SPC Guiding Case No. 44: Bu Xinguang (Application for Compensation for Unlawful Criminal Recovery of Property)

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

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Keywords

State compensation / criminal compensation / criminal recovery / return of stolen goods

Holding

Where a public security organ, in accordance with an effective criminal judgment of a people's court, returns the stolen goods ordered to be recovered to the victim unit, this does not infringe the lawful rights and interests of the compensation claimant, does not fall within the circumstances specified in Item 1 of Article 18 of the State Compensation Law of the People's Republic of China, and the state shall not bear state compensation liability.

Basic Facts

The compensation claimant, Bu Xinguang, applied to the Compensation Committee of the Supreme People's Court for compensation, alleging that the criminal compensation decision (Wan Gong Xing Pei Zi [2011] No. 01) of the Anhui Provincial Public Security Department and the criminal compensation reconsideration decision (Gong Xing Pei Fu Zi [2011] No. 1) of the Ministry of Public Security of the People's Republic of China (hereinafter the "Ministry of Public Security") were inconsistent with the facts and improperly applied the law; asserting that the Anhui Provincial Public Security Department had exceeded its authority in handling an economic dispute and that it was unlawful for the "Shenkeng Village land" he had purchased to be used to offset bank debts; and requesting that the Anhui Provincial Public Security Department compensate economic losses of RMB 3.166 million and other compensation claims.

Upon trial, the court found that: Bu Xinguang, the compensation claimant, was investigated by the Anhui Provincial Public Security Department on suspicion of the crimes of forging company seals, illegally issuing financial instruments, and misappropriating funds. He was arrested on September 5, 1999; before his arrest he had been the general manager of Shenzhen Xinhui Industrial Development Co., Ltd. (hereinafter "Xinhui Company"). On November 20, 2001, the Hefei Intermediate People's Court rendered criminal judgment (2001) He Xing Chu Zi No. 68, finding that, during the period from January 1995 when Bu Xinguang contracted to operate the Shenzhen Securities Business Department of the Anhui Provincial Trust and Investment Company (hereinafter the "Anxin Securities Department"), he had, without authorization from the Anhui Provincial Trust and Investment Company (hereinafter "Anxin Company"), arranged for employees he hired to privately carve and use the company seal exclusively owned by Anxin Company, and used this forged seal to fabricate the corporate legal representative's power of attorney of Anxin Company, a certificate of the legal representative, and guarantee documents addressed to the Shenzhen Stock Exchange, thereby obtaining the business qualification of the Anxin Securities Department; his conduct constituted the crime of forging seals. During the period when Bu Xinguang contracted to operate the Anxin Securities Department, in violation of financial administration regulations, he twice issued false credit certificates to others, causing major economic losses of RMB 10.32 million; his conduct also constituted the crime of illegally issuing financial instruments. During the contracted operation, as general manager of the Anxin Securities Department, he took advantage of his position to directly or indirectly misappropriate RMB 91,732,286 of the Anxin Securities Department's funds for investment in and various expenses of Xinhui

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Company, which was personally owned by him and unrelated to the business of the Anxin Securities Department, and the resulting economic losses were to be borne by the Anxin Securities Department and Anxin Company under the law; this should be regarded as Bu Xinguang's misappropriation of the securities department's funds for personal use, and his conduct constituted the crime of misappropriating funds. After the case arose, the Anhui Provincial Public Security Department recovered stolen money of RMB 16.8905 million and stolen goods and housing equivalent to RMB 16.27 million, and sealed property worth RMB 28.4 million and land use rights worth RMB 19.5 million invested by Xinhui Company, totaling RMB 81.0605 million. Bu Xinguang committed multiple crimes and should be punished for all of them concurrently; the court therefore sentenced: (1) Bu Xinguang committed the crime of forging company seals and was sentenced to fixed-term imprisonment of two years; committed the crime of illegally issuing financial instruments and was sentenced to fixed-term imprisonment of eight years; committed the crime of misappropriating funds and was sentenced to fixed-term imprisonment of ten years, with the combined sentence being fixed-term imprisonment of fifteen years; (2) the stolen money and stolen goods totaling RMB 81.0605 million were to be recovered. Bu Xinguang refused to accept the judgment and appealed. On February 22, 2002, the Anhui Provincial Higher People's Court rendered criminal ruling (2002) Wan Xing Zhong Zi No. 34, dismissing the appeal and affirming the original judgment. The land use rights sealed and ordered to be recovered in the criminal judgment referred to the "Shenkeng Village land" use rights invested by Bu Xinguang in the name of Xinhui Company. On August 4, 2009, Bu Xinguang was released upon completion of his sentence.

The court further found that: after Bu Xinguang's criminal case arose, the Renminqiao Sub-branch of Shenzhen Development Bank (formerly the Business Department of Shenzhen Development Bank, hereinafter "Shendong Bank"), on the ground that it had a debt dispute with Bu Xinguang, the Anxin Securities Department, and Anxin Company over a RMB 25 million interbank loan, filed a civil lawsuit with the Shenzhen Intermediate People's Court on December 28, 1999, with case number (2000) Shen Zhong Fa Jing Tiao Chu Zi No. 72. Shendong Bank also filed civil lawsuits with the Luohu District People's Court of Shenzhen on March 10, 2000, on the grounds of guarantee loan disputes and disputes over interbank fund contracts and margin deposit agreements with the Anxin Securities Department and Anxin Company; the court accepted the cases, with case numbers (2000) Shen Luo Fa Jing Yi Chu Zi No. 372 and (2000) Shen Luo Fa Jing Yi Chu Zi No. 373 respectively. On April 19, 2000, the Anhui Provincial Public Security Department wrote to the Shenzhen Intermediate People's Court and the Luohu District People's Court, requesting that the courts, in accordance with Article 12 of the Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Cases Involving Suspected Economic Crimes in the Trial of Economic Dispute Cases, suspend the civil cases and transfer them to the Anhui Provincial Public Security Department for unified investigation and handling. On July 15, 2000, the Luohu District People's Court transferred the civil cases (2000) Shen Luo Fa Jing Yi Chu Zi No. 372 and (2000) Shen Luo Fa Jing Yi Chu Zi No. 373 it had accepted to the Anhui Provincial Public Security Department. On August 24, 2000, the Criminal Police Corps of the Anhui Provincial Public Security Department sealed the "Shenkeng Village land." With respect to case (2000) Shen Zhong Fa Jing Tiao Chu Zi No. 72, the lawsuit by Shendong Bank against the Anxin Securities Department and Anxin Company over a RMB 25 million interbank loan, the Shenzhen Intermediate People's Court, after trial, held that the case involved suspected criminal conduct and, on September 21, 2001, transferred the case to the Anhui Provincial Public Security Department for investigation, while notifying Shendong Bank, Anxin Company, and the Anxin Securities Department that the civil case had been transferred to the Anhui Provincial Public Security Department. After the criminal judgment (2001) He Xing Chu Zi No. 68 of the Hefei Intermediate People's Court took effect, the Anhui Provincial Public Security Department released the seal on the "Shenkeng Village land" and returned the recovered land use rights to the victim unit, the Anxin Securities Department, to offset the RMB 25 million debt that Bu Xinguang had borrowed in the name of the Anxin Securities Department from Shendong Bank in civil case (2000) Shen Zhong Fa Jing Tiao Chu Zi No. 72 investigated by the Anhui Provincial Public Security Department.

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The court further found that: after Bu Xinguang's criminal case arose, Shendong Bank, believing that the Anxin Securities Department had raised RMB 20 million from the bank but had repaid only RMB 12 million, leaving RMB 8 million overdue, sued Bu Xinguang and the Anxin Securities Department and Anxin Company before the Shenzhen Intermediate People's Court on the ground of a bond repurchase agreement dispute, demanding joint and several repayment of the RMB 8 million owed plus RMB 3 million in interest. On November 9, 1999, the Shenzhen Intermediate People's Court rendered civil judgment (1998) Shen Zhong Fa Jing Yi Chu Zi No. 311: Bu Xinguang was to return RMB 2,570,016 to Shendong Bank plus interest for the period during which the RMB 20 million was used; where Bu Xinguang's property was insufficient to satisfy the debt, the Anxin Securities Department and Anxin Company were to bear supplementary repayment liability. During execution of that civil judgment, Shendong Bank and Anxin Company reached a settlement and offset the debt with other property.

Judgment

On November 24, 2011, the Compensation Committee of the Supreme People's Court rendered Compensation Committee Decision (2011) Fa Wei Pei Zi No. 1: upholding the criminal compensation decision Wan Gong Xing Pei Zi [2011] No. 01 of the Anhui Provincial Public Security Department and the criminal compensation reconsideration decision Gong Pei Fu Zi [2011] No. 1 of the Ministry of Public Security of the People's Republic of China.

Reasoning

The Supreme People's Court held that: during the period when Bu Xinguang contracted to operate the Anxin Securities Department, without authorization from Anxin Company, he privately carved and fraudulently used the seal of Anxin Company, issued false credit certificates to others in violation of financial administration regulations, and took advantage of his position to misappropriate RMB 91,732,286 of the Anxin Securities Department's funds; he had been found by criminal judgment (2001) He Xing Chu Zi No. 68 of the Hefei Intermediate People's Court to have committed the crimes of forging seals, illegally issuing financial instruments, and misappropriating funds, and the stolen money and goods totaling RMB 81.0605 million, including the "Shenkeng Village land" use rights invested by Bu Xinguang in the name of Xinhui Company (of which the land use rights were worth RMB 19.5 million), had been ordered to be recovered. Bu Xinguang's argument that the part of the land use rights he purchased with Xinhui Company's funds were his personal lawful property was untenable; the effective criminal judgment of the people's court had already recovered the RMB 19.5 million "Shenkeng Village land" use rights invested by Xinhui Company as part of the stolen money and goods from Bu Xinguang's crime of misappropriating funds, and Bu Xinguang had no right to claim state compensation for property recovered under an effective judgment of a people's court.

With respect to Bu Xinguang's claim that the Anhui Provincial Public Security Department used the "Shenkeng Village land" to offset his RMB 8 million debt to Shendong Bank, causing a direct property loss of RMB 3.166 million: after Bu Xinguang's suspected crime arose, Shendong Bank sued Bu Xinguang and the Anxin Securities Department and Anxin Company in the RMB 8 million bond repurchase agreement case, and the Shenzhen Intermediate People's Court rendered civil judgment (1998) Shen Zhong Fa Jing Yi Chu Zi No. 311, which had been executed. That case was not the same civil case as case (2000) Shen Zhong Fa Jing Tiao Chu Zi No. 72, which was transferred by the Shenzhen Intermediate People's Court to the Anhui Provincial Public Security Department for investigation on September 21, 2001, namely the lawsuit by Shendong Bank against Bu Xinguang and the Anxin Securities Department and Anxin Company over a RMB 25 million interbank loan. After the criminal judgment took effect, the Anhui Provincial Public Security Department returned the RMB 19.5 million "Shenkeng Village land" use rights ordered to be recovered to the victim unit in the RMB 25 million fund case it was investigating in which Bu Xinguang had borrowed funds in the name of the Anxin Securities Department; this had a factual basis and did not harm his interests. Bu Xinguang's claim that the Anhui Provincial Public Security Department used the "Shenkeng Village land" to offset his RMB 8 million debt to Shendong Bank was inconsistent with the facts. Bu Xinguang's request that

the Anhui Provincial Public Security Department compensate him RMB 3.166 million for the loss caused by the unlawful return of the "Shenkeng Village land" had no factual or legal basis.

In summary, the "Shenkeng Village land" had already been ordered recovered by criminal ruling (2002) Wan Xing Zhong Zi No. 34 of the Anhui Provincial Higher People's Court. The compensation claimant Bu Xinguang's claim that the Anhui Provincial Public Security Department unlawfully returned the land and caused him a loss of RMB 3.166 million had no legal basis, his other claims had no factual basis, and they did not meet the requirements of the State Compensation Law and were not supported.

Relevant Legal Provisions

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

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