SPC Guiding Case No. 137: The People's Procuratorate of Jianchuan County, Yunnan Province v. Jianchuan County Forest Public Security Bureau (Environmental Administrative Public Interest Litigation for Failure to Perform Statutory Duties)

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 26, 2019.

Keywords

Administrative / environmental administrative public interest litigation / failure to perform statutory duties / standard of review

Holding

In environmental administrative public interest litigation, the people's court shall take the following as the standard for reviewing whether an administrative organ has performed its statutory duties: whether the unlawful acts of the counterpart have been effectively stopped, whether the administrative organ has sufficiently, promptly, and effectively taken statutory supervision measures, and whether the interests of the state or the public interest of society have been effectively protected.

Basic Facts

In January 2013, Wang Shouquan, a resident of Jianchuan County, was entrusted by Yuxin Company to excavate a road in a state-owned forest area, and was discovered and stopped by forest rangers of the Jianchuan County Hongqi Forestry Bureau. After receiving the report, the Jianchuan County Forestry Bureau handed the matter to the Jianchuan County Forest Public Security Bureau for investigation and handling. On February 20, 2013, the Jianchuan County Forest Public Security Bureau served Wang Shouquan a notice of the right to a hearing for the forestry administrative penalty, and on February 27 of the same year served Wang Shouquan the Forestry Administrative Penalty Decision Jian Lin Fa Shu Zi (2013) No. (288) of the Jianchuan County Forestry Bureau. The administrative penalty decision stated that, without having obtained lawful procedures for occupying forest land, Yuxin Company entrusted Wang Shouquan, between January 13 and 19, 2013, to use an excavator to open a road of 494.8 meters in length, 4.5 meters in average width, and 2,226.6 square meters in area, totaling 3.34 mu, between Compartments 21 and 22 of Forest Block 13. Pursuant to Article 43, paragraph 1 of the Implementation Regulations for the Forest Law of the People's Republic of China, it was decided to impose the following administrative penalties on Wang Shouquan and Yuxin Company: (1) ordering restoration of the original condition within a time limit; and (2) imposing a fine of RMB 10 per square meter of forest land whose use was unlawfully changed, amounting to RMB 22,266.00. After Yuxin Company paid the fine on March 29, 2013, the Jianchuan County Forest Public Security Bureau closed the case. Thereafter, until November 9, 2016, the Jianchuan County Forest Public Security Bureau did not urge Yuxin Company or Wang Shouquan to perform the administrative obligation of "restoring the original condition within a time limit," and the destroyed forest vegetation has still not been restored.

On November 9, 2016, the Jianchuan County People's Procuratorate issued a procuratorial recommendation to the Jianchuan County Forest Public Security Bureau, recommending that it perform its duties in accordance with law, earnestly implement the administrative penalty decision, and take effective measures to restore the forest vegetation. On December 8, 2016, the Jianchuan County Forest Public Security Bureau replied that, after receiving the Procuratorial Recommendation, it had immediately conducted careful study and taken active measures, and had dispatched police officers to Wang Shouquan's home to demand

performance of item 1 of Penalty Decision Jian Lin Fa Shu Zi (2013) No. (288), the order to restore the original condition within a time limit; given that Wang Shouquan had died, enforcement was terminated. As to Yuxin Company, the Jianchuan County Forest Public Security Bureau did not issue it a demand notice.

It was further established that the Jianchuan County Forest Public Security Bureau was a division-level institution under the Jianchuan County Forestry Bureau, and that in early 2013 the Jianchuan County Forestry Bureau authorized and entrusted it to handle all forestry administrative penalty cases within the county involving forestry and forest land. On September 27, 2013, the Yunnan Provincial People's Government, in its Reply on the Work Plan for the Relatively Centralized Exercise of Forestry Administrative Penalty Powers by the Forestry Departments of Yunnan Province, authorized forest public security organs at all levels to carry out the relatively centralized exercise of forestry administrative penalty powers throughout the province; on November 20 of the same year, with the authorization of the Yunnan Provincial People's Government, the Legislative Affairs Office of the Yunnan Provincial People's Government issued a public announcement on the units possessing the qualifications and powers of administrative law enforcement subjects of forest public security organs, and the Jianchuan County Forest Public Security Bureau was one of the units possessing the qualifications and powers of an administrative law enforcement subject; on December 11 of the same year, the Yunnan Provincial Forestry Department issued a notice deciding that, from January 1, 2014, forest public security organs at all levels would exercise in accordance with law 62 items of forestry administrative penalty powers and 11 items of administrative compulsory powers approved by the provincial government.

Judgment

On June 19, 2017, the Jianchuan County People's Court of Yunnan Province rendered Administrative Judgment (2017) Yun 2931 Xing Chu No. 1: (1) confirming that the defendant Jianchuan County Forest Public Security Bureau's failure to perform item 1 of Penalty Decision Jian Lin Fa Shu Zi (2013) No. (288) was unlawful; and (2) ordering the defendant Jianchuan County Forest Public Security Bureau to continue performing its statutory duties. After the judgment was pronounced, the parties accepted the judgment and ceased litigating; neither party appealed, the judgment has become legally effective, and the Jianchuan County Forest Public Security Bureau also actively performed the judgment.

Reasoning

The court in its effective judgment held that the public interest litigant's initiation of this lawsuit fell within the scope of administrative public interest litigation prescribed by the Implementation Measures of the Supreme People's Court for the Trial of Pilot Cases of Public Interest Litigation Brought by People's Procuratorates and the Implementation Measures of the Supreme People's Procuratorate for the Pilot Work of Public Interest Litigation Brought by People's Procuratorates, and satisfied the conditions for filing suit. Article 26, paragraph 6 of the Administrative Litigation Law of the People's Republic of China provides that "where an administrative organ has been abolished or its powers changed, the administrative organ that continues to exercise its powers shall be the defendant." On September 27, 2013, the Yunnan Provincial People's Government's Reply on the Work Plan for the Relatively Centralized Exercise of Forestry Administrative Penalty Powers by the Forestry Departments of Yunnan Province authorized forest public security organs at all levels to relatively centrally exercise part of the administrative penalty powers of the forestry administrative departments; therefore, pursuant to the provisions, the Jianchuan County Forest Public Security Bureau exercised the forestry administrative penalty powers formerly exercised by the Jianchuan County Forestry Bureau and was a proper defendant. In this case, after investigating and confirming the facts of Yuxin Company's and Wang Shouquan's unauthorized change of forest land use, the Jianchuan County Forest Public Security Bureau, in the name of the Jianchuan County Forestry Bureau, rendered an administrative penalty decision ordering Yuxin Company and Wang Shouquan to restore the original condition within a time limit and imposing a fine of RMB 22,266.00, which was in accordance with the law. However, in the more than three years after Yuxin Company paid the fine, it did not urge Yuxin Company or

Wang Shouquan to restore the destroyed forest land, nor did it perform the restoration on their behalf, so that the forest land unlawfully changed by Yuxin Company and Wang Shouquan has still not been restored; nor did it provide evidence to prove the existence of any lawful and reasonable cause. Its conduct was evidently improper and constituted a failure to perform its statutory duties. Since the administrative penalty decision had not been fully executed, the Jianchuan County Forest Public Security Bureau should, in accordance with law, continue to perform its statutory duties and take effective measures to urge the administrative counterparts to restore the changed forest land to its original condition within a time limit.

Relevant Legal Provisions

1. Articles 13 and 20 of the Forest Law of the People's Republic of China.
2. Article 43 of the Implementation Regulations for the Forest Law of the People's Republic of China.
3. Articles 70 and 74 of the Administrative Litigation Law of the People's Republic of China.

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the Supreme People's Court shall prevail. This translation does not constitute legal advice.