SPC Guiding Case No. 209: Suichang County People's Procuratorate v. Ye Jicheng (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 litigation / ecological damage civil public interest litigation / restorative justice / preliminary execution

Holding

The core concept of ecological restorative justice is to promptly repair the damaged ecological environment and restore its ecological functions. Where ecological environment restoration is time-sensitive, seasonal, and urgent, and failure to repair immediately will cause the ecological environment damage to expand, this falls within the circumstance of "needing preliminary execution due to an emergency" prescribed in Article 109, item 3 of the Civil Procedure Law of the People's Republic of China, and the people's court may rule to grant preliminary execution in accordance with law.

Basic Facts

In early November 2018, defendant Ye Jicheng hired others to clear dead pine trees on the mountain site behind Longtan Village, Miaogao Subdistrict, Suichang County, Zhejiang Province, within the scope of Longtan Village (locally named "Longtan Bay"), during which he indiscriminately felled 89 live pine trees. Upon appraisal, the standing timber volume indiscriminately felled by Ye Jicheng was 22.9964 cubic meters, equivalent to 13.798 cubic meters of timber, and the mountain site where the incident occurred belonged to a national Grade III public welfare forest. According to the restoration opinion issued by a forestry expert, Ye Jicheng should replant 1,075 container seedlings of 2- to 3-year-old broad-leaved trees such as Schima superba and sweetgum at the mountain site in issue. The Suichang County People's Procuratorate of Zhejiang Province considered that there was no need to pursue Ye Jicheng's criminal liability, and made a decision not to prosecute in July 2019. However, Ye Jicheng's act of indiscriminately felling trees on the public welfare forest mountain site caused forest resource losses and damaged the ecological environment, so the procuratorate initiated an environmental civil public interest lawsuit on March 27, 2020. Because the spring greening and afforestation work in Suichang County was about to end, the plaintiff in the public interest litigation, while initiating the lawsuit, filed an application for preliminary execution, requesting that Ye Jicheng complete the replanting in situ in accordance with the expert restoration opinion mentioned above. Later, because the time for planting broad-leaved trees such as Schima superba and sweetgum had passed and it was difficult to purchase seedlings, a forestry expert conducted a new restoration assessment and determined that, calculated on the basis of the value of the damaged trees in issue and the replanting expenses of RMB 9,658.4, a total of 1,288 seedlings of 1- to 2-year-old Chinese fir needed to be replanted. The procuratorial organ accordingly changed its litigation claims and the preliminary execution application on April 2, 2020, requesting that Ye Jicheng carry out replanting in accordance with the newly issued restoration opinion.

Judgment

On March 31, 2020, the Lishui Intermediate People's Court of Zhejiang Province rendered Ruling (2020) Zhe 11 Min Chu No. 35, granting preliminary execution and requiring defendant Ye Jicheng to complete the replanting and re-greening work at the mountain site where the incident occurred and its surrounding areas

within thirty days after receiving the ruling. Ye Jicheng, in accordance with the changed restoration opinion, completed the replanting on April 7, 2020, and the Suichang County Natural Resources and Planning Bureau of Zhejiang Province conducted the acceptance inspection on the same day.

On May 11, 2020, the Lishui Intermediate People's Court of Zhejiang Province rendered Judgment (2020) Zhe 11 Min Chu No. 35: (1) defendant Ye Jicheng shall, within thirty days after receiving the civil ruling (2020) Zhe 11 Min Chu No. 35 of this court, replant 1,288 seedlings of 1- to 2-year-old Chinese fir at the "Longtan Bay" mountain site, continuously tend them for three years (until April 7, 2023), with a survival rate of no less than 95% in the year of planting and no less than 90% after three years; and (2) where defendant Ye Jicheng fails to perform the obligations determined in item 1 of this judgment, he shall bear ecological function restoration expenses of RMB 9,658.4. After the judgment was pronounced, neither party appealed, and the judgment became effective.

Reasoning

The court's effective judgment held that the restoration of the forest ecological environment requires consideration of factors such as the solar terms and the planting climate. If restoration measures are not taken in a timely manner to replant seedlings, it will not only increase restoration costs and affect the restoration effect, but will also cause the loss of service functions during the period from the damage to the ecological environment until the completion of restoration to further expand. Ye Jicheng's act of indiscriminately felling trees and damaging the ecological environment was clear and definite, while at that time it was a favorable opportunity for afforestation, and timely replanting of seedlings was conducive to the survival of the newly planted trees and the timely and effective restoration of the ecological environment. Based on the seasonal requirements for the replanting of seedlings in issue and the urgency of restoring the ecological environment, this case met the circumstance of needing preliminary execution due to an emergency prescribed in Article 106, item 3 of the Civil Procedure Law of the People's Republic of China, so the preliminary execution application of the plaintiff in the public interest litigation was granted.

Forest land is an important component of forest resources and the foundation of forestry development. The protection of forest land resources is an important link in the construction of ecological civilization and plays an important role in responding to global climate change and improving the ecological environment. Defendant Ye Jicheng, in violation of Articles 23 and 32 of the Forest Law of the People's Republic of China, without permission, indiscriminately felled a relatively large number of trees on the public welfare forest mountain site, damaging forestry resources and the ecological environment and causing damage to the public interest, and should bear corresponding environmental tort liability. Taking into account all the facts of the case and the appraisal and assessment opinions, the people's court upheld the plaintiff's claim requiring Ye Jicheng to bear ecological environment restoration liability.

Relevant Legal Provisions

Article 109 of the Civil Procedure Law of the People's Republic of China (the case applied Article 106 of the Civil Procedure Law of the People's Republic of China, amended June 27, 2017).

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