SPC Guiding Case No. 176: Yiyang Municipal People's Procuratorate, Hunan Province v. Xia Shun'an and Fourteen Others (Ecological Damage Civil Public Interest Litigation)

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 1, 2021.

Keywords

Civil / ecological damage civil public interest litigation / ecological environment restoration / liability for damage / full compensation / illegal sand mining

Holding

When trying environmental civil public interest litigation cases, the people's court shall implement the principles of liability for damage and full compensation. For illegal and criminal acts that damage the ecology, it shall not only pursue criminal liability in accordance with the law, but also pursue civil liability for ecological environment damage in accordance with the law. When determining the scope and losses of ecological environment damage caused by illegal sand mining, a comprehensive assessment and reasonable determination shall be made based on the damage to water environment quality, riverbed structure, water conservation, aquatic biological resources, and other aspects.

Basic Facts

From June to November 2016, Xia Shun'an and others, in order to seek illegal profits, respectively piloted the sand-mining vessels No. 158 Jiujiang Cai, No. 1168 Xiang Yuanjiang Cai, No. 999 Jiangsu-flagged, and other sand-mining vessels to the Xiasai Lake area of Dongting Lake, a non-planned area, to illegally mine sand, illegally profiting RMB 22.43333 million. The illegal sand mining of Xia Shun'an and others constituted the crime of illegal mining, which was found by relevant effective criminal judgments. In July 2019, the Yiyang Municipal People's Procuratorate of Hunan Province brought a civil public interest lawsuit, requesting an order that Xia Shun'an and others bear joint and several liability for compensation for the ecological environment damage caused by their illegal sand mining, and apologize. Upon appraisal by the Judicial Appraisal Center for Ecological Environment Damage of the Hunan Provincial Environmental Protection Science Research Institute, the impact of the illegal sand mining of Xia Shun'an and the other 15 persons on the ecological environment of the illegal sand mining area was divided into damage to water environment quality, damage to riverbed structure, damage to water conservation, and damage to aquatic biological resources. The total spatial scope of the ecological environment impact caused was approximately 99,000 square meters, of which the loss of aquatic biological resources caused was RMB 26,530, and the costs required to restore the damaged aquatic biological resources and the damaged riverbed structure and water conservation were RMB 79,690 and RMB 8.6561 million respectively, totaling RMB 8.73579 million.

Judgment

On June 8, 2020, the Yiyang Intermediate People's Court of Hunan Province rendered Civil Judgment (2019) Xiang 09 Min Chu No. 94: (1) Xia Shun'an and the other 15 persons privately mined state mineral resources, and their illegal sand mining seriously damaged the ecological environment of the sand mining area. Defendant Xia Shun'an was ordered to bear liability for compensation for the restoration costs of the original riverbed structure and water conservation of the sand mining waters caused by illegal sand mining in the amount of RMB 8.6561 million, and the restoration costs of aquatic biological resources of RMB 79,690, totaling RMB 8.73579 million in ecological environment restoration costs; (2) the other 14 defendants bore

joint and several liability within the range of RMB 8.24 million to RMB 38,000 respectively, based on their specific tortious acts; (3) Xia Shun'an and the other 15 persons shall publicly apologize in state-level media for their illegal mining. Defendant Wang Degui appealed. On December 29, 2020, the High People's Court of Hunan Province rendered Civil Judgment (2020) Xiang Min Zhong No. 1862: the appeal was dismissed and the original judgment affirmed.

Reasoning

The effective judgment of the court held: According to the provisions of the relevant laws and regulations on mineral resources in China, the mining of mineral resources must require a license applied for in accordance with the law and the acquisition of mining rights. The sand and gravel excavated by Xia Shun'an and the other 15 persons in the Xiasai Lake area were state mineral resources. According to the certificate of the Office of the Leading Group for Sand and Gravel Resource Mining Administration of Yuanjiang City, the "Situation Statement" of the Yiyang Municipal Water Affairs Bureau, the certificate of the Xiangyin County River Channel Sand and Gravel Comprehensive Law Enforcement Bureau, the certificate of the Yueyang Municipal River Channel Sand and Gravel Service Center, and in combination with the facts found by effective judgments in other cases and the statements of the defendants in court, it could be proved that the defendants had not lawfully obtained a license and had privately mined state mineral resources, which should be found to constitute illegal sand mining.

Illegal sand mining not only causes losses to state resources, but also causes damage to the ecological environment, resulting in losses to state interests and public social interests. Mineral resources have both economic attributes and ecological attributes. We should not only attach importance to the protection of the economic value of mineral resources, but also not neglect the relief of the ecological value of mineral resources. Illegal and criminal acts of illegal sand mining not only require criminal liability in accordance with the law, but also require civil liability for compensation for ecological environment damage in accordance with the law. The criminal and civil legal liability of illegal sand miners shall be pursued in accordance with the law, following the principles of "whoever pollutes shall clean up" and "whoever destroys shall bear responsibility."

In this case, the illegal sand mining and ecological damage acts of Xia Shun'an and the other 15 persons caused damage to the Dongting Lake ecosystem, specifically including the loss of abundant biological resources such as fish, shrimp and crabs, and soft-bodied animals such as snails and mussels, and seriously threatened the stability of the riverbed of Dongting Lake and flood control safety, and damaged the breeding and survival environment of aquatic biological resources. In order to ensure the scientific, comprehensive, and reasonable determination of the amount of ecological environment damage, the people's court entrusted qualified institutions to conduct judicial appraisal, and through judicial review of the ecological environment damage appraisal opinion, reasonably determined the compensation amount for ecological environment damage caused by the ecological damage acts. In this case, the people's court guided appraisal experts, in accordance with the principle of full compensation, to conduct a comprehensive appraisal of the damage caused by illegal sand mining to the riverbed of the sand mining area, water conservation, biological habitats, fish and shrimp biological resources, water environment quality, and other aspects, and quantified the degree of various losses based on indicators such as the total amount of sand extracted, expansion coefficient, density of loose sand in water, water content ratio, and the average fish resource yield of Dongting Lake. Although the defendants claimed that the damage to public interests was unrelated to them, the statements of the defendants in this case in court all acknowledged that they had carried out sand mining. Based on the facts found by effective judgments in other cases and the facts found in the trial, the sand mining carried out by the defendants was illegal, and the appraisal opinion clearly determined that the sand mining had caused damage to the ecological environment. Therefore, it was found that the defendants' sand mining had damaged the ecological environment resources. The defendants did not submit rebuttal evidence to overturn the appraisal opinion at issue, and after review, the various losses

Source: https://www.danyoungcpa.com/spc-guiding-case-176-china/

and restoration costs stated in the appraisal opinion were confirmed.

According to Article 64 of the Environmental Protection Law of the People's Republic of China, where damage is caused by environmental pollution and ecological destruction, tort liability shall be borne in accordance with the relevant provisions of the Tort Liability Law of the People's Republic of China. Article 8 of the Tort Liability Law of the People's Republic of China provides that where two or more persons jointly commit a tort causing damage to others, they shall bear joint and several liability. Article 20, paragraph 2 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases provides that the people's court may, while ordering the defendant to restore the ecological environment, determine the ecological environment restoration costs that the defendant shall bear if it fails to perform the restoration obligation; and may also directly order the defendant to bear the ecological environment restoration costs. Based on the facts found in the trial and the above legal provisions, Xia Shun'an and the other 15 persons, within the scope of the amount of illegal sand mining in which they respectively participated, constituted a joint tort, and should bear civil liability for joint and several compensation for ecological environment restoration costs within the scope of the amount of illegal sand mining in which they respectively participated.

Relevant Legal Provisions

Article 64 of the Environmental Protection Law of the People's Republic of China (2014 Amendment).

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.