SPP Guiding Case No. 252: People’s Procuratorate of Shangcheng County, Henan Province v. Shangcheng County Natural Resources Bureau (Administrative Public Interest Litigation for Failure to Perform Land Supervision Duties)

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

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Keywords

Administrative public interest litigation / natural resource protection / illegal occupation of land / failure to apply for compulsory enforcement / re-issuance of an administrative act

Holding

Where an administrative organ, through its failure to apply to the people's court for compulsory enforcement in a timely manner, causes an administrative penalty decision to lose its enforceability through compulsory enforcement, thereby causing continuous damage to the public interest, and the administrative organ still fails to perform its duties in accordance with law after the people's procuratorate has issued a procuratorial recommendation urging performance, the procuratorate shall, in accordance with law, institute administrative public interest litigation, requesting the court to order the administrative organ to take remedial measures or to re-issue an administrative act. Where the same administrative organ has failed to perform its duties in accordance with law with respect to multiple illegal acts of the same nature, the procuratorial organ may handle them as a single administrative public interest litigation case.

Basic Facts

In March 2017, Company A, a logistics company in Shangcheng County, Henan Province ("Company A"), after signing lease agreements with some villagers of Shilitou Village, Nianyushan Sub-district Office, Shangcheng County, illegally occupied 10,799 square meters of cultivated land, village land, and grassland for the construction of a logistics park without the approval of the relevant departments. On August 10, 2020, the Shangcheng County Natural Resources Bureau issued Administrative Penalty Decision No. 60 (2020) against Company A: (1) ordering the return of the 10,799 square meters of illegally occupied land to the Villagers' Committee of Shilitou Village, Nianyushan Sub-district Office; and (2) imposing a fine of RMB 93,275. On October 22, 2020, Company A paid the fine but did not return the land. On June 23, 2021, the Shangcheng County Natural Resources Bureau applied to the court for compulsory enforcement, but the court did not accept the application because the statutory time limit had been exceeded.

In March 2020, Company B, a renewable resources company in Shangcheng County, Henan Province ("Company B"), after signing a lease agreement with the Changgangling Group of Nanzhai Village, Liji Township, Shangcheng County, illegally occupied 3,375 square meters of forest land for the construction of a construction waste recycling and processing project without the approval of the relevant departments. On May 20, 2020, the Shangcheng County Natural Resources Bureau issued Administrative Penalty Decision No. 25-1 (2020): (1) ordering the return of the 3,375 square meters of illegally occupied land to the Changgangling Group and Tuanshan Group of Nanzhai Village, Liji Township; (2) ordering the demolition within 15 days of the 2,000 square meters of newly built structures on the illegally occupied land; and (3) imposing a fine of RMB 13,500. On May 21, 2020, Company B paid the fine but did not return the land or demolish the illegal structures. On June 23, 2021, the Shangcheng County Natural Resources Bureau applied to the court for compulsory enforcement, but the court did not accept the application because the

statutory time limit had been exceeded.

In March 2020, Company B also illegally occupied 3,924 square meters of cultivated land and forest land in Nanzhai Village, Liji Township, Shangcheng County, without approval, for the construction of a renewable resources production and operation site. On August 20, 2021, the Shangcheng County Natural Resources Bureau issued Administrative Penalty Decision No. 62 (2021): (1) ordering the return of the 3,924 square meters of illegally occupied land to the Villagers' Committee of Nanzhai Village, Liji Township; (2) ordering the demolition within 30 days of the 2,425 square meters of newly built structures on the illegally occupied land; and (3) imposing a fine of RMB 36,654. On November 26, 2021, Company B paid the fine but did not return the land or demolish the illegal structures. The Shangcheng County Natural Resources Bureau did not apply to the court for compulsory enforcement in accordance with law.

Procuratorial Performance of Duties

Pre-litigation procedure for administrative public interest litigation. On September 16, 2021, the People's Procuratorate of Shangcheng County, Henan Province ("the Shangcheng County Procuratorate") discovered clues to this case in the course of performing its duties. Through preliminary investigation, it found that the Shangcheng County Natural Resources Bureau might have failed to perform its duties in accordance with law with respect to multiple illegal acts of the same nature, and therefore filed and investigated the matter as a single case pursuant to Articles 68 and 69 of the Rules for the Handling of Public Interest Litigation Cases by People's Procuratorates. Through reviewing administrative law enforcement files, conducting on-site visits, and performing on-site inspections, it lawfully ascertained the illegal facts of Company A's and Company B's occupation of land.

The Shangcheng County Procuratorate considered that the Shangcheng County Natural Resources Bureau's failure to apply for compulsory enforcement of the administrative penalty decisions that had already taken effect caused the two companies to occupy land illegally for a long period, infringing the public interest. On November 3, 2021, the Shangcheng County Procuratorate issued a procuratorial recommendation to the Bureau, recommending that it perform its land supervision and administration duties in accordance with law and take effective measures to urge Company A and Company B to return the illegally occupied land in a timely manner. On November 25 of the same year, the Shangcheng County Natural Resources Bureau replied in writing that Company A had removed the enclosing fences on the illegally occupied land and that Company B was demolishing the illegal structures on its own. Due to objective reasons such as a major public health emergency, the two companies failed to complete rectification in a timely manner. Pursuant to Article 78 of the Rules for the Handling of Public Interest Litigation Cases by People's Procuratorates, the Shangcheng County Procuratorate made a decision on December 24 of the same year to suspend the review. On September 1, 2022, the Shangcheng County Procuratorate resumed the review and, through follow-up investigation of the rectification, found that Company A had not removed the fences or returned the illegally occupied land, and Company B had only removed part of the fences and had not demolished the above-ground structures; the illegal occupation of land by the two companies continued, and the public interest remained in a state of damage.

Institution of administrative public interest litigation. On November 1, 2022, the Shangcheng County Procuratorate instituted administrative public interest litigation in the Shangcheng County People's Court in accordance with law, requesting an order that the Shangcheng County Natural Resources Bureau continue to perform its land supervision duties in accordance with law and take effective measures to investigate and handle, and fully implement the handling of, the illegal occupation of land by the companies involved. On December 5 of the same year, the Shangcheng County People's Court held a public hearing of the case. During the hearing, the parties debated whether the Shangcheng County Natural Resources Bureau had already performed its supervision duties with respect to the two companies' illegal occupation of land and whether it should continue to perform such duties. The Shangcheng County Natural Resources Bureau argued that it had already investigated and handled the illegal occupation of land by Company A and

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Company B, that Company A had already returned the illegally occupied land, that Company B had engaged in "construction alongside approval," and that, considering the enormous losses involved in demolition, it had failed to apply for compulsory enforcement in a timely manner, resulting in the deadline being exceeded, and that supervision faced difficulties. The procuratorial organ held: First, the Shangcheng County Natural Resources Bureau failed to perform its land supervision duties in accordance with law, causing damage to the public interest. Pursuant to Article 13 of the Administrative Compulsion Law of the People's Republic of China, where the law does not provide for compulsory enforcement by an administrative organ, the administrative organ that made the administrative decision shall apply to the people's court for compulsory enforcement. Although the Shangcheng County Natural Resources Bureau imposed administrative penalties for the illegal occupation of land, it failed, where the violators did not voluntarily perform, to apply to the people's court for compulsory enforcement in accordance with law and in a timely manner, causing the original administrative penalties to lose their enforceability through compulsory enforcement, and the violators continued to occupy land illegally, infringing the public interest. Second, despite urging through the pre-litigation procedure, the Shangcheng County Natural Resources Bureau still failed to effectively perform its duties, and the public interest remained in a state of continuous damage. Investigation and verification showed that Company A had only submitted a written application to return the land but had not actually returned it, and Company B's illegal structures had still not been demolished; the illegal occupation of land by the two companies continued. Third, the Shangcheng County Natural Resources Bureau should continue to perform its supervision duties in accordance with law. Although the original administrative penalty decisions no longer had enforceability through compulsory enforcement, the illegal occupation of land continued, and the Shangcheng County Natural Resources Bureau should continue to perform its supervision duties and take effective measures to investigate and handle the illegal occupation of land.

Judgment. On December 15, 2022, the Shangcheng County People's Court rendered a judgment in accordance with law, holding that the natural resources department has the duty to maintain the order of land administration and to eliminate illegal acts. The right to apply for non-litigation administrative enforcement involving an administrative penalty decision made against a person occupying land illegally is a public administrative power, a duty conferred by law on the administrative organ, and the administrative organ shall not abandon it at will. Where an administrative organ fails to apply to the court for compulsory enforcement of an administrative penalty decision in a timely manner, causing the decision to lose its enforceability through compulsory enforcement, and the violator does not voluntarily correct the violation, the administrative organ shall still perform its supervision duties in a timely manner and take remedial measures. Article 75 of the Administrative Penalty Law of the People's Republic of China provides that an administrative organ has the duty to self-correct and proactively rectify the administrative penalties it has imposed. Therefore, the Shangcheng County Natural Resources Bureau could re-file and investigate the enterprises' illegal occupation of land and issue new administrative penalties, performing its duties in accordance with law and in a timely manner by applying to the court for compulsory enforcement, thereby remedying the consequences caused by its failure to apply for compulsory enforcement of the original administrative penalties. The Shangcheng County Natural Resources Bureau neither applied to the court for compulsory enforcement within the statutory time limit as required by Article 53 of the Administrative Compulsion Law of the People's Republic of China, nor adopted corresponding remedial measures in accordance with the provision, in the Implementation Opinions (for Trial Implementation) on Improving the Administrative Law Enforcement System and Mechanism for Natural Resources and Promoting Long-Term and Permanent Governance of Law Enforcement and Supervision jointly issued on March 4, 2021 by the Henan Provincial Department of Natural Resources and eight other departments, that "cases exceeding the time limit for applying for compulsory enforcement due to force majeure or other historical reasons shall be handled by the county (city, district) government, the court, and the natural resources competent department by way of 'one matter, one discussion,'" thereby causing land resources to be occupied for a long period and the public interest to remain in a state of continuous infringement, which constituted failure to perform statutory duties. It therefore ordered the Shangcheng County Natural Resources Bureau to continue to perform its land

supervision and administration duties and, within six months of the judgment taking effect, to re-investigate and handle the illegal acts of Company A and Company B and complete rectification.

After the judgment took effect, the Shangcheng County Natural Resources Bureau actively performed its duties. Since Company B had already completed rectification of the matters in Administrative Penalty Decision No. 25-1 (2020), the Bureau, targeting the illegal occupation of land involved in the other two administrative penalty decisions that had not been rectified, investigated and handled Company A and Company B separately on February 17, 2023 in accordance with law, ordering the two companies to rectify in accordance with law, return the illegally occupied land, and demolish the newly built structures on the illegally occupied land within a time limit. In November of the same year, the Shangcheng County Natural Resources Bureau applied to the court for compulsory enforcement. In December of the same year, the Shangcheng County People's Court made an administrative ruling that the implementation be completed within three months by the organization implementation organ designated by the People's Government of Shangcheng County. In April 2024, the Shangcheng County Procuratorate confirmed through follow-up investigation that all the land involved in the case had been returned and all illegal structures had been demolished.

Guiding Significance

(1) Where a failure to apply for compulsory enforcement in a timely manner causes an administrative penalty decision to lose its enforceability through compulsory enforcement and the public interest to be continuously damaged, the procuratorial organ may, through administrative public interest litigation, urge the administrative organ to continue performing its duties. Where a failure by an administrative organ to apply to the people's court for compulsory enforcement in a timely manner causes damage to the national interest or the social public interest, it shall be supervised as a circumstance of failure to perform duties in accordance with law. Where, after urging through the pre-litigation procedure, the administrative organ still fails to take effective measures to eliminate the circumstance of damage to the public interest, the procuratorial organ shall institute administrative public interest litigation in accordance with law, requesting the court to order the administrative organ to take remedial measures or to re-issue an administrative act, thereby safeguarding the national interest and the social public interest.

(2) Where the same administrative organ has failed to perform its duties in accordance with law with respect to multiple illegal acts of the same nature, the procuratorial organ may handle them as a single case. Administrative public interest litigation safeguards the national interest and the social public interest, is closely connected with the national legal order, and is holistic in nature. Where the procuratorial organ discovers that the same administrative organ may have failed to perform its duties in accordance with law with respect to multiple illegal acts of the same nature, it may file and handle them as a single administrative public interest litigation case; where the conditions for instituting a lawsuit are met, it may institute litigation in the people's court as a single case, urging the administrative organ to correct illegal acts of the same kind. This not only saves litigation resources but also serves a preventive function, conducive to better safeguarding the national interest and the social public interest.

Relevant Legal Provisions

Article 25, paragraph 4 of the Administrative Litigation Law of the People's Republic of China (2017 Amendment).

Articles 67, 68, 69, 75, 78, and 81 of the Rules for the Handling of Public Interest Litigation Cases by People's Procuratorates (effective 2021).

Articles 28, 29, and 75 of the Administrative Penalty Law of the People's Republic of China (2021 Revision).

Articles 13 and 53 of the Administrative Compulsion Law of the People's Republic of China (effective 2012).

Article 4, paragraph 2; Article 5; Article 44; Article 75; Article 77, paragraph 1; and Article 83 of the Land Administration Law of the People's Republic of China (2019 Amendment).

Article 33 of the Measures for Administrative Penalties in Natural Resources (2020 Amendment) (now Article 40 of the 2024 Revision).

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