SPC Guiding Case No. 21: Inner Mongolia Qiushi Real Estate Development Co., Ltd. v. the Civil Air Defense Office of Hohhot City (Civil Air Defense Administrative Levy)

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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 November 8, 2013.

Keywords

Administrative / civil air defense / administrative levy / civil air defense basement / off-site construction fee

Holding

Where a construction unit violates the Civil Air Defense Law and relevant provisions and fails to construct a civil air defense basement that should be constructed, this constitutes an unlawful act of failing to perform a statutory obligation. A construction unit that is required by law to pay the off-site construction fee for a civil air defense basement is not eligible for the provision that "all administrative and institutional charges such as urban infrastructure supporting fees are exempted" applicable to affordable housing construction projects such as low-rent housing and economically affordable housing.

Basic Facts

On September 10, 2008, the defendant, the Civil Air Defense Office of Hohhot City ("the Hohhot Civil Air Defense Office"), served on the plaintiff, Inner Mongolia Qiushi Real Estate Development Co., Ltd. ("Qiushi Real Estate"), a "Notice to Complete the 'Jiejian' Approval Procedures Within a Time Limit," informing Qiushi Real Estate that the newly built economically affordable housing residential community "Qiushi First City" project had not, in accordance with Article 22 of the Civil Air Defense Law of the People's Republic of China and Articles 45 and 47 of the Provisions on the Administration of Civil Air Defense Engineering Construction, simultaneously built a basement usable for air defense in wartime, and requiring Qiushi Real Estate to complete the "Jiejian" procedures with the Hohhot Civil Air Defense Office before September 14 and submit relevant materials. On June 18, 2009, the Hohhot Civil Air Defense Office issued to Qiushi Real Estate the "Decision of the Civil Air Defense Office of Hohhot City on Levying the Off-site Construction Fee for the Civil Air Defense Basement" No. Hu Ren Fang Zheng Fei Zi (001), deciding to levy an "off-site construction fee for the civil air defense basement" of RMB 1,724,600 on the "Qiushi First City" project. Qiushi Real Estate had no objection to the fact that the "Qiushi First City" project should have constructed a 5,518-square-meter civil air defense basement but did not, and had no objection to the legality of the procedure by which the Hohhot Civil Air Defense Office rendered the levy decision.

Judgment

On January 19, 2010, the Xincheng District People's Court of Hohhot, Inner Mongolia Autonomous Region, rendered Administrative Judgment (2009) Xin Xing Chu Zi No. 26: upholding the "Decision of the Civil Air Defense Office of Hohhot City on Levying the Off-site Construction Fee for the Civil Air Defense Basement" No. Hu Ren Fang Zheng Fei Zi (001) made by the Hohhot Civil Air Defense Office. After the judgment was pronounced, Qiushi Real Estate appealed. On April 20, 2010, the Hohhot Intermediate People's Court rendered Administrative Judgment (2010) Hu Xing Zhong Zi No. 16: dismissing the appeal and affirming the original judgment.

Reasoning

The effective judgment held: Article 16 of the Several Opinions of the State Council on Solving the Housing Difficulties of Urban Low-Income Families provides that "all administrative and institutional charges and government funds, such as urban infrastructure supporting fees, shall be exempted for the construction of low-rent housing and economically affordable housing, the renovation of shantytowns, and the improvement of old residential areas." Article 8 of the Measures for the Administration of Economically Affordable Housing issued by the Ministry of Construction and six other ministries and commissions provides that "all administrative and institutional charges and government funds, such as urban infrastructure supporting fees, shall be exempted for economically affordable housing construction projects." Although the above provisions on exempting all administrative and institutional charges for affordable housing construction projects such as economically affordable housing do not explicitly specify their objects of adjustment, from the legislative intent, the objects they target should be lawful construction activities. Article 22 of the Civil Air Defense Law provides: "Newly constructed civil buildings in cities shall, in accordance with the relevant provisions of the State, build basements usable for air defense in wartime." Article 48 of the Provisions on the Administration of Civil Air Defense Engineering Construction provides: "Where a civil building that should, in accordance with the provisions, have a civil air defense basement constructed cannot have one constructed due to geological, topographical, or other reasons, or where the area required to be constructed is smaller than the area of the ground floor of the civil building, the construction unit may, upon approval by the civil air defense competent department, refrain from constructing it, but must pay the off-site construction fee based on the cost required for the area of the civil air defense basement that should have been constructed, and the civil air defense competent department shall construct it off-site nearby." That is to say, only where laws and regulations provide that it is inappropriate to construct a civil air defense basement may affordable housing construction projects such as economically affordable housing refrain from constructing one and apply the relevant provisions on exemption from the off-site construction fee for the civil air defense basement. The objects to which the provisions on exemption from the off-site construction fee for the civil air defense basement apply should not include unlawful construction activities; otherwise, the result would be that the cost of violating the law is lower than the cost of complying with the law, contrary to the legislative purpose and detrimental to safeguarding national defense security and the fundamental interests of the people. Qiushi Real Estate failed to construct the civil air defense basement that should have been constructed in accordance with law, which constituted an unlawful act of failing to perform a statutory obligation, and it could not apply the relevant preferential provisions on exemption from the off-site construction fee for the civil air defense basement.

Relevant Legal Provisions

Articles 22 and 48 of the Civil Air Defense Law of the People's Republic of China.

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