SPC Guiding Case No. 22: Wei Yonggao and Chen Shouzhi v. the People’s Government of Lai’an County (Administrative Reply on Recovery of Land Use Right)

Dan Young Business Consultancy — www.danyoungcpa.com

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

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Keywords

Administrative litigation / scope of acceptance / reply (approval)

Holding

A reply issued by a local people's government to a request for instructions from its subordinate administrative department is generally an internal administrative act and cannot be sued. However, where the administrative department directly implements the reply and it actually affects the rights and obligations of the administrative counterpart, and the administrative counterpart files a lawsuit against the reply, the people's court shall accept the case in accordance with law.

Basic Facts

On August 31, 2010, the Lai'an County Land and Resources and Housing Administration Bureau of Anhui Province submitted to the People's Government of Lai'an County a "Request for Instructions on Recovering the Right to Use State-Owned Land," requesting the recovery of the right to use land in certain plots on East Yongyang Road and Middle Tashan Road in the county. On September 6, the People's Government of Lai'an County issued the "Reply Approving the Recovery of the Right to Use State-Owned Land in Certain Plots on East Yongyang Road and Middle Tashan Road." After receiving the reply, the Lai'an County Land and Resources and Housing Administration Bureau did not, in accordance with law, prepare and serve a decision on the recovery of the land use right on the original land use right holders, but directly handed it to the Lai'an County Land Reserve Center for implementation. The houses of Wei Yonggao and Chen Shouzhi were located within the land whose use right was recovered. Dissatisfied with the reply of the People's Government of Lai'an County on recovering the right to use state-owned land, they applied for administrative reconsideration. On September 20, 2011, the Chuzhou Municipal People's Government issued an "Administrative Reconsideration Decision" upholding the reply of the People's Government of Lai'an County. Still dissatisfied, Wei Yonggao and Chen Shouzhi brought an administrative lawsuit requesting the people's court to revoke the aforesaid reply of the People's Government of Lai'an County.

Judgment

On December 23, 2011, the Chuzhou Intermediate People's Court rendered Administrative Ruling (2011) Chu Xing Chu Zi No. 6: dismissing the lawsuit of Wei Yonggao and Chen Shouzhi. Wei Yonggao and Chen Shouzhi appealed. On September 10, 2012, the Anhui Higher People's Court rendered Administrative Ruling (2012) Wan Xing Zhong Zi No. 14: (1) revoking the Administrative Ruling (2011) Chu Xing Chu Zi No. 6 of the Chuzhou Intermediate People's Court; and (2) ordering the Chuzhou Intermediate People's Court to continue the trial of this case.

Reasoning

The effective judgment held: According to the procedural provisions of the Measures for the Administration of Land Reserves and the Anhui Provincial Measures for State-Owned Land Reserves on reserving state-owned land by way of recovery, after the People's Government of Lai'an County issued the reply

approving the plan to recover the right to use state-owned land, the Lai'an County land and resources administrative department should have served on the original land use right holders a notice of recovery of the right to use state-owned land that takes legal effect externally. The reply of the People's Government of Lai'an County was an internal administrative act, was not served on the counterpart, and had not yet actually affected the rights and obligations of the counterpart; it generally did not fall within the scope of acceptance of administrative litigation. However, in this case, after the People's Government of Lai'an County issued the reply, the Lai'an County land and resources administrative department did not prepare and serve a legal document that takes effect externally, but directly handed it to the Lai'an County Land Reserve Center to carry out demolition, compensation, and resettlement in accordance with the reply, which actually affected the rights and obligations of the original land use right holders; the original land use right holders also learned of the contents of the reply by applying for government information disclosure and applied for administrative reconsideration against the reply, and the reconsideration organ informed them of the right to sue when rendering the reconsideration decision. The reply had been actually implemented and externalized into a specific administrative act that takes legal effect externally. Therefore, where a lawsuit is brought against the reply, the people's court shall accept the case in accordance with law.

Relevant Legal Provisions

Article 11 of the Administrative Procedure Law of the People's Republic of China.

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