SPP Guiding Case No. 5: Case of Chen Genming, Lin Fujuan, and Li Dequan for Abuse of Power

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

Keywords

Subject of the crime of dereliction of duty; personnel of village-level grassroots organizations; crime of abuse of power

Holding

As the urban construction and the construction of a new socialist countryside in China gradually advance in depth, grassroots organizations such as village committees and residents' committees play an increasingly important role in assisting the people's governments in social administration. In practice, where personnel of grassroots organizations such as village committees and residents' committees abuse their power or neglect their duties to the extent that a crime is constituted while assisting the people's governments in carrying out administrative management work, they shall be pursued for criminal liability in accordance with the provisions of the Criminal Law on the crime of dereliction of duty.

Basic Facts

The defendant Chen Genming, male, born in 1946, formerly the person in charge of the Office of the Leading Group for Advancing the Small Town Social Insurance (hereinafter referred to as "Town Insurance") Work of Situan Town, Fengxian District, Shanghai.

The defendant Lin Fujuan, female, born in 1960, formerly the secretary of the Party branch and director of the village committee of Yangjiazhai Village, Situan Town, Fengxian District, Shanghai, and the person in charge of the village's Town Insurance work.

The defendant Li Dequan (formerly known as Li Deyuan), male, born in 1958, formerly a member of the Party branch and deputy director of the village committee of Yangjiazhai Village, Situan Town, Fengxian District, Shanghai, and the person handling the village's Town Insurance work.

From January 2004 to June 2006, the defendant Chen Genming, taking advantage of his position as the person in charge of the Office of the Leading Group for Advancing Town Insurance Work of Situan Town, Fengxian District, Shanghai, and the defendants Lin Fujuan and Li Dequan, taking advantage of their positions as the person in charge and the person handling the Town Insurance work of Yangjiazhai Village respectively, entrusted by the Situan Town People's Government of Fengxian District, Shanghai, in the course of carrying out employment and social security work for agricultural personnel on land subject to expropriation, violated the relevant provisions and, by methods such as inflating the area of expropriated land, engaged in favoritism and fraud, jointly or separately bringing 114 persons from Yangjiazhai Village, Liangmin Village, and Hengqiao Village who did not meet the conditions for Town Insurance into the scope of Town Insurance, causing the Situan Town People's Government of Fengxian District to pay a total of more than 6 million yuan in Town Insurance contributions for the said persons, and the Shanghai Social Insurance Fund Settlement and Management Center (hereinafter referred to as the "Municipal Social Insurance Center") to actually distribute a total of more than 1.78 million yuan in Town Insurance funds to the said persons, and causing a seriously adverse social impact. Among them, the defendant Chen Genming jointly and separately brought 71 persons who did not meet the conditions for Town Insurance into the scope of Town Insurance, causing the town government to pay a total of more than 4 million yuan in Town Insurance contributions and the Municipal Social Insurance Center to actually distribute a total of more than 1.14 million

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yuan in Town Insurance funds; the defendant Lin Fujuan jointly and separately brought 79 persons who did not meet the conditions for Town Insurance into the scope of Town Insurance, causing the town government to pay a total of more than 4 million yuan in Town Insurance contributions and the Municipal Social Insurance Center to actually distribute a total of more than 1.24 million yuan in Town Insurance funds; and the defendant Li Dequan jointly and separately brought 60 persons who did not meet the conditions for Town Insurance into the scope of Town Insurance, causing the town government to pay a total of more than 3 million yuan in Town Insurance contributions and the Municipal Social Insurance Center to actually distribute a total of more than 950,000 yuan in Town Insurance funds.

Procuratorate Performance of Duties

On April 15, 2008, Chen Genming, Lin Fujuan, and Li Dequan were placed on file for investigation by the Fengxian District People's Procuratorate of Shanghai on suspicion of the crime of abuse of power; Chen Genming was placed in criminal detention on April 15 and arrested on April 29, while Lin Fujuan and Li Dequan were released on bail pending trial on April 15, and the investigation was concluded and the case transferred for review and prosecution on June 27. On July 28, 2008, the Fengxian District People's Procuratorate of Shanghai initiated a public prosecution against the defendants Chen Genming, Lin Fujuan, and Li Dequan for the crime of abuse of power before the Fengxian District People's Court. On December 15, 2008, the Fengxian District People's Court of Shanghai rendered a first-instance judgment, holding that the defendant Chen Genming, as a staff member of a state organ, and the defendants Lin Fujuan and Li Dequan, as persons performing public duties in an organization that exercises authority on behalf of a state organ under the entrustment of the state organ, in the course of being responsible for or handling the employment and security work for persons whose land had been expropriated, deliberately violated the relevant provisions and, jointly or separately, arbitrarily brought persons who did not meet the conditions for Town Insurance into the scope of Town Insurance, causing major losses to public property and a seriously adverse social impact, and that their acts had all violated the Criminal Law and constituted the crime of abuse of power, with circumstances of favoritism and fraud for personal favor and gain. Among them, the circumstances of the defendants Chen Genming and Lin Fujuan were especially serious. After committing the crime, the three defendants truthfully confessed their crimes before being subjected to compulsory measures by the judicial organs, which constituted voluntary surrender, and could be given a lighter or mitigated punishment in accordance with the law. In accordance with Article 397, Paragraph 1 of Article 25, Paragraph 1 of Article 67, Paragraph 1 of Article 72, and Paragraphs 2 and 3 of Article 73 of the Criminal Law of the People's Republic of China, the defendant Chen Genming was convicted of the crime of abuse of power and sentenced to two years of fixed-term imprisonment; the defendant Lin Fujuan was convicted of the crime of abuse of power and sentenced to one year and six months of fixed-term imprisonment, with a suspended sentence of one year and six months; and the defendant Li Dequan was convicted of the crime of abuse of power and sentenced to one year of fixed-term imprisonment, with a suspended sentence of one year. After the first-instance judgment, the defendant Lin Fujuan appealed. The Shanghai No. 1 Intermediate People's Court rendered a final second-instance ruling dismissing the appeal and affirming the original judgment.

Relevant Legal Provisions

Article 397 of the Criminal Law of the People's Republic of China; the Interpretation of the Standing Committee of the National People's Congress on the Application of the Subject of the Crime of Dereliction of Duty in Chapter IX of the Criminal Law of the People's Republic of China.

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