SPC Guiding Case No. 206: Fourth Branch of Beijing Municipal People's Procuratorate v. Zhu Qingliang and Zhu Qingtao (Environmental Pollution Civil Public Interest Litigation)

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

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Keywords

Civil / environmental pollution civil public interest litigation / soil pollution / compensation for loss of ecological environment functions / ecological environment restoration / assessment of restoration effect

Holding

1. Where two or more infringers separately commit acts of polluting the environment or damaging the ecology causing the same damage, and the act of each infringer of polluting the environment or damaging the ecology is insufficient to cause the entire damage, and, after some infringers have performed the entire restoration obligation in accordance with the overall restoration requirements determined by the restoration plan, they request that the restoration expenses paid on behalf of the other infringers be offset against the compensation for the loss of ecological environment service functions that they should bear, the people's court shall uphold such request.

2. With respect to the ecological environment restoration project implemented by the infringer, an assessment of the restoration effect shall be conducted. Where, upon assessment, the service functions of the damaged ecological environment have been restored, it may be determined that the infringer has performed its ecological environment restoration liability.

Basic Facts

From October to December 2015, Zhu Qingliang and Zhu Qingtao illegally mined 89,370.8 cubic meters of construction sand within their contracted land, worth RMB 4,468,540. Upon appraisal, the land cover type of the land illegally mined by Zhu Qingliang and the other was orchard, the original soil of the plot had been lost, the original ecosystem had been completely destroyed, and the ecosystem service capacity was seriously damaged, confirming the existence of ecological environment damage. The appraisal institution determined the ecological environment damage restoration plan to be to restore the damaged plot to garden and forest land, backfill the missing soil in the plot with borrowed soil, backfill ordinary soil in the lower layer, and cover the surface with 60 centimeters of planting soil, so that the plot would again have the conditions for planting fruit trees. The restoration project expenses were assessed and calculated as RMB 2,254,578.58. The Fourth Branch of the Beijing Municipal People's Procuratorate initiated an environmental civil public interest lawsuit on the ground that Zhu Qingliang and Zhu Qingtao's illegal mining caused soil damage, damaged the ecological environment, and harmed the public interest (the criminal part of this case was tried in a separate case).

On June 24, 2020, Zhu [X], the agent of Zhu Qingliang and Zhu Qingtao, signed an ecological environment restoration commitment letter, committing to carry out restoration work in accordance with the ecological environment restoration plan. The restoration project began on June 25, 2020 and was completed on October 15, 2020. On October 15, 2020, the relevant units of Fangshan District, Beijing, conducted an on-site inspection of the construction quality of the restoration project, and all considered that the restoration project was lawful and compliant, that the construction was carried out safely and in an orderly manner, that

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no safety or environmental pollution problems occurred during construction, and that the construction procedures and project quality all met the requirements of the restoration plan. The construction process strictly followed the various specific requirements of the ecological environment restoration plan, the quality of the backfilled soil met the standards, the plot was restored and leveled, and the surface was covered with more than 60 centimeters of planting soil, so that it again had the conditions for planting fruit trees.

Within the land in issue, there existed 21,392.1 cubic meters of waste soil dumped by unidentifiable others. In the process of performing the restoration, Zhu Qingliang and Zhu Qingtao paid project expenses of RMB 754,000 for the environmental cleanup of this waste soil.

Judgment

On December 21, 2020, the Beijing Fourth Intermediate People's Court rendered Civil Judgment (2020) Jing 04 Min Chu No. 277: (1) Zhu Qingliang and Zhu Qingtao shall bear civil liability for restoring the original state of the ecological environment damage to the 14,650.95 square meters of land west of Zhugangzi Village, Changyang Town, Fangshan District, Beijing, caused by them, confirming that Zhu Qingliang and Zhu Qingtao had, in accordance with the restoration plan determined in the Appraisal and Assessment Report on the Ecological Environment Damage in the Case of Zhu Qingliang and Others Illegally Mining Sand and Gravel in Fangshan District, restored the damaged ecological environment to its state and functions before the damage occurred (already performed in full); (2) Zhu Qingliang and Zhu Qingtao shall compensate the loss of service functions of RMB 652,896.75 during the period from the damage to the ecological environment until the restoration of the original state; and the expenses of RMB 754,000 paid by Zhu Qingliang and Zhu Qingtao for handling the construction waste on the plot in issue in performing the restoration obligation in item 1 of this judgment shall be offset against the loss of service functions of RMB 652,896.75 that they should compensate during the period from the damage to the ecological environment until the restoration of the original state; (3) Zhu Qingliang and Zhu Qingtao shall, within seven days after the judgment took effect, pay the appraisal fees of RMB 115,000 to the Fourth Branch of the Beijing Municipal People's Procuratorate; and (4) Zhu Qingliang and Zhu Qingtao shall publicly apologize to the public in a nationally publicly distributed media, with the content of the apology and the media, layout, and font to be reviewed by this court; Zhu Qingliang and Zhu Qingtao shall submit the apology to this court within fifteen days after the judgment took effect, and publish it within thirty days after approval; where they fail to perform the above obligations, this court shall select media to publish the main contents of the judgment, with the expenses incurred to be borne by Zhu Qingliang and Zhu Qingtao. After the judgment, neither party appealed.

Reasoning

The court's effective judgment held that the illegal mining acts of Zhu Qingliang and Zhu Qingtao caused ecological environment damage, infringed the lawful rights and interests of an unspecified majority of people, harmed the public interest, and constituted environmental civil infringement. Zhu Qingliang and Zhu Qingtao, as the actors of illegal mining, violated their statutory obligation to protect the environment and should bear civil liability for the ecological environment damage caused.

I. On whether the defendants' expenses for handling the waste soil dumped by others could be offset against the ecological function loss compensation expenses

From the perspective of environmental law, the ecological environment has functions such as supply services, regulating services, cultural services, and supporting services. Damage to the ecological environment will lead to the reduction or loss of its functions of providing the above services to the public or other ecosystems. Zhu Qingliang and Zhu Qingtao illegally mined on their leased forest-fruit land, causing soil damage to the plot, which was an act of damaging the ecological environment and harming the public interest, and they should also compensate the loss of service functions during the period from the damage to the ecological environment until the restoration of the original state. Based on the assessment opinion on the

loss of ecological service value in the appraisal and assessment report, the amount of the service function loss compensation that Zhu Qingliang and Zhu Qingtao should bear was determined to be RMB 652,896.75. Article 24, paragraph 1 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 ecological environment restoration expenses borne by the defendant as ordered by the people's court, the loss of service functions during the period from the damage to the ecological environment until the restoration of the original state, and other funds shall be used to repair the damaged ecological environment. Therefore, the funds borne by the defendants for the loss of service functions during the period from the damage to the ecological environment until the restoration of the original state should be specifically used for the environmental restoration and governance of this case or for the restoration and governance of the public ecological environment elsewhere. When Zhu Qingliang and Zhu Qingtao carried out ecological restoration of the land in issue, there also existed waste soil dumped by unidentifiable others on the land. The illegal mining acts of Zhu Qingtao and Zhu Qingliang caused the loss of the original soil of the damaged plot and changes in the physical structure of the soil, while the act of others dumping waste soil would cause changes in soil nutrients, and the superimposition of the two infringement acts caused the current soil ecological environment damage. In order to comprehensively and promptly restore the ecological environment, Zhu Qingliang and Zhu Qingtao, in accordance with the requirement of the restoration plan for the overall restoration of the plot in issue, cleaned up the waste soil dumped in the environment and actually paid RMB 754,000 for this, which was an active restoration and governance of the environment in issue, and this was consistent with the purpose and effect of the defendant bearing ecological function loss compensation liability as prescribed by law and judicial interpretation. At the same time, while bearing restoration liability, the infringers actively took measures to repair and govern the consequences caused by others' damage to the environment, which was beneficial to ecological environment protection and could better reflect the characteristics of promptly optimizing the ecological environment in terms of restoration effect and comprehensive governance. Therefore, comprehensively considering the functional purposes of the two expenses and the actual effect of the specific execution of the compensation expenses, the expenses of Zhu Qingliang and Zhu Qingtao for cleaning up the environment where waste soil was dumped could be offset against the ecological function loss compensation expenses that Zhu Qingliang and Zhu Qingtao needed to bear.

II. On the assessment of the effect of the ecological restoration carried out by the defendants on their own during the litigation

Zhu Qingliang and Zhu Qingtao proactively performed their environmental restoration obligations during the litigation, and from June 25 to October 15, 2020, carried out backfill restoration of the plot in issue in accordance with the ecological environment restoration plan stated in the commitment letter. In accordance with Article 9 of the Several Provisions of the Supreme People's Court on the Trial of Ecological Environment Damage Compensation Cases (for Trial Implementation), incident investigation reports, inspection reports, monitoring reports, assessment reports, monitoring data, and other materials formed by the department with the duty of supervising and administering the protection of relevant environmental resources, or by institutions entrusted by it, in the process of administrative law enforcement, may be used as the basis for finding the facts of the case after cross-examination by the parties and where they meet the evidence standards. In this case, the relevant units of Fangshan District, Beijing, actively performed their environmental supervision and administration duties, supervised the process of the ecological restoration project implemented by the defendants on their own, and issued corresponding acceptance opinions, which fell within the scope of their duties and reflected their professional judgment ability. The acceptance opinions jointly issued by the relevant units could serve as an important basis for finding that the quality of the ecological restoration project implemented by the parties on their own met the standards. At the same time, the appraisal institution, on this basis, conducted an effect assessment of the restoration project and confirmed that the soil of the damaged plot in issue had been restored to the baseline level, based on which

it could be determined that the infringers had performed their ecological environment restoration liability.

Relevant Legal Provisions

Articles 1167 and 1229 of the Civil Code of the People's Republic of China (the case applied Articles 21 and 65 of the Tort Liability Law of the People's Republic of China, effective July 1, 2010).

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