SPP Guiding Case No. 233: Litigation Supervision Case: Cao Mou et al. v. a Subdistrict Office of a District People's Government of a City in Henan Province (Administrative Reward)

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

Decided at the 46th meeting of the 14th Procuratorial Committee of the Supreme People's Procuratorate on February 8, 2025; issued on March 21, 2025.

Keywords

Supervision of legally effective administrative judgments / administrative reward / one-child family / land requisition compensation / protest

Holding

Where a local regulation establishes an administrative reward in accordance with the law and publishes the reward standards, the administrative subject shall implement them. Where a legally effective judgment of the people's court fails to support the litigation claim of an administrative counterpart requesting the administrative subject to perform its duty of administrative reward in accordance with law, the people's procuratorate shall supervise in accordance with law.

Basic Facts

The household registration of Cao Mou's family was located in a certain village under a subdistrict office of a district people's government of a city in Henan Province. In March 2012, the district government established a command headquarters for the urban-village reconstruction project of the village (hereinafter referred to as the "command headquarters") to specifically implement the reconstruction work. On December 9, the command headquarters publicly announced the Relocation, Compensation and Resettlement Plan for the Urban-Village Reconstruction of the Village. On the same day, the Party branch of the village, the villagers' committee and the village affairs supervision committee formulated the Supplementary Provisions on Resettlement and Compensation for the Urban-Village Reconstruction of the Village in accordance with the resettlement plan, expressly providing: "Housing resettlement: persons enjoying villagers' welfare treatment shall each be resettled with a floor area of 200 square meters." On December 30, Cao Mou signed relocation, compensation and resettlement agreements with the command headquarters and the villagers' committee respectively, reaching agreement on matters such as the per-person resettlement floor area of 200 square meters for housing relocation, compensation and resettlement.

In September 2013, Cao Mou and his wife signed the Relocation, Compensation and Resettlement Agreement for the Reconstruction Project (hereinafter referred to as the "Agreement") with the command headquarters. The main content of the Agreement was: Cao Mou's household was a one-child family "where one or both parents enjoy villagers' welfare treatment and have obtained the Certificate of Honor for Parents of an Only Child", and chose to receive a total of 100 square meters of reward resettlement housing. The Population and Family Planning Law of the People's Republic of China (2002) provides that parents of an only child enjoy rewards in accordance with the relevant provisions of the State and of the provinces, autonomous regions and municipalities directly under the Central Government. Article 37 of the Population and Family Planning Regulations of Henan Province (2011 Amendment, hereinafter referred to as the "Regulations") provides: "A holder of the Certificate of Honor for Parents of an Only Child shall, on presentation of the certificate, enjoy the following treatment: … (3) when economic benefits such as urban demolition and resettlement, relocation and resettlement of migrants, resettlement for new rural construction, collective economic income, collective welfare and land requisition compensation are distributed per person,

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a one-child family shall receive an additional share for one person." On this basis, Cao Mou held that the content of the Agreement did not conform to the provision of the Regulations that a one-child family should receive "an additional share for one person" when economic benefits such as land requisition compensation were distributed per person.

In September 2016, Cao Mou, his wife, son and daughter-in-law sued the district government and the subdistrict office before the Intermediate People's Court of a city, requesting the district government to implement the provisions of the Regulations in accordance with law, to additionally compensate with 100 square meters of resettlement housing, and to pay an additional 62,400 yuan of transition fees for one person. After trial, the Intermediate People's Court held that, after signing the relocation, compensation and resettlement agreement, Cao Mou and the command headquarters reached the Agreement through negotiation, which should be deemed as having reached agreement with the district government on the issues relating to the relocation, resettlement, compensation and reward of the one-child family. Cao Mou and others claimed that the Agreement was signed under coercion but provided no evidence to prove it, and the first-instance judgment rejected the litigation claims of Cao Mou and others. Cao Mou and others appealed against the first-instance judgment. The Higher People's Court of Henan Province rejected the appeal in the second-instance judgment and affirmed the original judgment. Cao Mou and others applied for retrial, and the Supreme People's Court ruled to reject the retrial application.

Procuratorate Performance of Duties

Case source. Cao Mou's family and four other households in the same circumstances respectively applied to the People's Procuratorate of Henan Province for supervision. After examination in accordance with law, the Henan Provincial People's Procuratorate submitted the above five cases to the Supreme People's Procuratorate for protest.

Investigation and verification. Through reviewing the files and listening to the opinions of the parties, the procuratorial organ found that the parties had a relatively large dispute over the determination of facts and serious differences over whether the application of laws and regulations in the original judgment and the sued administrative act was erroneous. In October 2019, the Supreme People's Procuratorate decided to hold a public hearing, inviting people's supervisors and legal experts to serve as hearing officers, and inviting some deputies to the National People's Congress, deputies to the provincial people's congress, and relevant personnel of the provincial health commission to observe. Upon hearing, it was ascertained that when Cao Mou and his wife signed the Agreement, they did not fully understand the content of the relevant reward provisions, were unaware that they had not received the full reward, and had no expression of intent to voluntarily waive the reward. The hearing officers unanimously held that the demolition compensation in the urban-village reconstruction involved in the case should implement the provisions of the Regulations on family planning rewards.

Supervision opinions. Upon examination, the Supreme People's Procuratorate held that the focal point of the dispute in this case was whether the act of Cao Mou and his wife signing the Agreement could be deemed as their waiver of the administrative reward prescribed by the Regulations. First, the Agreement signed between the district government and Cao Mou and his wife was an administrative decision in substance despite being called an "agreement". The district government never expressed its intention to grant Cao Mou's family 200 square meters of resettlement housing or monetary reward in accordance with the Regulations, but instead granted Cao Mou's family a reward of 100 square meters of resettlement housing, half a share for one person, by way of an "agreement", which constituted a reduction of the lawful rights and interests of Cao Mou's family without negotiation. Second, the Regulations set deterministic reward standards in accordance with the Population and Family Planning Law, which the administrative organ should implement without discount, and the waiver of such a right by the administrative counterpart should be expressed in an explicit manner. In circumstances where the district government did not inform Cao Mou's family of their right to receive the reward of "an additional share for one person", Cao Mou and others

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were unaware that they had the qualification to apply for 200 square meters of resettlement housing or monetary reward. Determining, based on the signatures of Cao Mou and his wife on the Agreement, that Cao Mou and others had voluntarily "reached agreement" with the command headquarters was inconsistent with the objective facts. Therefore, the act of Cao Mou and his wife signing the Agreement could not serve as a factual basis for determining or presuming that Cao Mou and others voluntarily waived the administrative reward.

On August 30, 2021, the Supreme People's Procuratorate filed a protest with the Supreme People's Court against the supervision application cases of five one-child households in the same village, including Cao Mou's family.

Supervision results. On April 25, 2022, the Supreme People's Court adopted the protest opinions and directed the Higher People's Court of Henan Province to retry the five cases, including that of Cao Mou's family. During this period, 11 other one-child households in the same village, including that of Zhao Mou, applied to the procuratorial organ for supervision based on the same facts and reasons. The Supreme People's Procuratorate issued procuratorial suggestions on analogous cases to the Supreme People's Court with respect to these 11 cases, and the Supreme People's Court directed the Higher People's Court of Henan Province to consolidate the 16 cases, including those of Cao Mou and Zhao Mou, for trial. During the retrial, the Supreme People's Court, the Supreme People's Procuratorate, the Higher People's Court of Henan Province and the Henan Provincial People's Procuratorate jointly carried out substantive resolution of the administrative dispute. The 16 households, including that of Cao Mou, signed agreements with the district government, and the district government performed its statutory duty of reward by means of economic compensation in accordance with the reward standards prescribed by the Regulations. On August 24, 2023, the 16 households, including that of Cao Mou, withdrew their retrial requests, and the Higher People's Court of Henan Province ruled to terminate the retrial procedure.

Guiding Significance

When handling supervision cases concerning legally effective administrative judgments, where the people's procuratorate discovers that a legally effective judgment of the people's court fails to support a citizen, legal person or other organization's lawful claim requesting an administrative subject to perform its statutory duty of reward, it shall supervise in accordance with law. Where a local regulation establishes an administrative reward for the land requisition compensation of one-child families in accordance with the law, the local government and the grassroots self-governing organizations assisting the government in performing the administrative duties of land requisition compensation, as the implementing subjects of the administrative reward, shall strictly implement the reward standards prescribed by laws and regulations and lawfully ensure the full realization of the reward rights and interests of administrative counterparts. Only where an administrative counterpart, on the premise of fully understanding the content of its relevant rights, voluntarily waives the relevant lawful rights and interests through an explicit expression of true intent, may it be determined to have waived the right; the administrative subject may not unilaterally reduce the lawful rights and interests of the administrative counterpart. Where an act of the administrative subject failing to perform or failing to fully perform its statutory duty of reward is not corrected by a legally effective administrative judgment of the people's court, the people's procuratorate shall lawfully file a protest or a procuratorial suggestion for retrial. Where, in supervising legally effective administrative judgments of the people's courts, the people's procuratorate discovers common problems in fact-finding or the application of law among analogous effective judgments, it may issue procuratorial suggestions on analogous cases to improve judicial efficiency.

Relevant Legal Provisions

Article 91 of the Administrative Litigation Law of the People's Republic of China.

Articles 6, 83, 84 and 90 of the Rules on Supervision of Administrative Litigation by the People's Procuratorates.

Articles 23 and 27 of the Population and Family Planning Law of the People's Republic of China (effective 2002) (currently Articles 23 and 31 of the 2021 Amendment).

Article 37 of the Population and Family Planning Regulations of Henan Province (2011 Amendment) (currently Article 32 of the 2021 Amendment).

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