SPC Guiding Case No. 242: Application by Chongqing [X]guang Real Estate Brokerage Co., Ltd. for Compensation for Unlawful Criminal Seizure by Jiulongpo District Branch of Chongqing Public Security Bureau

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

Keywords

State compensation; compensation for unlawful criminal seizure; safekeeping measures; occupation of immovable property

Holding

Where, in the course of handling a criminal case, a judicial organ, in order to keep property that has been sealed up or seized, unlawfully occupies immovable property of a compensation claimant that is unrelated to the criminal case and thereby causes economic loss to the claimant, this falls within the circumstances prescribed in Article 18(1) of the State Compensation Law of the People's Republic of China. Where the compensation claimant applies for state compensation on this basis, the people's court shall support the application in accordance with law.

Basic Facts

On July 1, 2011, Chongqing [X]guang Real Estate Brokerage Co., Ltd. (hereinafter "Chongqing [X]guang Company") and Chongqing [X]cheng Housing Sales Co., Ltd. (hereinafter "Chongqing [X]cheng Company"), as lessors, leased the negative-first-floor (street-level) commercial premises of a commercial building in Jiulongpo District of Chongqing to Chongqing [X]li Maoye Automobile Leasing Co., Ltd. (hereinafter "[X]li Automobile Leasing Company"), and the first-floor (second street-level) commercial premises to Guangdong [X]jia Health Industry Supermarket Co., Ltd. (hereinafter "[X]jia Health Company"). The two lessee companies paid rent through July 15, 2012.

Because [X]li Automobile Leasing Company and [X]jia Health Company were suspected of the crime of illegally absorbing public deposits, the Jiulongpo District Branch of the Chongqing Municipal Public Security Bureau decided on May 15, 2012 to open a case for investigation against them, and seized on the spot the case-related items and vehicles in the relevant leased commercial premises. Subsequently, because the premises leased by [X]li Automobile Leasing Company and [X]jia Health Company needed to be vacated, from May 22, 2013 the Jiulongpo District Branch of the Chongqing Municipal Public Security Bureau moved the seized case-related items and vehicles into parking spaces owned by Chongqing [X]guang Company and Chongqing [X]cheng Company, until September 30, 2017.

Thereafter, Chongqing [X]guang Company and Chongqing [X]cheng Company applied to the Jiulongpo District Branch of the Chongqing Municipal Public Security Bureau for state compensation for their rent losses, property management fees, parking space rent, and water and electricity charges. During this period, with the negotiation and consent of Chongqing [X]guang Company and Chongqing [X]cheng Company, it was agreed that the right to claim such losses would be enjoyed solely by Chongqing [X]guang Company. The Jiulongpo District Branch of the Chongqing Municipal Public Security Bureau rendered the criminal compensation decision Jiu Gong Xing Pei Zi [2017] No. 2: not compensating Chongqing [X]guang Company. Chongqing [X]guang Company was dissatisfied and applied to the Chongqing Municipal Public Security Bureau for reconsideration. The Chongqing Municipal Public Security Bureau rendered the criminal compensation reconsideration decision Yu Gong Pei Fu Jue Zi [2017] No. 36, affirming the criminal

compensation decision Jiu Gong Xing Pei Zi [2017] No. 2 of the Jiulongpo District Branch of the Chongqing Municipal Public Security Bureau. Subsequently, Chongqing [X]guang Company applied to the Compensation Committee of the Chongqing Fifth Intermediate People's Court for a compensation decision.

Judgment

On October 24, 2018, the Compensation Committee of the Chongqing Fifth Intermediate People's Court rendered the state compensation decision (2018) Yu 05 Wei Pei No. 12: (1) revoking the criminal compensation decision Jiu Gong Xing Pei Zi [2017] No. 2 of the Jiulongpo District Branch of the Chongqing Municipal Public Security Bureau and the criminal compensation reconsideration decision Yu Gong Pei Fu Jue Zi [2017] No. 36 of the Chongqing Municipal Public Security Bureau; and (2) ordering the Jiulongpo District Branch of the Chongqing Municipal Public Security Bureau to compensate Chongqing [X]guang Company RMB 1,083,300 within thirty days after this decision takes effect.

Reasoning

Article 18 of the State Compensation Law provides: "Where, in the exercise of their powers, organs exercising investigation, prosecution and adjudication powers, as well as detention centers and prison administration organs and their staff members, have any of the following circumstances of infringing property rights, the victim shall have the right to obtain compensation: (1) unlawfully taking measures such as sealing up, seizing, freezing, or recovering property..." Article 3 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Compensation Cases (Fa Shi [2015] No. 24) provides: "Where, after measures such as sealing up, seizing, freezing, or recovering are taken against property, any of the following circumstances exists and the case-handling organ has not lawfully lifted the measures of sealing up, seizure, freezing, or recovery or returned the property, this constitutes infringement of property rights prescribed in Article 18 of the State Compensation Law: (1) the compensation claimant has evidence proving that the property is unrelated to the criminal case that has not yet been concluded, and this is confirmed upon examination..." In this case, after the Jiulongpo District Branch of the Chongqing Municipal Public Security Bureau decided to open a case for investigation against [X]li Automobile Leasing Company and [X]jia Health Company, it took on-the-spot seizure measures against the case-related items and vehicles in the relevant leased commercial premises of those companies, and after the commercial premises leases expired, it still kept them in the commercial premises and parking spaces of Chongqing [X]guang Company. Although the Jiulongpo District Branch of the Chongqing Municipal Public Security Bureau did not seal up the aforementioned immovable property of Chongqing [X]guang Company, it objectively occupied that immovable property, and did not timely return the immovable property to Chongqing [X]guang Company even after ascertaining that Chongqing [X]guang Company was unrelated to the criminal case involved. The aforementioned acts caused economic loss to Chongqing [X]guang Company and infringed its property rights, so the Jiulongpo District Branch of the Chongqing Municipal Public Security Bureau should bear state compensation liability.

Relevant Legal Provisions

Article 18 of the State Compensation Law of the People's Republic of China

Article 3 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Compensation Cases (Fa Shi [2015] No. 24)

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