

The definition and current situation of collective construction land use right and its circulation

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Abstract

In order to alleviate the imbalance between rural and urban development in China, the barriers to the transfer of the right to the use of collective construction land should be removed to form a coordinated supply-demand relationship between China's land resources and the land market, so as to maximize the use of farmers' collective land. China has been constantly liberalizing the restrictions on the transfer of the right to the use of collective construction land. This paper defines the background and concept of the right to the use of collective construction land, and analyzes the current situation and problems of the transfer of collective construction land. By studying the transfer system of the right to the use of collective construction land, a comprehensive framework for the transfer of the right to the use of collective construction land is constructed to ensure its smooth flow.

Keywords: *Collective construction land use rights, status quo, define, circulation*

1. INTRODUCTION

The research background

In order to reduce the gap between rural and urban economic development, break the shackles of the circulation of collective construction land use right, so that China's land resources can meet the economic development demand of the market, in recent years, China has been constantly liberalizing the use right of collective construction land, so as to realize the maximum utilization of collective land by Chinese farmers. Policy coherence, in urban and rural construction land market of collective construction land and land state-owned construction land to provide sufficient resources, in order to solve China's current land resources are limited, the shortage of land market, urban and rural land, and the imbalance problems in the development of collective construction land, farmers and the collective economic organizations with a large amount of land resources at the same time also can enjoy the value-added benefits, reduce the gap between rich and poor. China's newly revised "land management law" has come into force as of January 1, 2020 the newly revised "land management law" before breaking the collective construction land use rights transfer of obstacles, and flow conditions, rules, content involved in the relevant path dependence, but there are drawbacks in this law, the rights of the collective construction land use rights attribute, aspects of the rules of the circulation is not reflected in the law, need a more complete system of civil architecture. As a fundamental law of rights, the civil code should provide management system guarantee for the smooth transfer of the right to use construction land for collective economy, so as to promote the smooth transfer of the right to use

construction land under the condition of clear ownership and definite right elements.

1. 1. The definition of collective construction land use right

The right of use is the right that the owner exercises or authorizes others to exercise without changing the nature of the property. It includes two forms: the owner himself exercises and the authorized person exercises. Collective land use rights are the same here. However, the ownership of collective construction land belongs to the collective, and the collective can plan and use the collective interior, which is the right granted by law. Due to the needs of development, the right to use collective construction land can be transferred to a third party and other collectives, which is the collective legitimate exercise of their rights and should not be prohibited.

Firstly, the right to use the land for collective economic construction is a usufruct, and secondly, the right to use the land for collective construction is a restricted property right. It is mainly manifested in the fact that the owner must be able to obtain the approval of the government for the collective land that cannot be disposed freely. Finally, at present we can only be a member of the collective economic organization management can be a collective land use rights subject.

1. 2. The concept of circulation of the right to use collective construction land

The right to use construction land is divided into

state-owned construction land use right and collective land construction land use right [1]. Strictly speaking, the concept of collective construction land use right does not appear in the Civil Code, and the so-called transfer of construction land use right is only reflected in the Land Management Law. It is this clause that makes the right to use collective construction land in the property law becomes fuzzy. Although the "Opinions on The Determination of Land Ownership" issued by the land administration department mentioned the name of construction land use right of rural collective land for the first time, its connotation is still unclear. It is worth noting that in the Land Management Law of 2019, the two basic concepts of "the right to the use of land for collective business projects" and "the right to the use of ecological land for collective economic construction" emerged, which allowed the concept of the birthright of the right to the use of land for collective construction to become a legal concept in the true sense. But it still has not defined its connotation. In this regard, the author believes that, from the perspective of civil code, the concept of collective construction land use right is more comprehensive and rigorous compared with the formulation of collective commercial construction land use right, and at the same time, it can also be corresponding to the construction land use right of state-owned land. So I use this concept. Combined with the provisions of the Civil Code and the Land Administration Law on the right to use construction land. The author holds that the circulation of the right to the use of collective construction is the action of peasants or collectives to punish their legitimate rights, and the main content of the punishment is the right of rural collectives and peasants to possess, use, earn, operate and dispose, and it is reasonable and legal use, not beyond the scope of legal provisions.

1.3. Analysis on the current situation and problems of collective construction land transfer

The circulation of the right to the use of land for collective economic construction and development mainly has the following two different forms, which are the first circulation and the second circulation respectively: the so-called "first circulation", in essence, is the first separation of the right to the use of land and the right to the land. Under the regulation of the land administration measures of the People's Republic of China, this form is not different from the acquisition of construction right of use in essence. Won government approval according to law is, therefore, under the premise of collective construction land use rights and ownership can realize the separation, the "flow" for the first time in essence is a kind of trading behavior, but because our country land system, its main body is rather special, for the land resources, between the owner and the consumer demand as the government approval for the transfer of land form, and tend to be passive, so it's hard to truthfully reflect the intention of the government approval flow, also can

guide the government cannot effectively for examination and approval of the accused. So there will be a large amount of land into the market for transfer. The "re-circulation" is the land use right circulation behavior between the land user and another land resource user on the basis of the first circulation. However, the re-transfer is relatively special. The parties to the transaction cannot go beyond the right to use the construction land to carry out other transfers, for example, it does not involve the change of the use mode of farmland, nor does it need the relevant approval from the government. In practice, the government does not recognize the legality of the practice of obtaining the right to use construction land through "first circulation". The first circulation occurs mainly between collective land owners and land users [2], which can only increase the total supply of construction land rather than improve the utilization rate of existing land. If the first circulation is ineffective, it will easily lead to excessive land supply, bringing adverse social effects. However, the re-circulation is to redistribute the existing construction land use right. Its advantage lies in the more reasonable utilization of land resources without adding new construction land. Moreover, through signing circulation contract, land use right change registration, taxation, price and other means, can realize the effective monitoring of the circulation again.

1.4. Current situation of circulation

With the rapid development of economy and the large-scale construction of urbanization, the transfer speed of land use rights has also been improved rapidly. Although China has issued a series of laws and regulations to restrict the land transfer, but the effect is not obvious. Of various regions in our country, regardless of north and south and east, the transfer of collective construction has often happened, especially in some cities and towns cross area, the construction of the transfer of the right to use has been formed a big market, and the transfer of collective construction land use rights has also largely contributed to the development of local economy. At present, the circulation of the right to use collective construction in China is mainly faced with the following problems:

1.4.1. Land contracted is scarce and it is difficult to form large-scale production.

Chinese farming civilization for thousands of years, with the concepts of land is the root, deeply rooted in his bones in the rural land contract responsibility system, farmers average access to land contract right, every household has its own use of land, thus has formed the basic rural land by contract, in the limited land and develop the extra land to operate on a large scale. Moreover, for the farmers who immerse themselves in the yellow land all their life, the land is the fundamental source of their life materials. If they give up the land, their life cannot be guaranteed and they are not willing to transfer the contracted land. Small-scale land

cannot be transferred, and because land use rights are not centralized, large-scale land transfer is almost impossible, resulting in the waste of agricultural land resources.

1. 4. 2. It is difficult to increase the income from small-scale agricultural production.

The inherent decentralized management of small-scale peasant economy and the shackles of low productivity deeply restrict agricultural structural adjustment, and also affect the formation and promotion of agricultural industrialization management.

1. 4. 3. The policy is too broad to be effective.

Promoting the rational transfer of land use rights has been the main central rural policy, which involves one of a series of central rural policies, but more in principle. Among the many reasons for non-standard rural land circulation in China, there are no specific implementation rules for various agricultural administrative departments, and there are no unified and effective provisions on how and through which land circulation should be conducted and how to manage it.

1. 4. 4. The deep-rooted old concepts make it difficult to transfer contracted land.

People in rural areas still have a deep affection for the land. Only when there is land can there be a family, and only when there is a family can there be roots. Therefore, most people would rather the land be abandoned than transferred. According to the survey, more than 10% of the arable land area in some areas of the seasonal land has been abandoned, large-scale abandoned to the rural economy caused a certain loss.

1. 4. 5. Non-standard operation.

This is mainly reflected in the following aspects: first, most of the circulation contracts between farmers are oral agreements, and very few people adopt written contracts for circulation. Moreover, even if there are written contracts, most of them are incomplete in content and sometimes have no legal effect. Second, the land transfer agreement is not standard, the signed contract does not have the basic elements, and sometimes the contract terms and subject matter violate the existing laws and regulations. Third, some contracts have not been effectively examined, approved and notarized. At present, there is still no complete record of land transfer in a file, and there is a lack of rural land transfer data files.

1. 4. 6. Difficulties in development and introduction.

Project income on rural land is relatively low, agricultural development is subject to the dual restrictions of market and nature. Investment and development of agriculture are faced with greater risks, and the returns are not objective, so investors are always cautious. Engaged in agricultural development of investors really adhere to the down is not much, can achieve better benefits is wind hair water chestnut. Mainly reflected in the management level is low, the technical content is not high, the industry fusion is difficult, the variety is single and so on.

1. 4. 7. Large scale circulation is difficult.

Most of the young and middle-aged people in the countryside go out to work or do business, and most of them are the labor force with cultural skills in the countryside. And the labor force left in the countryside has mostly contracted part of the land to get a living. It is difficult to meet investors' expectation of land concentration and contiguities, which leads to the practical difficulty of land transfer. In addition, the rural land has not been comprehensively developed, with small and uneven plot areas and backward infrastructure, which has caused great difficulties for mechanized farming, increased corresponding costs, increased investment risks, and led to the increase in the difficulty of transfer.

The solution of this problem must be carried out under a reasonable and effective transfer mechanism for the transfer of land use right, and the operation of this mechanism can promote the legal and effective transfer of land use right.

1. 5. Countermeasures to perfect the circulation system of collective construction land use right

The collective land transfer system is in its infancy, and it faces so many problems and complexity that we should study them more deeply and actively.

1. 5. 1. Strengthening institutions for the administration and supervision of land circulation.

All departments should establish systems, implement institutions and personnel, and strengthen the service, guidance, management and supervision of land circulation behavior [3]. According to the rural land contract laws and regulations, to establish and improve the rural land circulation management and supervision organization at all levels, clear the function of the rural land contracting and management responsibilities, to carry out the full-time personnel [3], actively guide, implementation, management

and supervision, forming method and work flow management system, timely find problems and solve the problem, code of conduct.

In order to realize the function of management and supervision, the first thing to do is to introduce relevant regulations and measures. The measures need to make clear provisions on the form and operation procedures of circulation, as well as work out practical and feasible treatment measures. The second is to standardize the circulation contract, actively introduce the corresponding guidance, to provide a practical working method for the circulation parties, and further promote the standard and legal conclusion of circulation contract, reduce unnecessary disputes caused by circulation. The most important thing is to complete the land contract management right registration as soon as possible, carry out the land right registration system, clarify the right subject of the land use right, can better trade for the land use right owner, also more conducive to the right of disposal cheaper. Effectively strengthen the management of rural land contract archives, promote the informatization of land contract archives management, and properly solve the problems such as unclear contract contents, incomplete land contract and management right certificates and incomplete registration books [4].

1. 5. 2. Change outdated concepts and promote land circulation.

Due to the thousands of years of Land thinking in China, as well as the contradiction between small-scale peasant production and socialized large-scale production in real life, the contradiction between average distribution and free distribution of land resources in the market and the contradiction between small-scale peasant operation and intensive agricultural management has become increasingly prominent. Therefore, according to the actual needs of land circulation, it is particularly important to build a fair, standard and orderly land circulation trading platform and establish a tangible land circulation market. The obvious advantages of constructing service-oriented government can also be highlighted at this time to establish a service mechanism for innovative agricultural production and push forward the specialization of services. The government gradually guides the social forces from all walks of life to participate in, actively promotes the way of information service, and forms a new agricultural production service mechanism. Establish a special service organization to release circulation information, timely update and accurately, provide advice on relevant laws and policies, evaluate the price legally and effectively, and guide the signing of contracts. The purpose is to strengthen the management and service of land circulation. Of course, the settlement of disputes can also be left to it, after all, it is in the first line of land transfer position. To carry out the circulation system of contract for the record, you also need to establish and improve the rules of right to the contracted management of land circulation, professional guidance to

flow for the implementation of the contract, regulating the behavior of circulation, better supervision and regulation of the use of the circulation, strengthen the right to the contracted management of land circulation information monitoring, mastering the type of land circulation area, through the platform system, such as, provide a reliable basis for guiding work.

1. 5. 3. Adhere to policy principles to ensure the standardized transfer of land [5].

First, the policy of extending land contracts for 30 years must be adhered to in land circulation, the practice of adjusting land contracts only within three to five years must be rectified in a timely manner, and the long-term and stable operation of the household contract management system must be ensured. Second, we must adhere to the principle of "law-based, voluntary, compensated and standardized" in land circulation. We should fully respect farmers' wishes, and the government should not overstep its authority and violate farmers' wishes to conduct land circulation without authorization. In the name of good for them, everything should focus on agricultural development and all should be done to increase farmers' income. Third, we must insist that farmers are the main body of the transfer of rural land-use rights. Farmers have sufficient right to dispose of their own rights, and can determine the form and price of land circulation by themselves without violating the mandatory norms of the law. Moreover, they own the ownership of the circulation income, which is not allowed to be violated by anyone. Development land scale operation, should fully respect the wishes of farmers, [6], not to be able to make a decision for farmers, also will not be able to think its assigned tasks to promote the land circulation, should pay attention to when working methods, not against farmers will through some disguised in an effort to complete the transfer, you can pay attention to the typical case is put forward to guide and work for better stability to carry out the land circulation have a demonstration effect. Fourth, promote the standardized development of land circulation. The operation and management of land circulation should be standardized. Administrative departments at all levels should earnestly perform their duties, actively do a good job in the signing, modification and related work of land circulation contracts for the circulation work, and actively and properly mediate and handle land circulation disputes.

1. 5. 4. Establish and improve mechanisms and improve circulation.

First, we will establish and improve the market mechanism. Governments at all levels have established land circulation management and service centers [7] to timely and accurately collect and release land circulation information, so as to facilitate the clarification of rights of relevant rights holders of land circulation. An arbitration committee shall be set up to arbitrate the circulation disputes and properly

handle the circulation disputes. Set up a land appraisal organization to grade and evaluate the land price, so as to provide scientific basis for the fair transfer of both sides of the transfer. We will create a fair and transparent market environment for business transactions. Second, we will expand employment channels. We will speed up urbanization, unify the labor market and employment systems, improve labor cooperation mechanisms and information networks, and guide farmers to ensure that their livelihood is guaranteed during the transfer process. We will ensure that rural migrant workers have the right to work in cities, and increase subsidies for maintaining stable posts and securing employment. Third, we will establish and improve a guarantee mechanism. We will establish mechanisms to guarantee agricultural risks, increase investment in infrastructure construction, speed up land leveling and comprehensive agricultural development, improve agricultural production conditions such as water conservancy, and create conditions for large-scale agricultural operations.

1. 5. 5. Encourage circulation through institutional policies and measures.

First, set up special fund management to promote moderate scale land management. Second, encourage enterprises to adopt the mode of company + peasant household + cooperative and order agriculture to drive farmers to develop industrialized operation. Third, we will increase financial support from the government. Establish and improve China's rural employment, pension insurance, cooperative medical care and other social life security systems to reduce farmers' dependence on the land for survival [8]. Fourth, financial service institutions shall provide financial support in line with the support of policies to provide active credit fund support for enterprises and large operators participating in the transfer of land contracting and management rights in rural areas of China, so as to better provide a convenient environment for the transfer of land.

At present, the state has issued a notice to do a good job in land circulation, requiring to lead the healthy development of rural land use rights. We should seize the opportunity, actively seek effective methods for land circulation, formulate active land policies and speed up the pace of economic development through accumulating useful experience.

2. Conclusion

Through the systematic study of collective construction land use rights transfer system, the author proposed own shallow view, in the process of writing the article, the author collected ability is limited, can not collect information about collective land circulation, overall and at the same time the author writing ability and expression ability is limited, to discuss profound enough, but I will keep on learning, in the

study of collective construction land use conversion and learning, for the collective construction land use rights transfer constructed a set of relatively complete legal system to safeguard its flow smoothly.

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