SPC Guiding Case No. 207: Nanjing Municipal People's Procuratorate v. Wang Yulin (Ecological Damage 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 / ecological damage civil public interest litigation / illegal mining / ecological environment damage / overall determination of losses / systematic protection and restoration

Holding

1. In trying environmental civil public interest litigation cases, the people's court shall adhere to the integrated protection and systematic governance of mountains, waters, forests, farmlands, lakes, grasslands, and sand. With respect to ecological environment damage caused by illegal mining, it shall not only determine the loss of the mountain body (mineral resources), but also make an overall determination of the damage to the ecological environment elements of the mining area, such as forests and grasslands, water and soil, biological resources, and their habitats.

2. In trying environmental civil public interest litigation cases, the people's court shall attach great importance to improving the pertinence and effectiveness of ecological environment restoration, and may, when ordering the infringer to bear ecological environment restoration expenses, determine the specific direction of use of the restoration expenses in conjunction with the basic ecological environment restoration plan and the biodiversity restoration plan.

Basic Facts

From 2015 to 2018, Wang Yulin, in violation of the state's legal provisions on the administration of mineral resources and without obtaining a mining permit, used machinery to illegally mine more than 100,000 tons in total of marl, shale, and other materials within the old mine adit of the former Shanshan Second Mine of Laoshan Forest Farm in Yongning Town, Pukou District, Nanjing City, and outside the red line of the construction of Beiyanshan Avenue. The Pukou District People's Procuratorate of Nanjing City initiated a public prosecution against Wang Yulin and others for the crime of illegal mining before the Xuanwu District People's Court of Nanjing City. During the trial of that case, Wang Yulin had returned RMB 4,455,998.6 in ore resource funds. In March and August 2020, the Jiangsu Provincial Academy of Environmental Sciences successively issued the Ecological Environment Damage Assessment Report on the "Illegal Mining Case of Wang Yulin and Others in Pukou District, Nanjing City" (the "Assessment Report") and the Supplementary Explanation on Ecological Environment Damage (Animals) in the "Illegal Mining Case of Wang Yulin and Others in Pukou District, Nanjing City" (the "Supplementary Explanation"). The Nanjing Municipal People's Procuratorate, considering that Wang Yulin's illegal mining caused damage to national mineral resources and the ecological environment and harmed the public interest, initiated the present lawsuit, requesting an order that Wang Yulin bear tort liability for ecological damage and compensate ecological environment damage restoration expenses of RMB 1,893,112 (specifically including: 1. the direct economic loss of trees in the loss of ecological resources of RMB 861,750; 2. the loss of ecosystem functions: the loss of forest water conservation of RMB 440,233; the loss of water and soil erosion of RMB 50,850; the loss of soil erosion of RMB 81,360; the loss of reduced oxygen release by trees of RMB 64,243; the ecological value loss of birds of RMB 243,122; and the loss of the service value of mammal habitats of RMB 18,744; and 3.

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the value loss of biodiversity during the restoration period of RMB 132,810) and transactional expenses of RMB 400,000, and proposed a corresponding restoration plan.

Judgment

On December 4, 2020, the Nanjing Intermediate People's Court of Jiangsu Province rendered Civil Judgment (2020) Su 01 Min Chu No. 798: (1) defendant Wang Yulin shall bear compensation liability for the ecological resource loss of RMB 1,893,112 caused by his illegal mining (already paid), of which RMB 1,498,436 shall be used for the ecological restoration project of the Shanshan Second Mine in Nanjing City and the geological hazard treatment project at the intersection of the Daqiao Forest Farm in Yongning Subdistrict, Pukou District, Nanjing City, and RMB 394,676 shall be used for the restoration and protection of biodiversity in the above areas; and (2) defendant Wang Yulin shall bear transactional expenses such as damage assessment of RMB 400,000 (already paid), which shall be transferred to the Nanjing Municipal People's Procuratorate within ten days after the judgment took effect. After the judgment, neither the Nanjing Municipal People's Procuratorate nor Wang Yulin appealed, and the judgment became legally effective.

Reasoning

The court's effective judgment held that illegal mining causes compound harm to ecological resources. Illegal open-pit mining along the Yangtze River coast not only causes losses to national mineral resources, but also inevitably causes damage to the ecological environment and losses of ecological elements in the mining area. The environment and organisms, and organisms and organisms, coexist in coordination, influence and depend on each other, and form a dynamic balance. The damage to one ecological element will inevitably have an adverse impact on multiple elements of the entire ecosystem. Illegal mining will directly cause the destruction of vegetation and soil in the mining area; the damage to the mountain body affects the accumulation of forests and grasslands; the reduction of forests and grasslands affects water and soil conservation; and the damage to the above ecological elements will, directly and indirectly, affect the habitats of birds and other animals, causing the overall damage of the ecosystem and the reduction of biodiversity. The systematic damage to the ecological interests of natural elements will ultimately inevitably affect human production and life and the realization of a beautiful ecological environment. Defendant Wang Yulin, in violation of the provisions of the Mineral Resources Law, carried out illegal mining without obtaining a mining permit, causing damage to the ecological environment, and had subjective fault. There was a causal relationship between the illegal mining and the ecological environment damage, and he should bear compensation liability for the ecological environment damage consequences caused by his acts in accordance with Article 6 of the Tort Liability Law of the People's Republic of China.

I. On the calculation of ecological environment damage

(I) The calculation of the economic loss of ecological resources was reasonable

Illegal mining would inevitably cause serious damage to the vegetation of the mined area, and the restoration of the damaged mountain body and the restoration of the natural forest land both require a reasonable period, that is, a relatively long period of time before the ecological service function level of the forest land can be restored. Therefore, the Assessment Report's use of forest land with a 20-year growth period as a reference for calculation was reasonable to a certain extent, and the explanation of the producers of the Assessment Report regarding the calculation of the economic loss of trees was scientific. Therefore, the economic loss of trees of RMB 861,750 caused by the illegal mining should be determined in accordance with law.

(II) The calculation of the ecological value loss of birds was appropriate

Forest resources provide habitats and food sources for birds. Bird populations maintain the integrity of the food chain and the smooth progress of the nutrient cycle. The destruction of habitats will inevitably lead to the migration of forest birds or the breakage of the food chain. Once the integrity of the food chain is

damaged, it will inevitably have serious consequences for the entire forest ecosystem. The Supplementary Explanation stated that the two illegal mining sites were the main habitats and suitable habitats of forest bird populations, and that the illegal mining caused serious damage to the bird habitats, thereby inevitably producing losses in the benefits of seed dispersal and soil improvement. Birds are the main dispersers and predators of seeds, and can carry or swallow plant seeds, which is conducive to the natural succession of secondary forests in the ecosystem; at the same time, the virtuous cycle of secondary forests and primary forest systems also provides shelter for the natural habitats of birds and has positive significance for the dispersal of plant seeds. The producer of the Supplementary Explanation gave a detailed explanation of the loss of seed dispersal by birds caused by illegal mining from the perspective of ecosystem integrity and interspecies ecological balance, and the explanation was scientific and reasonable. Therefore, the ecological value loss of birds of RMB 243,122 caused by the illegal mining should be determined.

(III) The loss of the service value of mammal habitats objectively existed

Forest ecosystems are an important component of terrestrial ecosystems and are also one of the main habitats for the reproduction and survival of mammals. Mammals not only play an important role in maintaining ecosystem balance, but can also regulate plant competition, maintain the species diversity of the system, and participate in the cycle of matter and energy, and are the most fundamental driving force for changing the configuration of the various components within the ecosystem. Although the value of the damage to the ecological environment of habitats cannot be quantified due to objective factors, the illegal mining caused damage to the mountain body and destruction of vegetation, causing serious impact on the transit of mammals, and the loss of the service value of mammal habitats objectively existed. In conjunction with the actual situation that the illegal mining area in issue was located at the mine adit and the intersection of the forest farm road, and comprehensively considering objective factors such as the vegetation coverage rate of the above areas and the relatively small number of species and quantity of mammals in the two areas caused by the impact of human activities, the plaintiff in the public interest litigation’s claim to calculate the loss of the service value of mammal habitats as RMB 18,744 at 1% of the other ecological environment losses of RMB 1,874,368 had a certain reasonableness and should be upheld in accordance with law.

II. On ecological environment restoration

The concept of restorative justice requires that the damaged ecological environment be effectively repaired in practice. Systematic protection requires all-round, full-territory, and full-process protection of various ecological elements, and the restoration of losses caused by ecological damage should also comprehensively consider, from a systemic perspective, the actual impact suffered by different ecological elements, focusing on systematically carrying out ecological environment restoration from the source, focusing on the effective play of the ecological interests of natural elements, and providing practical and effective protection for the ecosystem of the Yangtze River basin. Given that the illegal mining caused serious damage to the ecological environment, measures should be taken to eliminate the hidden danger of geological disasters in the damaged mountain body, and, from the perspective of restoring its ecological environment functions as much as possible, an overall analysis and judgment should be made in conjunction with the actual development needs of the economy, society, and humanities.

The restoration plan in issue covered multiple aspects of ecological restoration and governance, such as mountain body restoration, vegetation replanting, and green space leveling, fully considered the functional positioning of the ecological environment structure of the area where it was located, embodied the concept of strengthening the coordinated governance of various ecological elements such as mountains, waters, forests, farmlands, lakes, grasslands, and sand, and had been demonstrated by the court’s technical consultants, with scientific conclusions and feasible methods. Of the ecological environment loss expenses compensated by Wang Yulin, those falling within the scope of improving the damaged natural environment and restoring and maintaining the normal ecological functions of ecological environment elements could be used for the ecological restoration project at the place where the infringement occurred and for geological

hazard treatment projects. In this case, biological habitats were also important targets of ecological protection and restoration, and the losses caused by the impact on biodiversity, namely the ecological value loss of birds, the loss of the service value of mammal habitats, and the biodiversity value restoration expenses during the restoration period, fell within the scope of biodiversity restoration considerations, and could be used for the restoration and protection of biodiversity at the place where the infringement occurred after the completion of the basic restoration project.

In summary, the court ultimately ordered Wang Yulin to bear compensation liability for the ecological resource losses caused by his illegal mining, and specified in the main text of the judgment the direction of use of the expenses for projects such as ecological restoration and geological treatment and for biodiversity protection.

Relevant Legal Provisions

Article 64 of the Environmental Protection Law of the People's Republic of China.

Article 1165 of the Civil Code of the People's Republic of China (the case applied Article 6 of the Tort Liability Law of the People's Republic of China, effective July 1, 2010).

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