
Legal Problems and System Research of Rural Collective Land Property Right Reform

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Abstract

This paper compares the tense status of rural land use and urban land use, and introduces the urgency of rural land property right reform and the necessity of research on related legal issues. By summarizing the path of China's historical property right system reform and combining the current situation and problems of the legal regulation of the land property right system, based on the clear relationship between the collective land property right and the transfer right, based on the reality, this paper proposes the theoretical measures of specific property right system reform where land transfer as the core and laws and regulations as the guarantee.

Keywords

Land transfer, market efficient configuration, clear property right main body, legal regulation.

1. Research Background

With the rapid advancement of market economic system reform and urbanization industrialization, the prosperity and saturation of urban real estate development as representative, the level of urban land intensive use has increased significantly, demand often exceeds supply, under the effect of market regulation mechanism, its tentacles will naturally extend to rural land.

Compared with the basic national conditions of urban land shortage and a large population with relatively little land, the reform of rural collective land property right system is relatively backward, The collective construction land, long-term unpaid use and non-transfer policy cause problems of extensive land use and idle waste to be serious. At the same time, the income creation effect of the household contract responsibility system on collective farming land is also gradually decreasing, the average distribution of land brings the reduction of land management scale and the fragmentation of land parcels, land security function and conflict of rural population non-agricultural transfer cannot be ignored and so on.

From the comparison of the current situation of rural and urban land use, urban land shortage and large-scale production of rural agriculture urgently need transfer rural land to achieve optimal resource allocation. However, the existing property right system has hindered the transfer of rural land to a certain extent; rural collectively owned land has not been converted into state-owned land without legal expropriation, its ownership and use right cannot be used as real estate for industrial operation; rural villagers' housing and homestead can't be used as real estate of industrial management.

Provision 10 of the China's Constitution provides that the land in rural and urban suburbs are collectively owned except for those owned by the state as provided by law; the homestead, household plot and the household mountain are also collectively owned. The state for the needs of the public interest, no organization or individual can misappropriate, trade or other way illegally transfer land. It can be seen that in China, only countries and the peasant collective enjoy land ownership. If people

want to develop rural cultivated land construction, it will be mainly collected through administrative means, however, there are many black-box operations and lack of compensation for administrative expropriation.

To sum up, the urban land marketization demand, idleness of rural land policy, the chaotic phenomenon of administrative expropriation of collective land, and the inherent needs of rural economic development are the background of this research.

2. Historical Path of Rural Property Right System Reform

Since China promulgated Agrarian Reform Law in 1950, the reform of land property right system has undergone four major changes, from the land ownership of feudal landlords to the ownership of peasants; the peasants have become the masters of the land, from small private ownership of peasant to agricultural cooperatives, realize the transformation of land from peasant personal ownership to collective land ownership, from agricultural cooperatives to household contract responsibility system, realized the separation of ownership and use right of collective land ownership, from the household contract responsibility system to the transfer of land management rights, realize collective land use rights transform from inherent specificity to transferable property.

Looking back at the four great land changes since the founding of the People's Republic of China, it is known that the transformation of the property right system is driven by the development and demand of agricultural productivity, every change means a huge breakthrough in the agricultural production model. As far as modern society is concerned, the scale and mechanization of agricultural production has become an irresistible trend, which inevitably requires land to achieve efficient and optimized transfer and allocation, and is different from the traditional fragmented land use method where farmers as unit.

3. The Status and Path Exploration of Legal Regulation of Rural Collective Land Property Right in China

Under the existing property right system, peasants have three types of property rights for contracted land according to the law: land management right for a certain number of years, and can be used as use, transfer, income, and property use right, the right to obtain some economic benefits of land appreciation, the right to receive an equivalent compensation when transferring land rights.

While peasants enjoy many land rights, the outstanding status of low land intensification is not to be ignored. The main reason for the low land utilization rate is that the normative boundaries of rural collective land ownership are vague. First of all, the main body of rural collective land ownership is a collective of peasant, namely collective of multiple peasants; the legal attribute does not conform to any of the categories of all property rights in the civil law, resulting in emptiness of collective ownership. Secondly, the emptiness of the ownership subject will inevitably lead to the weakening of the ownership subject; the land that should belong to the peasant is attributed to the cadre of the grassroots political organization. Finally, the three types of multiple subjects, including the township peasant collectives, the villager collectives, and group villager peasant collectives, which will inevitably lead to the dislocation and emptiness of the right subjects.

To sum up, rural collective land ownership includes three major categories, but the problem of ownership main body emptiness, multiple, and weakening, require clearing single property rights and establishing land property right system with modern property right as the core.

In the process of path exploration, we first analyze three traditional land property rights systems. Land nationalization gives land management rights to collective organizations for escrow, and is not conducive to solve the burden on farmers. The privatization of land is not the only way to clear the subject of property rights, nor does it necessarily lead to an increase in land utilization, and may even hinder the transfer of land. Diversified ownership can easily lead to chaotic ownership.

Therefore, the respective disadvantages of the above three paths are prominent, and they are not suitable China's national conditions. China's future change path should still adhere to the collective

ownership of land, re-clear the main body of land property right, and clear the relationship of land property right. To further generalize the idea, adhere to the collective ownership of rural land and clearly define the ownership scope of the three-level entity. At the same time, the land users are given complete and stable use rights, and the land resource allocation is optimized through the land share system.

4. Standardize Specific Measures to the Existing Collective Land Property Right System

4.1 Do a good job in the certification of collective land ownership and clear the main body of rural land property right

Restricted by the conditions of the legislation, the registration work of affirming right is carried out in the country, lags exist in some areas, the rural collective land ownership only confirms the right to the village collective level, and does not further confirm the right to peasant who grasp actual ownership of the land. Therefore, the premise and key to the reform of the property right system is to ensure the rights of the right users, after the ownership is certificate, the enthusiasm and creativity of the peasants are fully exerted in the reform.

4.2 Improve the power of rural collective land use right, and actively promote the transfer of land contract management rights

The essence of the transfer of land property right system and use right is the definition of property rights and the market mechanism, their status is the basis and direction. Therefore, the central link in the definition of property rights is the smooth transfer of collective land use right.

In addition to the use right of the land contract management right clearly stipulated in the Property Law, the locality can actively explore other ways of land contract management right and other transferring ways, for example, Chengdu allows peasants to entrust collective economic organizations to transfer their contract management rights on their behalf, for example, Lanzhou City allows peasants to transfer land contract management in the form of sublet, rental, exchange, transfer, shareholding cooperation, etc.

4.3 Improve legislative work of related laws and rules to the reform of the property right system

The reform of the property right system requires constitution, Property Law and Land Administration Law to comprehensive revised and improved, as legal guarantees, including accelerating the formulation and promulgation of the Regulations on the Uniform Registration of Real Estate, Regulations on Land Use Planning, and rural collective management construction land transfer regulations. Further promote the legalization of property rights system reform, while accelerating the transfer of farmland management right, use legal provisions to determine the relevant ways and modes to solve the rural collective construction land transfer

5. Conclusion

Urban land supply is in short supply and rural land is idle and wasted and as background for comparison, the necessity of research and exploration of land property right system reform is introduced. This paper starts from the historical analysis of the change of rural land property right system; integrates the current situation and problems of utilization under current rural land legal regulation, proposes the path model of law suggestions for legal improvement. Finally, going back to the past, based on the status quo and problems, specific measures with legal regulation as the main means is proposed.

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