VIII. Civil environmental public interest litigation by * Environmental Institute of Fengtai District of Beijing against Jiangsu * Steel Group over environmental pollution

[Case Number] Guiding Case No. 259

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[Adjudicating Court and Collegial Bench Members]

First instance: The Intermediate People's Court of Suzhou City of Jiangsu Province

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[Keywords]

Civil / Civil public interest litigation over environmental pollution / Public interests of the society / Review of lawsuit withdrawal

[Essence of Judgment]

1. In a civil environmental public interest lawsuit, if the plaintiff applies for withdrawal of the lawsuit, the people's court may rule to grant the permission only after reviewing to confirm all the plaintiff's claims associated with the public interests of the society, such as the defendants assuming the liabilities for ecological and environmental restoration and compensation for the damage, have been fully fulfilled.

2. "The plaintiff's claims have been fully fulfilled" stipulated in Article 26 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 means all the plaintiff's claims associated with the public interests of the society in the litigation have been fulfilled.

[Basic Facts]

On 28 June 2018, the Ministry of Ecology and Environment issued a notice on the issue of one million tons of steel slag being piled up by the Jiangsu * Steel Group Co., Ltd. (hereinafter referred to as the "Jiangsu * Steel Group"). The steel slag storage site in the factory area of one of its subsidiaries was not designed strictly in accordance with the requirements of the Pollution Control Standards for Storage and Disposal Sites of General Industrial Solid Wastes (GB18599-2001), and lacked supporting facilities for pollution prevention and control, etc., posing a relatively high risk of environmental pollution. Meanwhile, the Jiangsu * Steel Group was also found acts of

discharging excessive air pollutants.

On 15 March 2019, the * Environmental Institute of Fengtai District of Beijing (hereinafter referred to as the "Fengtai * Environmental Institute") lodged a civil environmental public interest lawsuit with the Intermediate People's Court of Suzhou City of Jiangsu Province, claiming the Jiangsu * Steel Group shall assume tort liability for the damage to the environment, and requesting the Jiangsu * Steel Group to: 1. Stop the infringement by immediately ceasing the excessive discharge of smoke, dust, waste gas, etc., and ceasing the illegal stacking of slag and wastes that harm the environmental public interests; 2. Make an apology to the general public through national mainstream media for the continuous damage to the environmental public interests; 3. Eliminate hazards by taking effective measures to remove the environmental risks to public interests, such as the impact of smoke, dust and waste gas on the atmospheric environment, and the impact of slag and wastes on the aquatic environment of the Yangtze River; 4. Compensate for the damage caused by the loss of service functions of the environment from the time it was damaged until the completion of restoration; 5. Assume the inspection and appraisal fees in the case, reasonable lawyers' expenses, and travel costs incurred by the plaintiff for litigation, etc.; 6. Cover all litigation costs of the case.

During the trial of the case, the Fengtai * Environmental Institute applied for withdrawal of the lawsuit on 19 April 2019 on the grounds that the people's government might initiate ecological and environmental damage compensation work regarding the environmental pollution problem involved in the case. After reviewing the case, the Intermediate People's Court of Suzhou City held that the reason for the withdrawal raised by the Fengtai * Environmental Institute did not comply with the relevant judicial interpretation, and subsequently made a civil ruling coded [2019, Jiangsu, 05, Civil First Trial, No. 299-1] on 22 October 2019 that rejected the Fengtai * Environmental Institute's application for the withdrawal.

On 17 October 2019, the People's Government of Zhangjiagang City of Jiangsu Province (hereinafter referred to as the "Zhangjiagang People's Government") addressed to the Suzhou Intermediate People's Court that the Zhangjiagang People's Government, entrusted by the People's Government of Suzhou City, would undertake the compensation work for ecological and environmental damage caused by the Jiangsu * Steel Group, and had begun consultation on the compensation for the ecological and environmental damage. Considering that the results of the consultation between the Zhangjiagang People's Government and the Jiangsu * Steel Group on the compensation for the ecological and environmental damage might affect the trial of the case, the Suzhou Intermediate People's Court made a civil ruling coded [2019, Jiangsu, 05, Civil First Trial, No. 299-2] on 29 October 2019 to suspend the trial of the case.

It was assessed the ecological and environmental damage caused by the polluting acts

of the Jiangsu * Steel Group in the case amounted to CNY 40,349,639.59. On 5 December 2020, the Zhangjiagang People's Government and the Jiangsu * Steel Group reached the "Agreement on Ecological and Environmental Damage Compensation" and a supplementary agreement through consultation, which were submitted to the Intermediate People's Court of Nanjing City of Jiangsu Province (where, upon approval by the Supreme People's Court, established the Nanjing Environment and Resources Tribunal in June 2019 with centralized management of cases of environment and resources under the jurisdiction of all intermediate people's courts across Jiangsu Province) for judicial confirmation. After reviewing the case, the Nanjing Intermediate People's Court held that the soil pollution damage caused by the steel slag had been effectively restored; the risk of groundwater pollution had been eliminated; the compensation for air pollution damage had been in place; and the "Agreement on Ecological and Environmental Damage Compensation" and its supplementary agreement involved in the case could achieve the effect of ecological and environmental restoration and remedy for the ecological and environmental damage; and the responsibility mechanism identified in the Agreement could guarantee the performance of the Agreement. Therefore, it rendered a civil ruling coded [2021, Jiangsu, 01, Civil Special Trial, No. 64] on 4 June 2021 that confirmed the legitimacy and validity of the "Agreement on Ecological and Environmental Damage Compensation" and its supplementary agreement reached between the Zhangjiagang People's Government and the Jiangsu * Steel Group on 5 December 2020.

On 23 February 2021, the Fengtai * Environmental Institute applied for withdrawal of the lawsuit for the second time on the grounds that a compensation agreement had been reached for the case through the local consultation procedure for the ecological and environmental damage compensation.

[Judgment]

Considering that claims of the * Environmental Institute of Fengtai District of Beijing associated with the public interests of the society had been fully fulfilled, the Intermediate People's Court of Suzhou City of Jiangsu Province rendered the civil ruling coded [2019, Jiangsu, 05, Civil First Trial, No. 299] on 5 June 2021, which allowed the * Environmental Institute of Fengtai District of Beijing to withdraw the lawsuit.

[Grounds for Judgment]

The issue in the case was whether the claims of the Fengtai * Environmental Institute had been fully fulfilled and whether its application for withdrawal shall be granted.

Paragraph 1 of Article 145 of the Civil Procedure Law of the People's Republic of China (2017 Amendment) stipulates, "Before the judgment is pronounced, if the

plaintiff applies for withdrawal of the lawsuit, whether to grant it shall be ruled by the people's court". As the object of the lawsuit relates to the environmental public interests in an environmental public interest lawsuit, the plaintiff's exercise of the right to withdraw the lawsuit shall not undermine the public interests of the society. If the plaintiff applies for withdrawal of a lawsuit, the people's court shall review the application ex officio and may approve it only when it is confirmed the withdrawal does not harm the public interests of the society. In this regard, Article 26 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 ([Judicial Interpretation, 2015, No. 1], 2020 Amendment) stipulates, "If the department responsible for supervising and managing environmental and resource protection performs its regulatory duties in accordance with the law, thereby fully satisfying the plaintiff's litigation claims, when the plaintiff applies for withdrawal of the lawsuit, the people's court shall grant permission." During the trial of the case, the Fengtai * Environmental Institute applied for withdrawal of the lawsuit for the first time on 19 April 2019 when it learned the people's government might initiate the compensation work for ecological and environmental damage as a result of the environmental pollution problem in the case. After review, the people's court held that the environmental pollution problem involved in the case had not been actually resolved, and there was no evidence that the claims of the plaintiff, the Fengtai * Environmental Institute, which related to the public interests of the society, had been fully fulfilled. Given that allowing the plaintiff to withdraw the lawsuit may damage the public interests of the society, the people's court ruled not to grant permission for the withdrawal.

Later on, the Zhangjiagang People's Government, as the authority designated by the Suzhou People's Government for consultation on compensation for the ecological and environmental damage, reached the "Agreement on Ecological and Environmental Damage Compensation" and its supplementary agreement with the Jiangsu * Steel Group through negotiation. Contents of the agreements were publicly announced according to the law to ensure the general public's rights to know and to participate. On 4 June 2021, the agreements were confirmed as legal and valid by the civil ruling [2021, Jiangsu, 01, Civil Special Trial, No. 64] rendered by the Nanjing Intermediate People's Court. During this period, the Fengtai * Environmental Institute applied for withdrawal for the second time on 23 February 2021.

After review, it was found the Jiangsu * Steel Group had made rectification regarding the environmental pollution problem in the case. After appraisal and assessment as well as review by the Suzhou Environmental Protection Inspection Rectification Working Group, it was confirmed the pollution had been rectified to meet the standard. The plaintiff's claims in the case related to the public interests of the society, including requesting the defendant the Jiangsu * Steel Group to cease infringement, eliminate hazards, compensate for losses, etc., had been fully fulfilled after the consultation on compensation for the ecological and environmental damage.

"The plaintiff's claims have been fully fulfilled" in Article 26 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 shall be comprehended as all the plaintiff's claims associated with the public interests of the society in the litigation have been achieved. In this case, the plaintiff's claims that the defendant shall bear the expenses incurred for litigation such as legal fees and travel expenses, as well as litigation costs, only concern the plaintiff's own interests instead of public interests. The plaintiff's application for withdrawal of the lawsuit before the realization of such claims can be considered as the plaintiff's disposal of his civil-law and litigation rights within the scope prescribed by the law. Therefore, the second application by the Fengtai * Environmental Institute for withdrawal of the lawsuit was well-grounded in the law, and shall be approved by the people's court.