



Photo: open source

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The regional authorities failed to return the land leased in the Temryuk region

A plot of 37 hectares was given to a Spanish company for use for 49 years

The region's property relations department was refused to consider a complaint against the decision of the Arbitration Court of the Krasnodar Territory to provide a long-term lease to an investor in the construction of a wind power plant in the Temryuk region. Information on this case is contained in the court file.



kad.arbitr.ru/Card/302665b1-9007-4477-91d2-fb3e4aa13c26



05.12.2022

308-ЭС22-22479 (1)

Об отказе в передаче кассационной жалобы (представления) для рассмотрения в судебном заседании Судебной коллегии ВС РФ

Кассационная инстанция

01.09.2022

Ф08-7413/2022 АС Северо-Кавказского округа

Отменить постановление апелляционной инстанции, Оставить в силе решение или определение первой инстанции (п.5 ч.1 ст.287 АПК РФ)

Апелляционная инстанция

29.04.2022

15АП-4915/2022 15 арбитражный апелляционный суд

Отменить решение, Принять новый судебный акт (п.2 ст.269 АПК)

Первая инстанция

27.01.2022

А32-44788/2020 АС Краснодарского края

Иск удовлетворить полностью



ВЕРХОВНЫЙ СУД РОССИЙСКОЙ ФЕДЕРАЦИИ

О П Р Е Д Е Л Е Н И Е

№ 308-ЭС22-22479

г. Москва

05.12.2022

Судья Верховного Суда Российской Федерации Попова Г. Г., изучив кассационную жалобу Департамента имущественных отношений Краснодарского края на решение Арбитражного суда Краснодарского края от 27.01.2022 и постановление Арбитражного суда Северо-Кавказского округа от 01.09.2022 по делу № А32-44788/2020,

установил:

доводы кассационной жалобы не подтверждают наличие оснований, предусмотренных статьями 291⁶, 291¹¹ Арбитражного процессуального кодекса Российской Федерации, для передачи жалобы для рассмотрения в судебном заседании Судебной коллегии Верховного Суда Российской Федерации и пересмотра обжалуемых судебных актов, поскольку не позволяют сделать вывод о том, что при рассмотрении дела допущены нарушения норм материального права и (или) норм процессуального права, приведшие к судебной ошибке существенного и непреодолимого характера.

Руководствуясь статьями 291⁶, 291⁸ Арбитражного процессуального кодекса Российской Федерации, судья Верховного Суда Российской Федерации

определил:

отказать Департаменту имущественных отношений Краснодарского края в передаче кассационной жалобы для рассмотрения в судебном заседании Судебной коллегии по экономическим спорам Верховного Суда Российской Федерации.

Судья Верховного Суда
Российской Федерации

Г.Г.Попова



The dispute began in October 2020. Elavan Power LLC filed an application with the arbitration court to the Department of Property Relations of the Krasnodar Territory, in which it asked to recognize the refusal to lease a land plot without holding a tender as illegal, and also to impose on the authorized body the obligation to eliminate the violations of the rights and legitimate interests of the applicant by provision of a land plot for lease without tendering for a period of 49 years. The stated requirements were satisfied in 2022.

The area of the projected territory for the placement of the main generating and auxiliary facilities, as well as the

purpose of the land - for agricultural use - is not suitable for the implementation of the investment project.

In addition, the boundaries of the disputed area crossed the existing water supply and the territory of the planned communication, as well as communication lines. And the relevant department did not agree with the requirements, pointing out that the documents submitted by the company did not contain information about the authority of the enterprise to construct the facility.

“The administration of the Temryuk district municipality also submitted a review in which it supported the department’s arguments regarding the crossing of the boundaries of the land plot by such objects as the projected water supply system, the connecting communication line and the existing water supply system,” the decision of the court of first instance said.

Kommersant clarifies that the agreement to create a wind farm in the area of the Beregovoi village was signed back in 2018. The parties were the Ministry of Fuel and Energy Complex and Housing and Communal Services, the administration of the Temryuk region, CJSC Wind Generating Company, Elawan Energy SL and Elavan Power LLC, formed by it.

It is noteworthy that the creation of a wind power plant is included in the development program of the unified energy system of Russia for 2019-2025.

The court, having examined the materials of the administrative case, came to the conclusion that the company had the right to receive the site without providing documents confirming its authority to build an energy facility. The applicant complied with the requirements of the agreement and took measures to eliminate the risk of refusal to provide the site, so the court upheld the stated requirements.

The region's Department of Property Relations appealed the decision to the Fifteenth Court of Appeal in April 2022. However, subsequently the Arbitration Court of the North Caucasus District upheld the decision.

According to Spark-Interfax, Elavan Power LLC was registered in 2018 in Moscow. Construction of power plants is the main activity of the enterprise. The company is owned by the Spanish Acek Energy 3 SL. In 2021, the company suffered losses of 4.2 million rubles.

[They plan to build wind power plants in Kuban.](#), **Live Kuban** previously reported .

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