SPC Guiding Case No. 91: Sha Mingbao et al. v. the People's Government of Huashan District, Ma'anshan City (Administrative Compensation for Forcible Demolition of Houses)

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Keywords

Administrative / administrative compensation / forcible demolition / burden of proof / reasonable market value

Holding

In an administrative compensation case arising from the forcible demolition of a house, where the plaintiff has provided preliminary evidence but, due to reasons attributable to the administrative organ, the plaintiff is unable to adduce evidence of the losses of the articles inside the house, and the administrative organ is likewise unable to adduce evidence of the losses of the articles inside the house because it failed to take measures such as registering and notarizing the property in accordance with the law, the people's court shall support the plaintiff's compensation claims for the articles inside the house that do not exceed the market value and conform to the common sense of daily life.

Basic Facts

On December 5, 2011, the People's Government of Anhui Province issued the Reply on the 35th Batch of Land for Urban Construction in Ma'anshan City in 2011 (Wan Zheng Di [2011] No. 769), approving the expropriation of 10.04 hectares of collective construction land of farmers within the Huali Sub-district of Huashan District, Ma'anshan City, for urban construction. On December 23, 2011, the People's Government of Ma'anshan City issued Announcement No. 37 of 2011, the Announcement of the People's Government of Ma'anshan City on the Land Expropriation Plan, announcing the content of the reply of the People's Government of Anhui Province and stating that the land expropriation plan would be implemented by the People's Government of Huashan District. The house numbered B11-3 in the Fengshou Villagers' Group of Fengshou Village, Huali Town, Huashan District, under the name of Su Yuehua, was within the scope of this expropriation. Su Yuehua died on September 13, 2011, and before her death she had disposed of the house to the four plaintiffs. The plaintiff Gu Hongying was the daughter of Su Yuehua, and the plaintiffs Sha Mingbao, Sha Minghu, and Sha Mingli were the grandsons of Su Yuehua. During the implementation of the expropriation and relocation, the expropriation units separately prepared the Compensation Form for Expropriation and Relocation Expenses for National Construction Land in Ma'anshan City and the Filing Form for Monetized Resettlement (Property Rights Exchange) of Expropriated Relocation Housing in Ma'anshan City, registering and compensating the house and above-ground attachments of Su Yuehua's household, and the husband of the plaintiff Gu Hongying received the resettlement compensation. In early 2012, the defendant organized relevant departments to demolish the house and above-ground attachments of Su Yuehua's household. The four plaintiffs, Sha Mingbao and others, believed that the People's Government of Huashan District, Ma'anshan City, had illegally demolished the house, infringing upon their lawful property rights, and therefore filed a lawsuit, requesting that the people's court order the People's Government of Huashan District, Ma'anshan City, to compensate for house losses, decoration losses, and rent losses totaling 2,827,680 yuan, and for losses of articles inside the house totaling 100,000 yuan, mainly including 50,000 yuan for clothing, furniture, household appliances, and mobile phones, and 50,000 yuan for a solid-wood carved bed.

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The Intermediate People's Court of Ma'anshan City rendered a judgment dismissing the compensation claims of the four plaintiffs, Sha Mingbao and others. Sha Mingbao and the other three were dissatisfied and appealed, arguing: (1) In early 2012, the People's Government of Huashan District, Ma'anshan City, expropriated the collective land of farmers in issue without soliciting public opinion, and the appellants also did not know by what standard compensation was to be made; (2) On August 1, 2012, the act of the People's Government of Huashan District, Ma'anshan City, in demolishing the appellants' house was unlawful, as no agreement was reached in advance, they were not informed when the demolition would take place, and the property inside the house was neither moved out nor inventoried, so the burden of proof for the resulting property losses should be borne by the People's Government of Huashan District, Ma'anshan City; (3) On August 27, 2012, the father of the appellants Sha Mingbao, Sha Minghu, and Sha Mingli, Sha Kaijin, signed the compensation form under duress, but their father Sha Kaijin had no rights and interests in the house and the compensation form was signed after the house had been demolished. In summary, they requested that the second-instance court revoke the first-instance judgment and support their compensation claims.

The People's Government of Huashan District, Ma'anshan City, did not submit a written defense.

Judgment

On July 20, 2015, the Intermediate People's Court of Ma'anshan City rendered Administrative Compensation Judgment (2015) Ma Xing Pei Chu Zi No. 00004: the compensation claims of Sha Mingbao and the other three were dismissed. After the judgment was pronounced, Sha Mingbao and the other three appealed. On November 24, 2015, the Higher People's Court of Anhui Province rendered Administrative Compensation Judgment (2015) Wan Xing Pei Zhong Zi No. 00011: Administrative Compensation Judgment (2015) Ma Xing Pei Chu Zi No. 00004 of the Intermediate People's Court of Ma'anshan City was revoked; and the People's Government of Huashan District, Ma'anshan City, was ordered to compensate the appellants Sha Mingbao and the other three for losses of articles inside the house of 80,000 yuan.

Reasoning

The court's effective judgment held that, under Article 45 of the Regulations for the Implementation of the Land Administration Law of the People's Republic of China, the land administrative authority orders the delivery of the land within a prescribed time limit, and if the person whose land is expropriated refuses to deliver it, an application shall be made to the people's court for compulsory execution. The evidence provided by the People's Government of Huashan District, Ma'anshan City, could not prove that the plaintiffs voluntarily delivered the house on the expropriated land. In the absence of a decision by the land administrative authority ordering the delivery of the land and without applying to the people's court for compulsory execution, its act of organizing the demolition of the house of Sha Mingbao and the other three was unlawful. As to the issue of the losses of the articles inside the demolished house, under Paragraph 2 of Article 38 of the Administrative Litigation Law of the People's Republic of China, in administrative compensation and administrative reparation cases, the plaintiff shall provide evidence of the harm caused by the administrative act. Where the plaintiff is unable to adduce evidence due to reasons attributable to the defendant, the defendant shall bear the burden of proof. When the People's Government of Huashan District, Ma'anshan City, organized the demolition of the appellants' house, it did not register and preserve the articles inside the house in accordance with the law, nor did it prepare a list of articles and have the appellants sign to confirm it, causing the appellants to be unable to adduce evidence of the damage to the articles. Therefore, whether such losses exist and the specific circumstances of the losses shall be subject to the burden of proof of the People's Government of Huashan District, Ma'anshan City, in accordance with the law. The 50,000 yuan for articles inside the house claimed by the appellants, including clothing, furniture, household appliances, and mobile phones, were all necessities of daily life, conforming to the actual circumstances of an ordinary family, and the appellee also did not provide evidence proving that these articles did not exist; therefore, the types, quantities, and values of the articles inside the house claimed by the appellants should be recognized. The appellants claimed that the value of the solid-wood carved bed

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was 50,000 yuan, which had exceeded the normal market price range, and they were unable to determine the material of the bed, the time of its formation, or how it differed from an ordinary solid-wood carved bed; the court did not support this claim. However, out of consideration for maximizing the protection of the lawful rights and interests of the infringed party, and in light of the current market price of ordinary solid-wood carved beds, applying the principle of “taking the higher when in doubt,” the court comprehensively exercised discretion to determine the value of the solid-wood carved bed at 30,000 yuan. In summary, the court rendered the above judgment.

Relevant Legal Provisions

Paragraph 2 of Article 38 of the Administrative Litigation Law of the People’s Republic of China.

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