SPP Guiding Case No. 185: Administrative Public Interest Litigation Urging Recovery of Illegally Disbursed Land Grant Proceeds (Changsha, Hunan)

Dan Young Business Consultancy — www.danyoungcpa.com

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

Keywords

Administrative public interest litigation; protection of state property; grant of state-owned land use rights; illegal disbursement of land grant proceeds; withdrawal of suit.

Holding

In handling public interest litigation cases concerning proceeds from the grant of state-owned land use rights, the procuratorial organ shall strengthen follow-up supervision and urge the administrative organ to perform its duties fully in accordance with the law, so as to ensure that all sums that should be collected are turned over to the state treasury in full. Where the jurisdiction of a grassroots procuratorate may involve interference and obstruction, a higher-level procuratorate may take the case up a level, and where the conditions for initiating administrative public interest litigation are met, it may designate a grassroots procuratorate to bring the suit before a court of the same level. Where administrative supervision loopholes are discovered in the course of handling a case, a social governance procuratorial recommendation may be issued to the local government to promote source governance.

Basic Facts

On December 27, 2017, a real estate group company won, by bidding, the state-owned construction land use rights to five parcels of land (numbered 071 through 075) in a county-level city of Hunan Province (the same hereinafter), with a total grant price of more than 4.298 billion yuan. It was agreed that the bidding deposit would automatically be converted into the grant price of the transferred parcels. The subsidiary of the group company responsible for developing the transferred parcels — a certain real estate company (hereinafter the "Real Estate Company") — signed five State-Owned Construction Land Use Right Grant Contracts with the original land and resources bureau of the city. The deposit of more than 1.524 billion yuan was transferred from the public resources center into the non-tax revenue collection and settlement account of the finance bureau of the city (hereinafter the "non-tax account"). In February and November 2018, the finance bureau of the city, under the name of "refunding the deposit," twice disbursed to the Real Estate Company more than 290 million yuan of state-owned land use right grant proceeds (hereinafter "land grant proceeds") that had already entered the non-tax account. The Real Estate Company used the funds to pay in full the deed tax on the five parcels and the remaining land price of parcel 072, obtained the real property certificate for parcel 072, and applied for a mortgage loan of more than 2.65 billion yuan. As of September 4, 2019, the finance bureau of the city had not lawfully recovered the more than 290 million yuan of land grant proceeds illegally disbursed to the Real Estate Company.

Procuratorate Performance of Duties

In June 2019, the People's Procuratorate of Hunan Province launched a province-wide special supervision action for public interest litigation in the field of the grant of state-owned land use rights. While supervising the handling of a series of cases concerning arrears in state-owned land grant proceeds by a municipal procuratorate, it discovered the leads and transferred them to the People's Procuratorate of Changsha City, Hunan Province (hereinafter the "Changsha Procuratorate"). Because the case was a major and complex case within its jurisdiction, the Changsha Procuratorate decided to handle the case itself and filed it for investigation on August 21, 2019. Through investigation methods such as retrieving documentary evidence

including land grant agreements and payment vouchers, interviewing relevant personnel, and consulting financial experts, the case-handling personnel ascertained that: the bidding deposit transferred into the non-tax account was the fees for the five parcels paid by the Real Estate Company, and had been automatically converted into land price after the signing of the transaction confirmation, and therefore should be characterized as land grant proceeds belonging to state property. The finance bureau of the city, as the finance department of the local people's government and the competent authority for non-tax revenue, failed to promptly and fully turn over the collected land grant proceeds to the state treasury, illegally set up a revenue transit account to detain, divert and use the funds, and, without justification, illegally disbursed to the Real Estate Company, under the name of "refunding the deposit," more than 290 million yuan of land grant proceeds that had already entered the non-tax account, harming state interests.

In response to the illegal circumstances in which the finance department's illegal disbursement of land grant proceeds caused losses to state property, the Changsha Procuratorate, on September 9, 2019, issued a procuratorial recommendation to the finance bureau of the city in accordance with the law, urging it to perform its statutory duties in accordance with the law and promptly recover the more than 290 million yuan of illegally disbursed land grant proceeds. In response to the universal problems in the city's revenue and expenditure management of non-tax revenue such as land grant proceeds — including poor coordination, imperfect mechanisms, and loopholes in management — the Changsha Procuratorate, on September 11, 2019, publicly served a social governance procuratorial recommendation on the people's government of the city, suggesting that it strengthen its supervision duties and management and rectify regulatory irregularities.

After receiving the procuratorial recommendation, the finance bureau of the city established a rectification work group, promptly interviewed and required the Real Estate Company to submit a repayment plan, and requested the people's government of the city to convene a special meeting to study rectification measures. On September 26, 2019, the finance bureau of the city replied in writing that it had lawfully initiated recovery procedures and that the Real Estate Company had undertaken to repay before October 15, 2019. On November 14, 2019, the people's government of the city replied in writing that it had convened the relevant functional departments for multiple special studies to further strengthen coordination and management and plug loopholes.

Through continued follow-up supervision, the provincial and municipal procuratorates found that, after the reply period for the procuratorial recommendation expired, the finance bureau of the city had not fully performed its duties in accordance with the law and the illegally disbursed land grant proceeds had still not been recovered. To avoid possible case-handling obstruction and interference, with the approval of the Hunan Procuratorate, the Changsha Procuratorate designated the People's Procuratorate of Yuelu District, Changsha City (hereinafter the "Yuelu Procuratorate") to exercise jurisdiction over the suit. On April 3, 2020, the Yuelu Procuratorate brought administrative public interest litigation before the Changsha Railway Transport Court, which exercised centralized jurisdiction, seeking an order that the finance bureau of the city take effective measures in accordance with the law to recover the more than 290 million yuan of illegally disbursed land grant proceeds. With respect to leads on duty-related illegal and criminal acts of state functionaries involved in the case, the Changsha Procuratorate simultaneously transferred them to the Changsha Commission for Discipline Inspection and Supervision for handling. After the suit was brought, the provincial, municipal and district procuratorates continued to follow up on the recovery progress of the finance bureau of the city. On April 30, 2020, the Real Estate Company issued a commercial acceptance bill; on May 27, a city investment company of the city, on behalf of the Real Estate Company, refunded the land grant proceeds to the non-tax account of the finance bureau of the city and turned them over to the state treasury, and the Real Estate Company honored the bill on November 1, 2020. Because all litigation claims had been realized, after the Yuelu Procuratorate submitted a decision to withdraw the suit, the Changsha Railway Transport Court ruled to permit the withdrawal.

Guiding Significance

Source: https://www.danyoungcpa.com/spp-guiding-case-185-china/

(1) Procuratorial organs should adhere to full-process supervision over illegal acts that harm the public interest and safeguard the safety of state property in accordance with the law. In handling public interest litigation cases in the field of the grant of state-owned land use rights, procuratorial organs should supervise not only the collection link, urging the collection department to promptly collect state-owned land grant proceeds, but also the link of transferring the collected funds to the state treasury, ensuring "full collection and prompt deposit into the treasury," and preventing the improper detention, diversion and misappropriation of land grant proceeds that cause losses to state property.

(2) Procuratorial organs should pay attention to promoting the resolution of problems through litigation in the course of handling cases. Where, after the reply period for a procuratorial recommendation expires, the administrative organ still fails to fully perform its duties in accordance with the law and the public interest remains harmed, the procuratorial organ shall bring administrative public interest litigation in accordance with the law, giving play to the functions of litigation procedures and judicial adjudication in strengthening the rigidity of supervision, promoting the resolution of problems, and guiding social values. Where all litigation claims are realized after the suit is brought, the procuratorate may withdraw the suit; where truly necessary, it may change the litigation claims and request the court to confirm by judgment that the administrative act is illegal.

(3) Give full play to the advantages of the procuratorial integrated working mechanism to remove case-handling obstruction. Public interest litigation cases in the field of state property and state land are often major, sensitive, difficult and complex. In the course of handling cases, full play should be given to the advantages of procuratorial integration, with joint analysis and judgment and coordinated action at higher and lower levels. Provincial and municipal procuratorates should play a demonstrative and leading role by directly handling major and complex public interest litigation cases involving state property and state land. For cases in which a lower-level procuratorate has difficulty in exercising jurisdiction or faces interference and obstruction in case handling, a higher-level procuratorate may take the case up a level, and where the conditions for initiating administrative public interest litigation are met, it may designate a grassroots procuratorate to bring the suit before a court of the same level.

(4) Issue social governance procuratorial recommendations targeting universal problems to promote the protection of state property. In response to problems discovered in case handling — such as non-standardized revenue and expenditure management of land grant proceeds, loopholes in supervision, and insufficient interdepartmental coordination — the procuratorial organ may issue social governance procuratorial recommendations to the local government for improving its work, promote the government's overall coordination, improve systems and mechanisms, strengthen administrative supervision, and enhance governance capacity.

Relevant Legal Provisions

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

Interim Regulations of the People's Republic of China on the Grant and Transfer of the Right to Use State-Owned Urban Land (revised in 2020), Article 50.

Measures for the Administration of the Revenue and Expenditure of Proceeds from the Grant of State-Owned Land Use Rights (effective in 2007), Articles 4 and 33.

Disclaimer: This document is an unofficial English translation of the original Chinese guiding case, provided for reference purposes only. While every effort has been made to ensure accuracy, the Chinese-language version is the sole authoritative text. This translation does not constitute legal advice, and no liability is accepted for any reliance placed upon it. For matters with legal implications, please consult the official Chinese source and seek qualified professional advice.