SPC Guiding Case No. 59: Dai Shihua v. Jinan Municipal Public Security Fire Brigade (Fire Acceptance Inspection Dispute)

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

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Keywords

Administrative litigation / scope of case acceptance / administrative confirmation / fire acceptance inspection / notice of filing result

Holding

A notice of the filing result of construction-project fire acceptance inspection contains an assessment of whether the fire completion acceptance is qualified, and has the nature of administrative confirmation. Where a party files an administrative lawsuit against the notice-of-filing-result act of a fire protection institution of the public security organ, the people's court shall accept the case in accordance with the law.

Basic Facts

The plaintiff, Dai Shihua, alleged as follows. The unit in which the plaintiff resides has four households per floor, and Room 801 in which he lives faces east with its entrance door opening outward. A fire hydrant measuring 1.6 meters high, 0.7 meters wide and 0.25 meters thick is mounted on the south wall 0.35 meters from his doorway. To enter the room, a person must step back to make way and wait for the door leaf to open before moving forward to enter. The plaintiff's door leaf could not open at all without opening to 60 to 70 degrees. The installation and construction of the fire hydrant affected the plaintiff's life. He requested that the decision of the defendant, the Jinan Municipal Public Security Fire Brigade, approving the acceptance of the fire hydrant installed in front of his door be revoked in accordance with the law, and that the defendant be ordered to instruct the unit that filed for approval to rectify the matter within a time limit in accordance with national standards.

The defendant, the Jinan Municipal Public Security Fire Brigade, argued as follows. The notice of the filing result of construction-project fire acceptance inspection is the product of completing an engineering inspection in accordance with the evaluation standards for construction-project fire acceptance, and is the embodiment of the inspection record. If the filing result is qualified, it indicates that the construction project complies with the relevant fire technical specifications; if unqualified, the fire protection institution of the public security organ will take measures in accordance with the law and require the construction unit to rectify the relevant issues. Its nature is a technical acceptance, and it is not an independent and complete specific administrative act, is not actionable, and does not fall within the scope of acceptance of administrative litigation by the people's courts. It requested the court to dismiss the plaintiff's action.

The court found upon trial as follows. With respect to the shantytown renovation project of Buildings 1 to 8 and the underground garage south of Guanyi Street where Dai Shihua resided, the Jinan Municipal Public Security Fire Brigade, after sampling and inspecting the fire protection facilities, issued on November 21, 2011 the Notice of Filing Result of Construction-Project Fire Acceptance Inspection, Ji Gong Xiao Yan Bei [2011] No. 0172.

Judgment

On November 13, 2012, the People's Court of Jinan High-tech Industrial Development Zone rendered Administrative Ruling (2012) Gao Xing Chu Zi No. 2, dismissing the action of the plaintiff Dai Shihua. Dai Shihua was dissatisfied with the first-instance ruling and appealed. After trial, the Intermediate People's

Court of Jinan City rendered Administrative Ruling (2012) Ji Xing Zhong Zi No. 223 on January 17, 2013: (1) the Administrative Ruling (2012) Gao Xing Chu Zi No. 2 rendered by the People's Court of Jinan High-tech Industrial Development Zone was revoked; and (2) the case was remanded to the People's Court of Jinan High-tech Industrial Development Zone for continued trial.

Reasoning

The effective judgment held as follows. On the nature of the act. Article 4 of the Fire Protection Law of the People's Republic of China (the "Fire Protection Law") provides: "The public security organs of the local people's governments at or above the county level shall exercise supervision and administration over fire protection work within their respective administrative areas, and the fire protection institutions of the public security organs at the corresponding level shall be responsible for implementation." Article 3(2) of the Provisions of the Ministry of Public Security on the Supervision and Administration of Construction-Project Fire Protection provides: "The fire protection institutions of the public security organs shall, in accordance with the law, carry out the review of construction-project fire protection design, fire acceptance inspection and filing, and sampling inspection, and exercise fire protection supervision over construction projects." Article 24 provides: "For construction projects other than those provided in Articles 13 and 14 of these Provisions, the construction unit shall, within seven days from obtaining the construction permit and passing the completion acceptance of the project, carry out fire protection design and completion-acceptance fire protection filing through the website of the fire protection institution of the provincial public security organ, or carry out fire protection design and completion-acceptance fire protection filing at the business reception venue of the fire protection institution of the public security organ." The above provisions indicate that construction-project fire acceptance filing is the act of a specific construction-project constructor reporting the completion of the project acceptance to the fire protection institution of the public security organ, which registers and files it for inspection and supervision by the fire protection institution. The filing act is an act by which the fire protection institution of the public security organ exercises fire protection supervision and administration over construction projects. The construction-project fire protection filing and sampling inspection acts carried out by the fire protection institution have the nature of exercising administrative powers, embodying the state will, legality, public interest, exclusivity and compulsion. The notice of the filing result is a component of the filing act and a concrete manifestation of its result, and likewise possesses the above characteristics of administrative power, and should be brought within the scope of judicial review.

On the consequences of the act. Article 13 of the Fire Protection Law provides: "Where a construction project that requires fire protection design in accordance with the national technical standards for construction-project fire protection is completed, fire acceptance inspection and filing shall be conducted in accordance with the following provisions: ... (2) for other construction projects, the construction unit shall, after acceptance, report to the fire protection institution of the public security organ for filing, and the fire protection institution of the public security organ shall conduct sampling inspection. A construction project that is required by law to undergo fire acceptance inspection may not be put into use without fire acceptance inspection or if the fire acceptance inspection is unqualified; other construction projects that fail the sampling inspection in accordance with the law shall cease to be used." Article 25 of the Provisions of the Ministry of Public Security on the Supervision and Administration of Construction-Project Fire Protection provides: "The fire protection institution of the public security organ shall randomly determine the inspection targets among the projects that have completed fire protection design and completion-acceptance filing and announce them to the public. For projects determined as inspection targets, the fire protection institution of the public security organ shall, within twenty days, complete the drawing inspection in accordance with fire protection regulations and the national technical standards for construction-project fire protection, or complete the engineering inspection in accordance with the evaluation standards for construction-project fire acceptance inspection, and prepare an inspection record. The inspection result shall be announced to the public; if the inspection is unqualified, written notice shall also be given to the construction unit. After receiving the notice, the construction unit shall stop construction or stop use, organize rectification, and then apply to the fire

protection institution of the public security organ for a re-inspection. The fire protection institution of the public security organ shall, within twenty days from receiving the written application, conduct a re-inspection and issue a written re-inspection opinion." The above provisions indicate that, in the completion-acceptance filing act, the fire protection institution of the public security organ does not merely accept the relevant materials submitted by the construction unit; it must also review the filing materials and complete the engineering inspection. The construction-project fire protection filing and sampling inspection acts carried out by the fire protection institution can produce binding force under administrative law. For the construction unit, after the completion acceptance of the project, it shall go to the fire protection institution of the public security organ for acceptance filing; otherwise it shall bear corresponding administrative responsibility. If the fire protection facilities fail the sampling inspection in accordance with the law, it shall cease use and organize rectification. For the fire protection institution of the public security organ, the filing result contains an assessment of whether the sampling inspection is qualified, which is in essence an act of administrative confirmation, that is, an administrative act by which the fire protection institution of the public security organ determines and confirms the legal facts and legal relations of the administrative counterpart. Once the fire protection facilities are assessed as qualified by the fire protection institution, it is deemed that the fire protection institution has in fact confirmed the fire protection engineering quality as qualified, and the administrative counterpart will likewise be bound by the act.

Accordingly, the court held that issuing the notice of construction-project fire acceptance filing is the final link in the supervision and administration of the quality of construction-project fire protection facilities, and that the notice of the filing result contains an assessment of whether the fire completion acceptance is qualified, has the nature of administrative confirmation, and is a specific administrative act of the fire protection institution of the public security organ. The completion of the filing formalities can produce binding force under administrative law. The filing act is therefore an actionable administrative act subject to judicial review by the people's court. The first-instance ruling held that the notice of the filing result of construction-project fire acceptance inspection was, in nature, a technical acceptance notice rather than a specific administrative act, and dismissed the appellant Dai Shihua's action on that basis; that was indeed improper.

(Judges of the effective judgment: Zhang Jifeng, Sun Jifa, Shan Lei)

Relevant Legal Provisions

Articles 4 and 13 of the Fire Protection Law of the People's Republic of China.

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