SPP Guiding Case No. 228: Public Interest Litigation by the Procuratorial Organs of Ordos, Inner Mongolia Urging Protection of the Qinzhidao (Qin Straight Road) Ruins

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Keywords

Administrative public interest litigation / civil public interest litigation / cultural relic protection / integrated performance of duties / simulated restoration / designated jurisdiction

Holding

When handling cases of serious damage to cultural relics, the procuratorial organ shall pay attention to lawfully and comprehensively applying functions such as criminal prosecution and public interest litigation prosecution. Where an immovable cultural relic is wholly destroyed and, in accordance with law, may not be rebuilt on its original site, the value of the damaged cultural relic may be determined by means of simulated restoration. A people's procuratorate at a higher level may, in consultation with the people's court at the same level, jointly designate a primary people's court and a primary people's procuratorate to handle a civil public interest litigation case.

Basic Facts

The Qinzhidao (Qin Straight Road) starts from Chunhua County, Shaanxi Province in the south and ends at Jiuyuan District, Baotou City, Inner Mongolia Autonomous Region in the north, with a total length of more than 700 kilometers. It was an important channel for transportation, trade and ethnic integration in ancient China and is of great value for studying the history of ancient transportation and the history of the Qin Dynasty. In 2006, the Qinzhidao Dalad Banner section (Qin Dynasty) was approved and announced by the State Council as a major historical and cultural site protected at the national level in the sixth batch. From 2009 to 2020, Coal Mine A of Dalad Banner, Inner Mongolia Autonomous Region (hereinafter referred to as "Enterprise A") and Coal Co., Ltd. B (hereinafter referred to as "Enterprise B") carried out production operations on the site itself of the Qinzhidao, causing the complete destruction of 3,214.01 meters of the Qinzhidao site.

Procuratorate Performance of Duties

Discovery of clues. In March 2023, the Public Security Bureau of Dalad Banner transferred to the People's Procuratorate of Dalad Banner for review and prosecution the case of Yang Moumou (the person in charge of Enterprise A), Guo Moumou (the former legal representative of Enterprise B) and others suspected of intentionally damaging cultural relics. During the handling of the case, the criminal prosecution department of the Dalad Banner People's Procuratorate discovered that the case might involve harm to the public interest, and therefore transferred the case clue to the public interest litigation prosecution department of the procuratorate.

Handling of the administrative public interest litigation case. After discovering the public interest litigation case clue, the Dalad Banner People's Procuratorate requested instructions from the People's Procuratorate of Ordos City, and the two levels of procuratorial organs, upon research and judgment, held that the production operations of Enterprises A and B had caused damage to the Qinzhidao site and harmed the public interest. According to the provisions of the Law of the People's Republic of China on the Protection of

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Cultural Relics (2017 Amendment, hereinafter referred to as the “Cultural Relics Protection Law”), the People’s Government of Dalad Banner was responsible for the protection of cultural relics within its administrative region, but it failed to strictly control the prior examination and approval of cultural relics in engineering construction; the Culture and Tourism Bureau of Dalad Banner (hereinafter referred to as the “Dalad Banner Culture and Tourism Bureau”) was responsible for supervising and administering the protection of cultural relics within its administrative region, but it failed to implement in accordance with law the “four-haves” work requirements of having a protection scope, having signs and explanations, having records and archives, and having a specialized protection management institution or specially assigned personnel responsible for protection management. On July 5 and July 13, 2023, the Dalad Banner People’s Procuratorate and the Ordos City People’s Procuratorate respectively filed the cases as administrative public interest litigation against the Dalad Banner Culture and Tourism Bureau and the People’s Government of Dalad Banner. After filing, the two levels of procuratorial organs invited experts from the Inner Mongolia Museum to conduct on-site survey of the site on multiple occasions, and ascertained that the coal production operations of Enterprise A and Enterprise B had respectively caused the complete destruction of 1,798.88 meters and 1,415.13 meters of the Qinzhidao site section.

On October 30, 2023, the Ordos City People’s Procuratorate, in accordance with Article 8 of the Cultural Relics Protection Law, issued a procuratorial suggestion to the People’s Government of Dalad Banner, urging it to comprehensively perform its cultural relic protection responsibility in accordance with law, coordinate the cultural relics administrative department and relevant functional departments to strictly implement the prior examination system for cultural relics in engineering construction, and strengthen the protection of the Qinzhidao site. On the same day, the Dalad Banner People’s Procuratorate, in accordance with the relevant provisions of the Cultural Relics Protection Law, issued a procuratorial suggestion to the Dalad Banner Culture and Tourism Bureau, urging it to comprehensively perform its supervision duties over the Qinzhidao site, lawfully handle the mining acts of Enterprises A and B within the scope of the Qinzhidao site, implement the “four-haves” work requirements for the Qinzhidao site, and take effective protection measures for the Dalad Banner section of the Qinzhidao site. After receiving the procuratorial suggestions, the People’s Government of Dalad Banner actively promoted the protection of the Qinzhidao site, applied for special cultural relic protection funds, strengthened the cultural relic management force, strictly implemented the prior examination system for cultural relics in engineering construction, improved the relevant procedures, and cumulatively urged the completion of cultural relic archaeological investigation and prior examination and approval procedures for 611 construction projects. The Dalad Banner Culture and Tourism Bureau lawfully imposed administrative penalties on the enterprises involved in the case, verified the distribution and preservation status of the Qinzhidao site within its jurisdiction, entrusted the compilation of the Special Cultural Relic Investigation and Exploration Report of the Dalad Banner Qinzhidao Site, implemented the “four-haves” work requirements for the Qinzhidao site, added safety warning signs at important sections of the Qinzhidao site, and organized irregular safety patrols.

Handling of the civil public interest litigation case. Upon further research and judgment, the procuratorial organ held that the Cultural Relics Protection Law only prescribed types of administrative penalties such as ordering correction and fines for acts of damaging cultural relics. In this case, granting administrative penalties alone could not comprehensively restore the harmed public interest, and the procuratorial organ could lawfully file civil public interest litigation to require the violators to bear liability for damages. On July 5, 2023, the Dalad Banner People’s Procuratorate filed the case as civil public interest litigation against Enterprises A and B and carried out investigation and evidence collection in accordance with law. On September 25 of the same year, the Dalad Banner People’s Procuratorate reported to the Ordos City People’s Procuratorate for designation of jurisdiction with respect to filing civil public interest litigation. Upon examination, the Ordos City People’s Procuratorate held that the place of the infringement and the place of the damage result in this case were both located in Dalad Banner, and the criminal case was handled by the Dalad Banner People’s Procuratorate; for the convenience of the parties’ litigation and to better enable the

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court hearing to play the role of publicity and education on the rule of law for the local masses and enhance awareness of cultural relic protection, the civil public interest litigation could be filed by that procuratorate. The Ordos City People's Procuratorate consulted the Ordos City Intermediate People's Court for designation of jurisdiction, and the Ordos City Intermediate People's Court, after reporting to and obtaining approval from the Higher People's Court of the Inner Mongolia Autonomous Region, ruled that the case be heard by the People's Court of Dalad Banner.

The Cultural Relics Protection Law provides: "Where an immovable cultural relic has been wholly destroyed, site protection shall be implemented and it shall not be rebuilt on the original site." The Qinzhidao site section involved in the case had been wholly destroyed, but there was currently no reference method for calculating the value of damage in the case of the complete destruction of an immovable cultural relic, making it difficult to determine the amount of damages through judicial appraisal. Upon consultation, the Inner Mongolia Museum held that the Qinzhidao, as a cultural heritage, was part of the environment, and in light of the particularity of cultural relic protection, the value of the damaged cultural relic could be assessed by reference to the General Outline of the Technical Guidelines for the Appraisal and Assessment of Eco-environmental Damage and the Recommended Methods for Environmental Damage Appraisal and Assessment (Second Edition), using the substitute equivalence analysis method, that is, quantifying the damaged value by equivalently implementing a simulated restoration project.

On November 2, 2023, the Dalad Banner People's Procuratorate entrusted a third-party enterprise qualified for cultural relic protection engineering survey and design to formulate a simulated restoration plan. The enterprise, in accordance with the Measures for the Administration of Cultural Relic Protection Engineering and other relevant regulations and the Technical Specification for the Protection Test of Earthen Sites (WW/T0039-2012) and other earthen site restoration and protection specifications, and drawing on the successful experience of previous physical protection and restoration projects, carried out simulated restoration of the Qinzhidao. Based on the original mountain contours and the distribution along the Qinzhidao, the damaged length of the Qinzhidao within the mining boundary was determined; the formed mining pits were simulated backfilled; simulated restoration of the road body of the Qinzhidao was carried out for the destroyed rammed-earth layers and cushion layers, and during the ramming process, the soil materials most similar to the existing site were selected for different soil layers to repair by layered ramming in a manner simulating the original construction technique of the Qinzhidao. On this basis, comprehensively considering its historical and cultural value, the value of the damaged cultural relic was ultimately quantified at 5.0666 million yuan.

On February 6, 2024, the procuratorial organ invited members of the cultural relic expert database of the Inner Mongolia Autonomous Region to hold a demonstration meeting. The participating experts held that quantifying the damaged value of the Qinzhidao site by using scientific assessment methods was necessary for the effective protection of immovable cultural relics. In the absence of normative standards for the time being, the procuratorial organ entrusted a specialized institution to carry out simulated restoration of the road body by selecting soil materials most similar to the Qinzhidao site and simulating the original construction technique of the Qinzhidao, and took into account the historical, scientific and social value of the cultural relic, so that the determination of the damage value of the Qinzhidao in this manner was scientific.

On March 12, 2024, the Dalad Banner People's Procuratorate filed civil public interest litigation with the People's Court of Dalad Banner, requesting that Enterprise A be ordered to bear damages of 1.1217 million yuan, Enterprise B bear damages of 3.9449 million yuan, and the two defendants jointly bear assessment expenses of 475,000 yuan. On April 28, 2024, the People's Court of Dalad Banner rendered a first-instance judgment in accordance with law, supporting all the litigation requests of the Dalad Banner People's Procuratorate. On June 4, 2024, Enterprise A and Enterprise B both paid the damage compensation for the Qinzhidao site, and all obligations determined by the effective judgment had been fully performed. The Dalad Banner Culture and Tourism Bureau formulated the Protection Plan for the Dalad Banner Section of the

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Qinzhidao Site, and used the above funds to implement the partial on-site emergency reinforcement and protection project of the non-destroyed section of the Qinzhidao site and the overall preventive protection project of the Qinzhidao site, thereby achieving systematic protection of the Qinzhidao site.

Guiding Significance

(1) With respect to acts of serious damage to cultural relics, the procuratorial organ may lawfully and comprehensively apply procuratorial functions such as criminal prosecution and public interest litigation to achieve comprehensive protection of cultural relics. Cultural relics and cultural heritage carry the genes and bloodline of the Chinese nation and are non-renewable cultural resources. In handling cultural relic protection cases, the procuratorial organ shall give full play to its legal supervision functions, pay attention to the coordination and complementarity of various procuratorial functions, form a joint force for punishing unlawful acts and protecting the harmed public interest, and serve and safeguard the construction of a culturally strong country with high-quality case handling. Where serious damage to cultural relics constitutes a criminal offense, criminal liability shall be pursued in accordance with law; where local governments or cultural relic administrative departments fail to perform their duties in accordance with law during cultural relic protection, administrative public interest litigation shall be used to urge them to perform their statutory duties; where administrative penalties still cannot comprehensively achieve public interest protection and the conditions for filing suit are met, civil public interest litigation shall be lawfully filed against the violators.

(2) With respect to the complete destruction of an immovable cultural relic, where rebuilding on the original site is prohibited in accordance with law, the value of the damaged cultural relic may be quantified by means of simulated restoration. Where an immovable cultural relic is wholly destroyed, and there is no normative standard for determining the value of the damaged cultural relic and it is difficult to determine the amount of damages through judicial appraisal, the procuratorial organ may entrust an institution qualified for cultural relic protection engineering survey and design and other work to assess it by reference to the substitute equivalence analysis method in the Recommended Methods for Environmental Damage Appraisal and Assessment (Second Edition), comprehensively considering the historical, scientific and social value of the cultural relic, and using simulated restoration to quantify the value of the damaged cultural relic. With respect to the assessment results, the cultural relic administrative department and cultural relic experts may be invited to issue professional opinions to further analyze and explain the scientific nature of the assessment method.

(3) A people’s procuratorate at a higher level may, in consultation with the people’s court at the same level, jointly designate a primary people’s court and a primary people’s procuratorate to handle civil public interest litigation cases. Comprehensively considering factors such as the place where the unlawful act occurred, the place of the damage result or the domicile of the violator, where it is more convenient and more conducive to publicity and education on the rule of law for a primary people’s procuratorate to file civil public interest litigation, the people’s procuratorate at a higher level may, in consultation with the people’s court at the same level, designate a primary people’s court to hear the case in accordance with the relevant provisions.

Relevant Legal Provisions

Articles 1229 and 1235 of the Civil Code of the People’s Republic of China (effective 2021).

Articles 8, 15, 22 and paragraph 1 of Article 65 of the Law of the People’s Republic of China on the Protection of Cultural Relics (2017 Amendment) (currently Articles 9, 26, 33 and 96 of the 2024 Revision).

Article 2 of the Environmental Protection Law of the People’s Republic of China (2014 Revision).

Article 25 of the Administrative Litigation Law of the People’s Republic of China (2017 Amendment).

Article 58 of the Civil Procedure Law of the People’s Republic of China (2023 Amendment).

Article 5 of the Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Procuratorial Public Interest Litigation Cases (2020

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Amendment).

Article 6 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases (2020 Amendment).

Articles 14, 16, 75 and 98 of the Rules for Handling Public Interest Litigation Cases by the People's Procuratorates (effective 2021).

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