SPC Guiding Case No. 178: Beihai Naizhi Marine Technology Co., Ltd. v. Beihai Municipal Ocean and Fisheries Bureau (Administrative Penalty)

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Keywords

Administrative / administrative penalty / illegal sea enclosure and reclamation / coastline protection / marine ecological environment / determination of joint violation / lighter or mitigated administrative penalty

Holding

1. Where an actor, without lawfully obtaining the right to use sea areas, engages in sea-use activities that, on the seaward side of the coastline, involve building embankments to enclose and partition sea areas by such means as leveling the site and constructing cofferdams for bank protection, filling the sea areas into land and forming an effective coastline, thereby changing the natural attributes of the sea areas, such activities may be found to constitute illegal sea enclosure and sea reclamation.

2. Where, within the same sea area, actors, in the absence of any common intent to commit a joint violation, successively engage in sea enclosure and sea reclamation through their own independent acts and cause different damage consequences, this does not constitute a joint violation. Where the administrative authority finds that the above acts of each actor constitute independent administrative violations and imposes independent administrative penalties on each actor, the people's court shall support it. Where there are two or more independent acts of illegal sea enclosure and sea reclamation in succession within the same sea area, each actor shall bear the corresponding administrative legal liability, and a subsequent illegal act shall not be subject to the relevant provisions on lighter or mitigated administrative penalties on account of a prior illegal act.

Basic Facts

Beihai Naizhi Marine Technology Co., Ltd. ("Naizhi Company") alleged that it had not engaged in sea enclosure or sea reclamation, and that the subject that carried out the acts was Beihai Yufeng Marine Aquaculture Co., Ltd. ("Yufeng Company"). Even if it were found to have engaged in illegal sea enclosure and sea reclamation, because it and Yufeng Company had occupied the sea area within the same sea area, all subjects that carried out the illegal acts should bear liability jointly, and a lighter or mitigated penalty should be imposed on it. The Beihai Municipal Ocean and Fisheries Bureau ("Ocean and Fisheries Bureau") imposed an administrative penalty on Naizhi Company of a fine equal to fifteen times the sea area use fee for illegally occupying and carrying out sea enclosure and sea reclamation of 0.38 hectares of sea area, which lacked a factual and legal basis and constituted a heavier penalty. Naizhi Company requested that the administrative penalty decision be revoked.

The Ocean and Fisheries Bureau argued that the on-site investigation records, photographs, and other evidence confirmed that Naizhi Company had carried out sea reclamation, and that it had separately investigated and dealt with the illegal acts of Naizhi Company and Yufeng Company, with the determination of the fine to be paid by Naizhi Company being in compliance with legal provisions.

After trial, the court found: On June 1, 2013, Yufeng Company signed a "Rural Land Lease Contract" with the Shitoubu Village Group of Xinggang Town, Tieshangang District, Beihai City, providing that the Shitoubu

Village Group would lease to Yufeng Company an open space by the sea in Shitoubu Village for management and use. The plot was located by the sea in Shitoubu Village, with a typhoon shelter on the left and the Beilin Wharf on the right, level with the sea embankment road, 100 meters along the street side, 145 meters deep toward the sea, totaling 21.78 mu, to be used as a seafood freezing site. The actual location of the seaside open space involved in the contract was outside the coastline. From July to September of the same year, Yufeng Company hired others to pump sea sand into the sea area at issue, forming sand piles. On May 12, 2016, Naizhi Company signed a "Land Contracting Contract Transfer Agreement" with Yufeng Company, by which Naizhi Company acquired Yufeng Company's rights under the original contract. From July to September of the same year, Naizhi Company, without lawfully obtaining the right to use the sea area, used machinery and vehicles to bring in soil and construction waste from outside to level the leased seaside open space (in fact a tidal flat), built a temporary wharf, formed land, and prepared to build a freezing plant.

In October 2017, the Ocean and Fisheries Bureau filed a case to investigate and deal with the sea enclosure and reclamation construction, and determined that the area of sea filled and occupied by Naizhi Company was 0.38 hectares. After hearing Naizhi Company's statements and defense opinions, holding a hearing, and conducting two joint reviews, the Ocean and Fisheries Bureau issued Administrative Penalty Decision Bei Hai Yu Chu Fa [2017] No. 09, imposing the following administrative penalty on Naizhi Company: it was ordered to return the illegally occupied sea area, restore the original condition of the sea area, and was fined RMB 2.5677 million, equal to fifteen times the sea area use fee payable for the sea area during the period of illegal occupation. Naizhi Company refused to accept the decision and brought an administrative lawsuit, requesting that the administrative penalty decision be revoked.

Judgment

On September 17, 2018, the Beihai Maritime Court rendered Administrative Judgment (2018) Gui 72 Xing Chu No. 2, dismissing the litigation claims of Plaintiff Naizhi Company. After the judgment was pronounced, Naizhi Company appealed. On June 26, 2019, the High People's Court of Guangxi Zhuang Autonomous Region rendered Administrative Judgment (2018) Gui Xing Zhong No. 1163: the appeal was dismissed and the original judgment affirmed.

Reasoning

The effective judgment of the court held: The seaside open space occupied by Naizhi Company was on the seaward side of the coastline (natural coastline), and was in fact a tidal flat. Its company used its own loaders, excavators, and other machinery to bring in soil and construction waste from outside to level and fill the sand piles formed by Yufeng Company's hydraulic filling, forming a temporary wharf, and also newly filled part of the sea area to the southwest of the temporary wharf, and built sandbag cofferdams and bank protection facilities on the seaward side to the north of the temporary wharf. The above acts of leveling and filling the site and constructing cofferdams for bank protection caused the natural attributes of the sea area to change and formed an effective coastline, and belonged to sea enclosure and sea reclamation. Naizhi Company had not obtained the lawful right to use the 0.38 hectares of sea area at issue, and carried out sea enclosure and sea reclamation in that area, constituting illegal sea enclosure and sea reclamation.

Both Yufeng Company and Naizhi Company carried out certain sea enclosure and sea reclamation activities in the sea area at issue, but their illegal acts were separable and independent, and did not constitute a joint illegal act. First, Yufeng Company and Naizhi Company neither had common intent to commit a joint violation nor jointly carried out the illegal acts. Analyzed from the perspective of time, Yufeng Company hired others to pump sea sand into the sea area at issue from July to September 2013, forming sand piles. Naizhi Company, however, acquired Yufeng Company's rights under the original contract by signing a transfer agreement on May 12, 2016, and leveled the site of the sea area at issue and built a temporary wharf from July to September 2016, forming land. The sea enclosure and sea reclamation activities of the two were far apart in time and mutually independent, without any circumstances of mutual cooperation. Second, the

nature of the violations of Yufeng Company and Naizhi Company was different. Yufeng Company merely pumped sea sand into the sea area at issue, forming sand piles, and the degree of its violation was relatively light. Naizhi Company, however, had already constructed cofferdams and leveled the site of the sea area at issue, built a temporary wharf, and formed land, and the circumstances of its violation were more serious and its nature more egregious. Third, the damage consequences caused by the acts of Yufeng Company and Naizhi Company were different. Yufeng Company's acts had not yet completely changed the marine environment of the sea area at issue, whereas Naizhi Company's construction of cofferdams and leveling of the site, establishment of a temporary wharf, and formation of land had completely changed the marine ecological environment of the sea area at issue, constituting illegal sea enclosure and sea reclamation, with more serious damage consequences. The Ocean and Fisheries Bureau's determination that the illegal acts of Naizhi Company and Yufeng Company were mutually independent and its separate filing of cases against them had a factual and legal basis and was not improper. Naizhi Company's claim that the Ocean and Fisheries Bureau had engaged in selective enforcement and its defense that Yufeng Company should bear liability jointly with it could not be established.

After being investigated and dealt with, Naizhi Company did not proactively take measures to mitigate or eliminate the harmful consequences of its sea enclosure and reclamation, and there was no circumstance for a lighter or mitigated penalty. Therefore, Naizhi Company's claim for a lighter or mitigated administrative penalty lacked a legal basis. Naizhi Company leveled and enclosed and filled the sea area at issue, occupying and filling an area of 0.38 hectares, and its acts changed the natural attributes of the sea area, formed land, and caused adverse effects on the offshore ecology. The Ocean and Fisheries Bureau, pursuant to Article 42 of the Sea Areas Administration Law, which provides for "a fine of not less than ten times and not more than twenty times the sea area use fee payable for the sea area during the period of illegal occupation," decided to impose a penalty at fifteen times, which did not violate the relevant provisions of the Administrative Penalty Law on the application of administrative penalties, and was consistent with the "general penalty" within the range of administrative penalties under the Several Opinions of the China Marine Surveillance Corps on Further Regulating the Exercise of Discretion in Marine Administrative Penalties; it was not a heavier penalty. The decision to impose a fine of RMB 2.5677 million was based on clearly found facts, and the application of law was not improper.

Relevant Legal Provisions

Article 32 of the Administrative Penalty Law of the People's Republic of China (2021 Amendment) (the case applied Article 27 of the Administrative Penalty Law of the People's Republic of China, 2017 Amendment).

Article 42 of the Sea Areas Administration Law of the People's Republic of China.

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