SPC Guiding Case No. 211: Wanshan District People's Procuratorate v. Wanshan District Forestry Bureau (Administrative Public Interest Litigation over Failure to Perform Forestry Administrative Duties)

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

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Keywords

Administrative / administrative public interest litigation / forestry administration / linkage between administrative penalty and criminal punishment / environmental restoration of special functional areas

Holding

1. Where the same act of a lawbreaker both violates administrative law and should be subject to administrative penalty, and violates the Criminal Law and should be subject to criminal punishment, the administrative organ shall not revoke the administrative penalty already imposed merely because the case has been transferred to the public security organ. Where the administrative organ issues an administrative penalty decision after the criminal judgment takes effect with respect to administrative penalty matters not covered by the criminal judgment, the people's court shall uphold such decision.

2. Where the lawbreaker has not borne ecological environment restoration liability in the criminal judgment, the forestry administrative authority and other competent administrative authorities shall promptly order the lawbreaker to perform its restoration obligations in accordance with law, and, where the lawbreaker fails to perform them or only partially performs them, shall organize performance on its behalf. Where the forestry administrative authority or another competent administrative authority fails to perform its statutory ecological restoration supervision and administration duties, and the plaintiff in the administrative public interest litigation requests it to perform its duties in accordance with law, the people's court shall uphold such request.

3. Where the ecological environment of a special functional area has been damaged, restoration shall, in principle, be carried out in situ. Where the person obligated to restore, or the person performing on behalf, claims off-site restoration but cannot prove that in-situ restoration is impossible or unnecessary, the people's court shall not uphold such claim.

Basic Facts

In April 2014, defendant Shen Zhongxiang invested to establish a one-person company, Wuling Agriculture and Forestry Company, and served as its legal representative. From May to July 2014, the company, on the pretext of building planting and breeding farms and without going through the formalities for a forest land use permit, hired a construction team to use excavation machinery to strip surface vegetation and excavate forest land at the Aikoushan group in Meihua Village, Chadian Subdistrict, Wanshan District, Tongren City, Guizhou Province, and at Ma'anshan in Daping Village, Daping Township, Wanshan District, causing the destruction of surface vegetation and the exposure of rock. Upon appraisal, 276.17 mu of forest land was damaged, including 49.38 mu of key public welfare forest, 72.91 mu of general public welfare forest, 108.93 mu of key commercial forest, and 44.95 mu of general commercial forest. The functions of the public welfare forest in issue were set as water and soil conservation and water conservation. At the time of the first-instance trial of this case, part of the damaged forest land had been newly planted with masson pine

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seedlings, but the seedlings were low and withered, and the surface was dry and cracked; the water-conserving public welfare forest had not been treated at all, with exposed rock and accumulated gravel resembling a desert.

In January 2015, the Wanshan District Forestry Bureau of Tongren City (the "Wanshan District Forestry Bureau") transferred the above acts to the Wanshan Branch of the Tongren Municipal Public Security Bureau on suspicion of constituting the crime of illegal occupation of agricultural land, but the public security organ, after filing the case for investigation, withdrew the case. The Wanshan District Forestry Bureau then issued administrative penalty decisions against Shen Zhongxiang and Wuling Agriculture and Forestry Company: ordering restoration of the original state within a prescribed period (without specifying the period) and imposing a fine of RMB 1,841,134, but neither of the penalized persons performed them. On January 20, 2016, the Wanshan Branch of the Tongren Municipal Public Security Bureau re-filed the case for investigation. The next day, the Wanshan District Forestry Bureau revoked the above administrative penalty decisions. In December 2016, the Wanshan District People's Court of Tongren City rendered Criminal Judgment (2016) Qian 0603 Xing Chu No. 67, holding that defendant Shen Zhongxiang committed the crime of illegal occupation of agricultural land, and sentencing him to fixed-term imprisonment of two years and a fine of RMB 50,000. After the judgment took effect, the Wanshan District People's Procuratorate of Tongren City issued a procuratorial recommendation to the Wanshan District Forestry Bureau, recommending that it perform its forest resource protection supervision duties in accordance with law, order Shen Zhongxiang to restore the original state within a prescribed period, and impose a fine of RMB 10 to 30 per square meter. The Wanshan District Forestry Bureau replied in writing that, because Shen Zhongxiang was serving his sentence, the company had collapsed, and the personnel had been disbanded, it was impossible to carry out restoration and re-greening; that the Forestry Bureau planned to carry out partial re-greening and afforestation, and to carry out off-site replanting and re-greening for the plots where re-greening and afforestation were difficult; and that, under the principle of no double punishment for one act, no fine would be imposed.

The procuratorial organ initiated an administrative public interest lawsuit on the ground that the Wanshan District Forestry Bureau had neither imposed an administrative penalty on Shen Zhongxiang nor taken effective measures for replanting and re-greening, had failed to perform its ecological environment supervision duties, resulting in the persistent destruction of the forest land and serious damage to the local ecological environment, requesting confirmation that the Wanshan District Forestry Bureau's failure to perform its supervision duties in accordance with law was unlawful, and ordering it to perform its environmental protection supervision duties in accordance with law.

Judgment

On September 29, 2017, the Bozhou District People's Court of Zunyi City, Guizhou Province, rendered Administrative Judgment (2017) Qian 0321 Xing Chu No. 97: the defendant Wanshan District Forestry Bureau of Tongren City shall, in accordance with law, perform its statutory supervision and administration duties over the replanting, re-greening, and restoration of the original state of the forest land at the Aikoushan group in Meihua Village, Chadian Subdistrict, and at Ma'anshan in Daping Village, Daping Township, Wanshan District, which had been damaged by Shen Zhongxiang in the name of Tongren Wanshan District Wuling Agriculture and Forestry Production Development Co., Ltd., and shall complete the acceptance inspection of the re-greening project within a prescribed period. After the judgment was pronounced, neither party appealed, and the judgment became legally effective.

Reasoning

The court's effective judgment held as follows:

I. The Wanshan District Forestry Bureau failed to perform its duties in accordance with law

As the forestry administrative authority of the Wanshan District People's Government, the Wanshan District Forestry Bureau was responsible, in accordance with Article 10 of the Forest Law of the People's Republic of China (2009 Amendment), for the supervision and administration of the protection, utilization, and renewal of forest resources within the administrative region of Wanshan District. The Wanshan District Forestry Bureau should perform its duties in accordance with law and investigate and handle, in accordance with law, acts of occupying or damaging forest resources and changing the use of forest land in violation of forestry administration laws and regulations. In accordance with Article 44 of the Forest Law of the People's Republic of China (2009 Amendment), it should order the lawbreaker to stop the illegal act and replant trees as prescribed by law; where the lawbreaker refuses to replant or the replanting does not comply with the relevant state provisions, the forestry authority shall replant on its behalf, with the expenses incurred to be recovered from the lawbreaker. However, the Wanshan District Forestry Bureau failed to perform its duties in accordance with law.

II. After the public security organ filed the case for investigation, the Wanshan District Forestry Bureau's revocation of the administrative penalty decisions was unlawful

Where the same act of a lawbreaker both violates administrative law and should be subject to administrative penalty, and violates the Criminal Law and should be subject to criminal punishment, an administrative penalty already imposed by the administrative law enforcement organ before the case was transferred to the judicial organ shall be offset against a criminal punishment of the same function. In accordance with Article 28 of the Administrative Penalty Law of the People's Republic of China (2017 Amendment), which provides that, where an illegal act constitutes a crime and the people's court imposes criminal detention or fixed-term imprisonment, and the administrative organ has already imposed administrative detention on the party, the corresponding term shall be offset in accordance with law; and that, where an illegal act constitutes a crime and the people's court imposes a fine, and the administrative organ has already imposed a fine on the party, the corresponding fine shall be offset; and in accordance with Article 11, paragraph 3 of the Provisions on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Organs, which provides that, where an administrative law enforcement organ, before transferring a suspected criminal case to the public security organ, has already imposed a fine on the party in accordance with law, the corresponding fine shall be offset in accordance with law when the people's court imposes a fine, such offsetting is an offsetting in execution rather than an offsetting of the penalty decision itself, and only penalties of the same function may be offset, while penalty contents of different functions cannot be offset. Therefore, an administrative penalty already imposed before the filing of the criminal investigation should not be revoked. When the Wanshan District Forestry Bureau transferred the administrative illegal act suspected of constituting a crime to the public security organ, and, after the public security organ filed the case, revoked its previously imposed administrative penalty decision, it not only revoked the fine penalty of the same function as the fine penalty that might be imposed by the criminal judgment, but also revoked the administrative penalty ordering the lawbreaker to replant, re-green, and restore the original state, which did not belong to the function of criminal punishment. This revocation by the Wanshan District Forestry Bureau violated the provisions of the law.

III. After the criminal judgment took effect, the Wanshan District Forestry Bureau's failure to order the lawbreaker to restore the damaged forest land was unlawful

With respect to penalty matters not covered by the criminal judgment, the administrative organ should issue an administrative penalty decision after the criminal judgment takes effect. Ordering the criminal to replant and re-green to restore the environment does not fall within the scope of criminal punishment, but rather falls within the administrative power granted by law to the competent administrative organ and within the scope of administrative penalty. After the criminal judgment takes effect, where no administrative penalty was previously imposed, the administrative organ shall not impose, based on the same act, an administrative penalty of the same function as the criminal punishment. After criminal liability is pursued against the lawbreaker, where the criminal punishment does not involve environmental restoration liability, the

administrative organ shall, in accordance with law, make a decision ordering the lawbreaker to plant trees and restore the environment as required by the Forest Law. Therefore, after the criminal judgment took effect, the Wanshan District Forestry Bureau should, in accordance with law, have issued an administrative penalty decision ordering the lawbreaker to perform the obligation of replanting and re-greening and supervised the lawbreaker's performance; where the lawbreaker refused to perform or performed inadequately, it should replant and re-green on behalf, and order the lawbreaker to bear the expenses. The defendant Wanshan District Forestry Bureau's failure to order Shen Zhongxiang and Wuling Agriculture and Forestry Company to replant, re-green, and restore the original state, and to supervise the performance, was unlawful.

IV. The Wanshan District Forestry Bureau failed to perform its duty of replanting and re-greening on behalf

Where the ecological environment of a special functional area has been damaged, restoration shall, in principle, be carried out in situ. Where the person obligated to restore, or the person performing on behalf, claims off-site restoration but cannot prove that in-situ restoration is impossible or unnecessary, the people's court shall not uphold such claim. Without having made a decision ordering the lawbreaker to restore the environment, the Wanshan District Forestry Bureau, together with the township people's government and others, planted some saplings on the damaged forest land, but the effect was poor, the survival rate was not guaranteed, and the purpose of environmental restoration was not achieved. Moreover, the severely damaged land resembling a desert was not treated and re-greened. Given the nature of the damaged forest land and trees as public welfare forest and their functions of water conservation and water and soil conservation, the replanting and re-greening should be carried out in situ and should not be replaced off-site. Although the Wanshan District Forestry Bureau's act of replanting trees on behalf had partially performed its duties, it was not yet correct and complete performance, and it should continue to perform.

Relevant Legal Provisions

Articles 74 and 81 of the Forest Law of the People's Republic of China (2019 Revision) (the case applied Articles 10 and 44 of the Forest Law of the People's Republic of China, 2009 Amendment).

Article 35 of the Administrative Penalty Law of the People's Republic of China (2021 Revision) (the case applied Article 28 of the Administrative Penalty Law of the People's Republic of China, 2017 Amendment).

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