successively illegally accepted or extorted RMB 570,000, of which RMB 50,000 was extorted.

Judgment

On December 15, 2008, the Jinhua Intermediate People's Court of Zhejiang Province rendered Criminal Judgment (2008) Jin Zhong Xing Er Chu Zi No. 30: (1) the defendant Yang Yanhu was found guilty of the crime of embezzlement and sentenced to 15 years of fixed-term imprisonment with confiscation of property of RMB 200,000; and guilty of the crime of accepting bribes and sentenced to 11 years of fixed-term imprisonment with confiscation of property of RMB 100,000; with a combined sentence of 18 years of fixed-term imprisonment and confiscation of property of RMB 300,000. (2) The defendant Zheng Xinchao was found guilty of the crime of embezzlement and sentenced to five years of fixed-term imprisonment. (3) The defendant Wang Yuefang was found guilty of the crime of embezzlement and sentenced to three years of fixed-term imprisonment. After the judgment was pronounced, all three defendants appealed. On March 16, 2009, the Zhejiang Provincial High People's Court rendered Criminal Ruling (2009) Zhe Xing Er Zhong Zi No. 34, dismissing the appeal and affirming the original judgment.

Reasoning

The effective judgment of the court held as follows.

Regarding the defense opinion of the defendant Yang Yanhu's defender that Yang Yanhu did not take advantage of the convenience of his position: Upon examination, the Yiwu International Trade City Headquarters was an organ established by the Yiwu Municipal Party Committee and Municipal Government

to ensure the smooth progress of the International Trade City construction project. The headquarters had a confirmation and approval section, whose staff were seconded from the Bureau of Land and Resources and were responsible for the review and submission for approval of land confirmation and construction land for housing. Wu XX, the deputy commander in charge of that section, was also the Deputy Director of the Bureau of Land and Resources. The confirmation and approval section, as an organ under the headquarters, was also subject to the leadership of the headquarters, and Yang Yanhu, as commander of the headquarters, had leadership authority over that section. "Taking advantage of the convenience of position" in the crime of embezzlement means taking advantage of the power and convenient conditions of one's position to take charge of, manage, or handle public property, including not only taking advantage of the positional convenience of personally taking charge of or managing public property, but also taking advantage of the positional convenience of other state functionaries subordinate to one's position. In this case, it was precisely by taking advantage of the conveniences of his positions as a member of the Standing Committee of the Yiwu Municipal Committee, Deputy Director of the Standing Committee of the Yiwu Municipal People's Congress, and concurrent Commander of the headquarters that Yang Yanhu spoke to the personnel of the subordinate land confirmation and approval section and the deputy commander in charge, which enabled the falsely reported demolition and resettlement of Wang Yuefang and others to be realized.

Regarding the defense opinion of the defendant Yang Yanhu and others and their defenders that Wang Yuefang should have received land resettlement compensation, that the land involved was collective land, and that the crime of embezzlement could not be constituted: Upon examination, Wang Yuefang was a resident at the time of purchasing the house, and, under the provisions of law and the relevant Yiwu demolition and resettlement provisions, did not qualify as a demolition and resettlement object and did not have the qualification to obtain land confirmation. The house she purchased in Gonghe Village could neither obtain land confirmation nor receive demolition and resettlement compensation. Yang Yanhu and others knew that Wang Yuefang did not meet the demolition and resettlement conditions, yet took advantage of Yang Yanhu's positional convenience to fraudulently obtain the qualification for old-house demolition and resettlement and fraudulently obtain state-owned land confirmation by falsely reporting the house purchased by Wang Yuefang as her ancestral old house and fabricating the fact of family division between Wang Yuefang and Wang XX Xiang. At the same time, because Yang Yanhu took advantage of the convenience of his position, Yang Yanhu and Wang Yuefang and others engaged in fraud, which enabled Zhao XX, the owner of the old house purchased by Wang Yuefang, to receive land resettlement compensation as a person without a house, and also enabled Wang Yuefang, who should not have received land resettlement compensation, to receive it. Articles 2 and 9 of the Land Administration Law of the People's Republic of China provide that China's land is under socialist public ownership, namely ownership by the whole people and collective ownership by the working people, and may be lawfully allocated to units or individuals for use. The occupation, use, development, operation, transaction, and circulation of land can bring corresponding economic benefits. Therefore, land use rights naturally have property interests, and whether state-owned land or collective land, they all fall within the scope of "public property" in Article 382, paragraph 1 of the Criminal Law and may be the object of embezzlement. The resettlement land parcel under Wang Yuefang's name had been expropriated as state-owned and converted to construction land in August 2002, and the Yiwu Municipal Government's document transcript also expressly provided that the registration of the demolition and resettlement land use rights at the site would issue state-owned land use right certificates. Therefore, the defense opinion raised by Yang Yanhu and others and their defenders could not be established.

In summary, the defendant Yang Yanhu, as a state functionary, took advantage of the conveniences of his positions as a member of the Standing Committee of the Yiwu Municipal Committee, Deputy Director of the Standing Committee of the Yiwu Municipal People's Congress, and concurrent Commander of the International Trade City headquarters, and, together with the defendants Zheng Xinchao and Wang Yuefang, used means of fabricating facts to fraudulently obtain state-owned land use rights and illegally possess

public property. The conduct of the three defendants all constituted the crime of embezzlement. Yang Yanhu also took advantage of the convenience of his position to extort or accept bribes from others and seek benefits for others, which also constituted the crime of accepting bribes and should be punished for multiple offenses in accordance with the law. In the joint crime of embezzlement, Yang Yanhu played a principal role and was a principal offender, and should be punished according to all crimes in which he participated or which he organized and directed; Zheng Xinchao and Wang Yuefang played secondary roles and were accomplices, and should be given mitigated punishment. Therefore, the courts of first and second instance rendered the above judgments in accordance with the law.

Relevant Legal Provisions

Article 382, paragraph 1 of the Criminal Law of the People's Republic of China.

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