

SPC Guiding Case No. 261: Case of Zhang [X]shan et al. for Illegal Mining (Criminal Case with Incidental Civil Public Interest Litigation)

Dan Young Business Consultancy — www.danyoungcpa.com

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

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Keywords

Criminal / criminal case with incidental civil public interest litigation / crime of illegal mining / cross-administrative-division / designated jurisdiction / restoration of the damaged site

Holding

1. For criminal cases of destroying environmental resources across administrative divisions that fall under the circumstances specified in paragraph 2 of Article 20 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China, the higher people's court may designate a lower people's court with environmental and resource adjudication functions to exercise jurisdiction.

2. Where it is more appropriate to organize and implement the restoration of the ecological environment at the damaged site, the people's court may, across administrative divisions, transfer the collected restoration funds to the relevant department at the damaged site for use in the restoration of the ecological environment.

Basic Facts

From March to July 2021, defendants Zhang [X]shan, Zhang [X]chen, Li [X], Ding [X], and others contributed funds, and defendants Hong [X]wu, Wang [X]hong, and others provided “three-no” (no license, no certificate, no navigation permit) sand-mining vessels; together with the sand-purchasing vessel owners contacted in advance, defendants Zhang [X]wei, Ling [X]hua, Bao [X]wen, and others, in the river sections above and below the Tongling reach of the Yangtze River in Anhui Province within the Yangtze finless porpoise national nature reserve, and without obtaining a river-channel sand-mining permit, jointly and unlawfully mined and transported 46,765.04 tons of river sand by an integrated mining-and-transport method, valued at RMB 2,893,129 (currency same hereinafter). Defendant Ma [X]yu, knowing that the river sand was illegally mined, still purchased 1,700 tons and sold it. Upon appraisal, the illegal sand-mining acts of Zhang [X]shan and others caused damage to the ecological environment of the Yangtze River, and there was a causal relationship between those acts and the damage to the ecological environment at the incident site. The assessed amount of damage to the Yangtze River ecological environment was RMB 5,157,476.86, including RMB 4,910,329.2 for damage to the riverbed structure, RMB 96,146.02 for damage to fish resources, RMB 14,884.62 for damage to benthic organisms, RMB 101,557.02 for loss of biodiversity service value, and RMB 34,560 for follow-up monitoring costs.

It was also found that the period from June 1 to September 30 each year was the sand-mining prohibition period for the main channel of the Yangtze River below Yibin. Both the upper and lower sections of the Tongling reach of the Yangtze River in Anhui Province within the Yangtze finless porpoise national nature reserve were sand-mining prohibition zones. From January 2020 to the time of the incident, no sand-mining permit had been issued for the Anhui section of the Yangtze River.

The Jianhu County People's Procuratorate of Jiangsu Province charged defendants Zhang [X]shan and others with the crime of illegal mining, and defendant Ma [X]yu with the crime of concealing or disguising the proceeds of crime, and filed a public prosecution with the people's court; at the same time, on the ground

that the social public interest had been damaged, it brought an incidental civil public interest litigation, requesting an order that Zhang [X]shan and others bear joint and several liability for compensating for the damage to the ecological environment, and apologize to the public in national-level media. Because this case involved a long period of criminal conduct and the crime sites spanned provincial administrative divisions such as Anhui and Jiangsu, the Supreme People's Court designated the Dongtai People's Court of Jiangsu Province to hear the case. That court was one of the grassroots courts determined by the Jiangsu High People's Court, based on the need for watershed ecological environment protection in the province, to exercise cross-regional jurisdiction over environmental and resource cases.

Judgment

The Dongtai People's Court of Jiangsu Province rendered the criminal incidental civil judgment (2022) Su 0981 Xing Chu No. 46 on March 1, 2022, finding that defendants Zhang [X]shan and others had committed the crime of illegal mining, sentencing them respectively to fixed-term imprisonment ranging from four years and six months to one year, applying suspended sentences to some defendants, imposing fines ranging from RMB 200,000 to RMB 15,000, and recovering the illegal gains; finding that defendant Ma [X]yu had committed the crime of concealing or disguising the proceeds of crime, sentencing him to one year and six months of fixed-term imprisonment, suspended for two years, imposing a fine of RMB 20,000, and recovering the illegal gains; and ordering the incidental civil public interest litigation defendants Zhang [X]shan and others to jointly and severally compensate RMB 5,157,476.86 for the damage to the ecological environment within the scope of the quantity of sand each participated in mining, and to publicly apologize in national-level media. After the judgment was pronounced, there was no appeal or protest, and the judgment became legally effective.

After the judgment became effective, the Dongtai People's Court of Jiangsu Province transferred the collected ecological environment restoration funds to the Tongling Intermediate People's Court of Anhui Province, and jointly with the local government implemented a project for the ecological environment remediation of the Tongling reach of the Yangtze River and the protection of the finless porpoise.

Reasoning

The Yangtze River is the mother river of the Chinese nation and an important support for the development of the Chinese nation. Sand and gravel in the Yangtze River channel are national mineral resources; the illegal collection of river sand will damage the ecological environment of the Yangtze River and affect the stability of the river regime, flood control, and navigation safety. Defendants Zhang [X]shan and others violated the provisions of the Mineral Resources Law and, without obtaining a river-channel sand-mining permit, engaged in illegal sand mining in the sand-mining prohibition period and prohibition zone of the Yangtze River without authorization, reaching the circumstance of serious circumstances, and their acts constituted the crime of illegal mining. Defendant Ma [X]yu, knowing that the purchased river sand was the proceeds of another person's crime, still purchased it, and his act constituted the crime of concealing or disguising the proceeds of crime. The sand-mining sites in issue were located between the upper and lower sections of the Tongling reach of the Yangtze River in Anhui Province within the finless porpoise national nature reserve, an area that is the habitat of precious and endangered aquatic wildlife such as the Chinese sturgeon and the finless porpoise. The illegal sand-mining acts of Zhang [X]shan and others directly caused damage to the ecosystem of the Yangtze River waters at the incident site and destroyed the environment for the reproduction and survival of aquatic animal resources; upon appraisal, they caused damage to the Yangtze River ecological environment of RMB 5,157,476.86. Pursuant to Article 93 of the Yangtze River Protection Law of the People's Republic of China and Articles 1168 and 1235 of the Civil Code of the People's Republic of China, Zhang [X]shan and others should bear civil liability for jointly and severally compensating for the damage to the Yangtze River ecological environment within the scope of the quantity of sand each participated in illegally mining. There were two focuses of dispute in this case: first, the jurisdiction of the case; and second, the use of the ecological environment restoration funds.

As to the jurisdiction of the case. Paragraph 2 of Article 20 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China (Fa Shi [2021] No. 1) provides: "Where it is more appropriate for a relevant case to be tried by a people's court other than the courts at the place of the crime or the defendant's residence, the higher people's court may designate a lower people's court to exercise jurisdiction." In this case, there were many defendants who committed illegal sand mining, the criminal conduct lasted a long time, and the sand-mining and sand-selling sites spanned multiple administrative divisions such as Anhui and Jiangsu. The illegal sand-mining acts in issue had the characteristics of huge profits, gang-style crime, and internal-external collusion, and there were leads suggesting that local public officials were suspected of committing crimes; therefore, it was more appropriate to designate a people's court outside Anhui Province to exercise jurisdiction over the case. Taking into account factors such as the same-level nature, convenience, and professionalism of the investigation, public prosecution, and adjudication activities, the Supreme People's Court designated the Dongtai People's Court of Jiangsu Province, which has environmental and resource adjudication functions, to exercise jurisdiction over this case.

As to the use of the ecological environment restoration funds. The protection of the ecological environment of the Yangtze River basin should adhere to the principles of systematic governance and giving priority to on-site restoration. Ecological environment restoration funds are the basic guarantee for the implementation of restoration; in most cases, because the ecological environment damage occurs within the jurisdictional area of the trial court, the ecological environment restoration funds can be matched with the implementation of restoration. However, in cross-regional, especially cross-provincial-administrative-division, circumstances, it is difficult to use the ecological restoration funds for the implementation of ecological environment restoration at the damaged site. Although this case was designated by the Supreme People's Court to be tried by the Dongtai People's Court of Jiangsu Province, the damaged site was located in the Tongling reach of the Yangtze River in Anhui Province, and the illegal sand-mining acts of Zhang [X]shan and others caused serious damage to the local Yangtze River ecological environment; if the damage could not be promptly and effectively restored, the harmful consequences would inevitably persist or even worsen. After the judgment in this case became effective, the people's court promptly transferred the collected ecological environment restoration funds to the relevant department in Tongling City, Anhui Province, for use in the ecological environment restoration of the damaged site in the Tongling reach of the Yangtze River in Anhui Province.

Relevant Legal Provisions

Articles 1168, 1234, and 1235 of the Civil Code of the People's Republic of China.

Articles 28 and 93 of the Yangtze River Protection Law of the People's Republic of China.

Article 27 of the Criminal Procedure Law of the People's Republic of China.

Article 20 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China (Fa Shi [2021] No. 1).

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