SPC Guiding Case No. 41: Xuan Yicheng et al. v. the Land and Resources Bureau of Quzhou City, Zhejiang Province (Recovery of State-owned Land Use Right)

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

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Keywords

Administrative litigation / burden of proof / failure to cite specific legal provisions / erroneous application of law

Holding

Where an administrative organ, in making a specific administrative act, fails to cite specific legal provisions, and in litigation cannot prove that the specific administrative act conforms to the specific provisions of the law, the specific administrative act shall be deemed to have no legal basis and to apply the law erroneously.

Basic Facts

The plaintiffs, Xuan Yicheng and 17 others, were residents of the faculty dormitory building of Quzhou Fushan Middle School at No. 1 (formerly No. 14) Weining Lane, Kecheng District, Quzhou City, Zhejiang Province. On December 9, 2002, the Quzhou Municipal Development Planning Commission, based on a report by the third party, the Quzhou Branch of China Construction Bank (hereinafter the "Quzhou Branch"), upon review, approved the Quzhou Branch's construction project to expand its business premises on the southeast side of its existing comprehensive business building. On the same day, the Quzhou Municipal Planning Bureau formulated a site selection opinion for the construction project; the Quzhou Branch, in order to expand its business premises, planned to acquire and demolish the 205-square-meter faculty dormitory building of Fushan Middle School on its own and rebuild it as an open-air parking lot, to be implemented specifically in accordance with the detailed planning. On the 18th, the Quzhou Municipal Planning Bureau further prepared the plane red-line map of the land for the Quzhou Branch's expanded business premises. On the 20th, the Quzhou Municipal Planning Bureau issued a construction land planning permit; the land area of the Quzhou Branch's construction project was 756 square meters. On the 25th, the defendant, the Quzhou Municipal Land and Resources Bureau (hereinafter the "Quzhou Municipal Land Bureau"), requested approval to recover 187.6 square meters of state-owned land use rights from the residents of the Quzhou Fushan Middle School faculty dormitory building, and reported the same to the Quzhou Municipal People's Government for approval. On the 31st of the same month, the Quzhou Municipal Land Bureau issued the Notice on the Recovery of State-owned Land Use Rights (Qu Shi Guo Tu [2002] No. 37) (hereinafter the "Notice"), and informed Xuan Yicheng and 17 others that the state-owned land use rights they were using would be recovered, as well as their right to sue and other matters. The Notice stated the name of the law on which the administrative decision was based, but did not specify the specific legal provisions relied upon. The plaintiffs refused to accept this and brought an administrative lawsuit.

Judgment

On August 29, 2003, the Kecheng District People's Court of Quzhou City, Zhejiang Province rendered administrative judgment (2003) Ke Xing Chu Zi No. 8: revoking the Notice on the Recovery of State-owned Land Use Rights (Qu Shi Guo Tu [2002] No. 37) issued by the defendant, the Quzhou Municipal Land and Resources Bureau, on December 31, 2002. After the judgment was pronounced, neither party appealed, and the judgment became legally effective.

Reasoning

The court's effective judgment held that: when the defendant, the Quzhou Municipal Land Bureau, made the Notice, although it stated the name of the law on which the Notice was based, it did not cite specific legal provisions. During the trial, the defendant argued that the specific administrative act at issue was made in accordance with Paragraph 1 of Article 58 of the Land Administration Law of the People's Republic of China (hereinafter the "Land Administration Law"). Paragraph 1 of Article 58 of the Land Administration Law provides: "Under any of the following circumstances, the competent land administration department of the relevant people's government may, upon approval by the people's government that originally approved the land use or a people's government with approval authority, recover the state-owned land use rights: (1) where the land is needed for public interests; (2) where the use of the land needs to be adjusted for the implementation of urban planning and the reconstruction of old urban areas; ..." As the competent land administration department, the Quzhou Municipal Land Bureau had the authority to administer and adjust the use rights of state-owned land within its jurisdiction in accordance with the Land Administration Law, but when exercising its functions and powers it must have a clear legal basis. When the defendant made the Notice, it merely stated that the Notice was made in accordance with the Land Administration Law and the relevant provisions of Zhejiang Province, but did not cite specific legal provisions; therefore, the specific administrative act it made had no clear legal basis and constituted erroneous application of law.

In this case, the evidence provided by the Quzhou Municipal Land Bureau, such as the Reply on Approving the Construction Project Plan for Expanding Business Premises (2002) No. 35 of the Quzhou Municipal Development Planning Commission, the Construction Project Site Selection Opinion Approval Form, and the plane red-line map of the construction land for the Quzhou Branch of China Construction Bank's expanded business premises, was insufficient to prove that the Notice it made conformed to the circumstances of "the land is needed for public interests" or "the use of the land needs to be adjusted for the implementation of urban planning and the reconstruction of old urban areas" as provided in Paragraph 1 of Article 58 of the Land Administration Law; the main evidence was insufficient, so the defendant's argument that the Notice it made conformed to the provisions of the Land Administration Law could not be established. In accordance with the Administrative Litigation Law of the People's Republic of China and its relevant judicial interpretations, in administrative litigation the defendant bears the burden of proof for the specific administrative act it made; where the defendant fails to provide the evidence and basis at the time the specific administrative act was made, the specific administrative act shall be found to have no evidence and basis.

In summary, the specific administrative act of recovering state-owned land use rights made by the defendant had insufficient main evidence and applied the law erroneously, and should be revoked.

Relevant Legal Provisions

Article 32 of the Administrative Litigation Law of the People's Republic of China.

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