SPC Guiding Case No. 76: Pingxiang Yapeng Real Estate Development Co., Ltd. v. Pingxiang Land and Resources Bureau (Failure to Perform Administrative Agreement)

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

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 28, 2016.

Keywords

Administrative / administrative agreement / contract interpretation / judicial review / legal effect

Holding

An administrative organ's interpretation, within the scope of its authority, of the terms agreed upon in an administrative agreement is legally binding on both parties to the agreement, and the people's court, upon review and in light of the actual circumstances, may use it as a basis for reviewing the administrative agreement.

Basic Facts

On January 13, 2004, the Pingxiang Municipal Land Acquisition and Reserve Center, entrusted by the Pingxiang Municipal Meat Joint Processing Plant and with the approval of the defendant, the Pingxiang Municipal Land and Resources Bureau ("Municipal Land Bureau"), published in the Pingxiang Daily a public listing-for-sale announcement of a state-owned land use right, scheduling the public listing-for-sale of the state-owned land use right for plot TG-0403 at the land transaction hall from January 30, 2004 to February 12, 2004. The plot was located at Wangongtang, Houbu Street, Anyuan District, Pingxiang City, with a land area of 23,173.3 square meters, the development land was comprehensive commercial-residential land, the cold-storage workshop was to be maintained as-is, the plot ratio was 2.6, and the land use term was 50 years. Pingxiang Yapeng Real Estate Development Co., Ltd. ("Yapeng Company") acquired the state-owned land use right for plot TG-0403 by bidding on February 12, 2006, for RMB 7.68 million, and on February 21, 2006 entered into the Contract for the Grant of the State-owned Land Use Right with the defendant Municipal Land Bureau. The contract agreed that the use of the granted plot was comprehensive commercial-residential land, with the cold-storage workshop maintained as-is. The land grant fee was RMB 331.42 per square meter, totaling RMB 7.68 million. On March 2, 2006, the Municipal Land Bureau issued to Yapeng Company two state-owned land use certificates, Ping Guo Yong (2006) No. 43750 and Ping Guo Yong (2006) No. 43751. Among them, the land category (use) in the certificate Ping Guo Yong (2006) No. 43750 was industrial, the type of use right was granted use, and the use right area was 8,359 square meters; the land category in the certificate Ping Guo Zi (2006) No. 43751 was comprehensive commercial-residential land. In this regard, Yapeng Company believed that the agreed "cold-storage workshop maintained as-is" meant maintaining the use function of the cold-storage warehouse, not maintaining the land category, and requested that the land category in one of the certificates be corrected from "industrial" to "comprehensive commercial-residential." However, the Municipal Land Bureau believed that maintaining the status quo meant that the cold-storage workshop retained its industrial land nature upon grant, and that the company had also paid the land grant fee based on the cold-storage workshop being industrial granted land, and therefore disagreed with correcting the land use. On July 30, 2012, the Pingxiang Municipal Planning Bureau issued to the Pingxiang Municipal Land Acquisition and Reserve Center a reply letter on the relevant issues in the Letter Concerning the Plot of the Pingxiang Municipal Meat Joint Processing Plant. The main content was: our bureau had already made clear in the planning conditions issued on October 8, 2003 that the land

use nature of the plot was comprehensive commercial-residential land (the cold-storage workshop being about 7,300 square meters, same below), but the cold-storage workshop was to be maintained as-is. According to the regulatory plan for the plot, its land use nature was residential (compatible with commercial), but since the food cold-storage workshop within the plot was the only agricultural product reserve and fresh-keeping warehouse in the city and an important livelihood project of the city, the use function of the approximately 7,300-square-meter cold-storage warehouse within the plot was temporarily retained and could not be demolished without the approval of the government or the relevant competent department. On February 21, 2013, the Municipal Land Bureau replied to Yapeng Company in writing: First, according to the planning conditions issued by the Municipal Planning Bureau and the actual circumstances of the plot, your company's application to change the land use of the cold-storage workshop land within plot TG-0403 from industrial land to commercial-residential land was approved. Second, since your company acquired the use right of the cold-storage workshop land within the plot at the industrial land price, according to the Law of the People's Republic of China on the Administration of Urban Real Estate, the change of the land use of the cold-storage workshop land within plot TG-0403 from industrial land to commercial-residential land required the payment of an additional land grant fee. The additional land grant fee could be calculated as the assessed value of the comprehensive land (residential, office) at the time of the grant of the plot minus the same proportion, i.e., RMB 2,976,560 multiplied by 70%, equaling RMB 2,083,600. Third, after the adjustment of the land use of the cold-storage workshop land, its use function could not be changed without the approval of the municipal government. On March 10, 2013, Yapeng Company brought an administrative lawsuit, requesting the court to order the defendant to correct the land category and use in the state-owned land use certificate Ping Guo Yong (2006) No. 43750 from "industrial" to comprehensive commercial-residential land (cold-storage workshop maintained as-is), and to revoke the second item of the defendant's Reply on the Land Use Issues of Plot TG-0403 of Yapeng Real Estate Co., Ltd., which concerned the payment of an additional land grant fee of RMB 2,083,600.

Judgment

On April 23, 2014, the Anyuan District People's Court of Pingxiang City, Jiangxi Province rendered the administrative judgment (2014) An Xing Chu Zi No. 6: (1) The defendant, the Pingxiang Municipal Land and Resources Bureau, should, within ninety days from the effective date of the judgment, correct in accordance with the law the land use of the 8,359.1 square meters recorded in the state-owned land use certificate Ping Guo Yong (2006) No. 43750; (2) The second item of the defendant Pingxiang Municipal Land and Resources Bureau's Reply on the Land Use Issues of Plot TG-0403 of Yapeng Real Estate Co., Ltd. dated February 21, 2013, concerning the payment of an additional land grant fee of RMB 2,083,600, was revoked. After the judgment was pronounced, the Pingxiang Municipal Land and Resources Bureau appealed. On August 15, 2014, the Intermediate People's Court of Pingxiang City, Jiangxi Province rendered the administrative judgment (2014) Ping Xing Zhong Zi No. 10: The appeal was dismissed and the original judgment was affirmed.

Reasoning

The effective judgment held: An administrative agreement is an agreement that an administrative organ, for the purpose of realizing public interests or administrative management objectives, negotiates and concludes with citizens, legal persons, or other organizations within the scope of its statutory duties, containing rights and obligations of an administrative law nature. The administrative agreement in this case was the contract for the grant of the state-owned land use right signed between the Municipal Land Bureau, on behalf of the state, and Yapeng Company. An administrative agreement emphasizes good faith, equality, and voluntariness. Once signed, all parties must strictly observe it, and an administrative organ may not, without justifiable reasons, impose obligations on the other party beyond the agreement or unilaterally modify or rescind it. In this case, the land use publicly announced at the time of the grant of plot TG-0403 was "development land as comprehensive commercial-residential land, with the cold-storage workshop

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maintained as-is," and the grant contract agreed that "the use of the granted plot is comprehensive commercial-residential land, with the cold-storage workshop maintained as-is." However, the Municipal Land Bureau and Yapeng Company diverged on their understanding of that agreement, while the Pingxiang Municipal Planning Bureau confirmed in its reply letter to the former Pingxiang Municipal Meat Joint Processing Plant that the land use nature of the 23,173.3 square meters of the state-owned land use right of plot TG-0403 (including the cold-storage workshop) was comprehensive commercial-residential land. The interpretation of the Pingxiang Municipal Planning Bureau was consistent with the land use nature made clear in the listing-for-sale announcement, was made by the Pingxiang Municipal Planning Bureau within the scope of its authority, conformed to the law and the actual circumstances, was conducive to establishing the image of a trustworthy government, had no major or obvious illegality, had legal effect, and was binding on the Municipal Land Bureau's judgment of the land use nature. Therefore, the Municipal Land Bureau's assertion that the land occupied by the cold-storage workshop was industrial land was not supported. Yapeng Company's request that the Municipal Land Bureau correct the land category in the land certificate Ping Guo Yong (2006) No. 43750 (with a land use right area of 8,359.1 square meters) to comprehensive commercial-residential land had justifiable reasons, and the Municipal Land Bureau should make the correction. Yapeng Company, as the land grantee, had paid the full price as agreed, and the Municipal Land Bureau's requirement that Yapeng Company pay an additional land grant fee if it changed the land use lacked factual and legal basis and was contrary to the principle of good faith.

Relevant Legal Provisions

Article 12 of the Administrative Procedure Law of the People's Republic of China.

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