# SPP Guiding Case No. 237: Litigation Supervision Case: Qian Mou v. a Villagers' Committee of a Certain District of Shanghai (Failure to Perform Statutory Duties)

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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 / villagers' committee / administrative management duties / standing as defendant in administrative litigation / procuratorial suggestion for retrial

## Holding

Where a villagers' committee fails to accept and submit a homestead application in accordance with laws, regulations and rules, and the applicant for house construction files an administrative lawsuit with the villagers' committee as the defendant, and the people's court rules to reject the lawsuit on the ground that it does not fall within the scope of administrative litigation, the people's procuratorate shall supervise in accordance with law.

## Basic Facts

On May 7, 2020, Qian Mou submitted a written house construction application to a villagers' committee of a district of Shanghai (hereinafter referred to as the "villagers' committee"). On May 13 of the same year, the villagers' committee issued a Statement of Circumstances, informing Qian Mou that his wife had already obtained a homestead through demolition resettlement and that his house construction application conflicted with current policy. Subsequently, the villagers' committee did not submit Qian Mou's house construction application. Qian Mou held that the villagers' committee's failure to submit the application harmed his lawful rights and interests, and sued the People's Court of a district, requesting an order for the villagers' committee to perform in accordance with law the statutory duties of publicizing, signing opinions and submitting the application to the township government for approval.

On March 30, 2021, the People's Court of a district held that the relevant functions exercised by the villagers' committee with respect to villagers' applications for house construction were examination procedures within the collective economic organization, belonged to villagers' self-governance acts, were not administrative acts performed by an administrative subject, did not have an actual impact on Qian Mou's rights and obligations under administrative law, and did not fall within the scope of administrative litigation. It ruled to reject Qian Mou's lawsuit. Qian Mou, dissatisfied, appealed. On August 25, 2021, an Intermediate People's Court rejected the appeal and affirmed the first-instance ruling. Qian Mou's retrial application was not supported.

## Procuratorate Performance of Duties

Case source. Qian Mou, dissatisfied with the effective ruling, applied to a branch of the Shanghai People's Procuratorate for supervision.

Investigation and verification. The branch of the Shanghai People's Procuratorate obtained the court files, listened to the opinions of both parties, and conducted a comprehensive examination of the facts and legal disputes of the case. It was ascertained that: First, the basis for the villagers' committee to accept, preliminarily examine and submit homestead applications derived from local regulations and rules. Paragraph 2 of Article 36 of the Measures of Shanghai Municipality for Implementing the Land Administration

Law of the People's Republic of China, formulated by the Standing Committee of the Shanghai Municipal People's Congress, provides that a rural villager applying for residential land shall solicit the opinions of the villagers' committee or the villagers' group in writing. Article 17 of the Measures of Shanghai Municipality for the Administration of Rural Villagers' Housing Construction, formulated by the Shanghai Municipal People's Government, provides that after receiving a farmer's house construction application, the villagers' committee shall publicly post the relevant information. Where there is no objection during the posting period, the villagers' committee shall, after signing an opinion on the application form, submit it together with the written application of the house construction applicant to the township (town) people's government; where there is an objection during the posting period, the villagers' committee shall convene a villagers' meeting or a villagers' representatives' meeting to discuss and decide. Second, the villagers' committee's acceptance, preliminary examination and submission of homestead applications is a preliminary procedure for homestead house construction approval. Article 18 of the Measures of Shanghai Municipality for the Administration of Rural Villagers' Housing Construction provides that the township (town) people's government shall, after receiving the application form submitted by the villagers' committee and the written application of the house construction applicant, conduct on-site examination jointly with the township (town) land management office. Before the lawsuit in this case, Qian Mou had filed an administrative lawsuit with the township government as the defendant, requesting the township government to perform the statutory duty of house construction approval. The court held that Qian Mou's direct request for the township government to perform the house construction approval duty without going through the villagers' committee's preliminary examination and submission procedure lacked basis, and ruled to reject Qian Mou's litigation claims.

Supervision opinions. The branch of the Shanghai People's Procuratorate held that, according to the provisions of the Land Administration Law, the statutory subject of the homestead approval power is the township (town) people's government. Local regulations and rules that place the acceptance procedure in the homestead approval process before the villagers' committee are in substance a redistribution of the homestead approval duty and do not violate the provisions of higher-level law. The villagers' committee's acceptance, publicizing, signing opinions and submission of homestead applications is an act of performing administrative management duties under the authorization of laws, regulations and rules. The villagers' committee's failure to publicize and submit Qian Mou's homestead application resulted in the application being unable to enter the approval process of the township government, which had an actual impact on Qian Mou's rights and obligations and fell within the scope of administrative litigation. Paragraph 1 of Article 24 of the Interpretation of the Supreme People's Court on the Application of the Administrative Litigation Law of the People's Republic of China provides that a villagers' committee performing administrative management duties under the authorization of laws, regulations or rules may become a defendant in administrative litigation. On September 27, 2022, the branch of the Shanghai People's Procuratorate issued a procuratorial suggestion for retrial to the Intermediate People's Court.

Supervision results. On June 28, 2023, the Intermediate People's Court made a retrial ruling, revoking the original first-instance and second-instance rulings and directing the People's Court of a district to hear the case. On July 31, 2024, the People's Court of a district rendered a first-instance judgment, holding that the villagers' committee's corresponding performance of duties in the process from acceptance of the homestead application to submission to the township (town) government could be determined as an act of performing administrative management duties, and ruled that the villagers' committee handle Qian Mou's homestead application in accordance with law within 90 days from the effective date of the judgment. After the judgment was rendered, neither party appealed, and it became legally effective. The villagers' committee performed the duty of submitting the homestead application in accordance with the effective judgment.

## Guiding Significance



Source: https://www.danyoungcpa.com/spp-guiding-case-237-china/

A villagers' committee's acceptance and submission of homestead applications is an act of performing administrative management duties under the authorization of laws, regulations and rules, and falls within the scope of administrative litigation; where the people's court rules not to file the case or to reject the lawsuit, the people's procuratorate shall supervise in accordance with law. After accepting a villager's homestead application under the authorization of laws, regulations and rules, the villagers' committee shall publicize it in accordance with law, and submit the application submitted by the villager, the collected villagers' opinions, the villagers' meeting resolutions and other materials to the township (town) people's government in accordance with the procedure, so as to initiate the subsequent administrative approval procedure; in this process, the villagers' committee's performance of duties is, in nature, the performance of administrative management duties authorized by laws, regulations and rules. An administrative dispute arising from a villagers' committee's failure to perform or incomplete performance of such administrative management duties falls within the scope of administrative litigation, and the villagers' committee may become a defendant in administrative litigation. Where the people's court rules to reject the lawsuit on the grounds that the villagers' committee has no statutory duty, that it is an act of villagers' self-governance, or that it has not affected the plaintiff's substantive rights and obligations, the people's procuratorate shall supervise in accordance with law.

## Relevant Legal Provisions

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

Article 62 of the Land Administration Law of the People's Republic of China.

Article 24 of the Interpretation of the Supreme People's Court on the Application of the Administrative Litigation Law of the People's Republic of China.

Article 34 of the Regulations for the Implementation of the Land Administration Law of the People's Republic of China (2021 Revision).

Article 36 of the Measures of Shanghai Municipality for Implementing the Land Administration Law of the People's Republic of China (2018 Amendment) (after Article 34 was added by the 2021 Revision of the Regulations for the Implementation of the Land Administration Law of the People's Republic of China, this article was deleted when the Measures were revised in 2023).

Articles 17 and 18 of the Measures of Shanghai Municipality for the Administration of Rural Villagers' Housing Construction (effective May 5, 2019).

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