Small Property Right House and Land System Reform in China

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Abstract. How the government solve the problem of "small property right house" is very crucial in the course of land system reform in China. Through on-the-spot survey and literature research, we find that comprehensive means with long term planning on the basis of a clear strategic direction and the train of thought are essential. The government should establish the relevant form a complete set of system to solve it according to gradation, classification, stages. At the same time, the government should ban the rights of land surface transverse-lianjian. On the contrary, it is very necessary that encourage the rights of longitudinal-lianjian on land surface in order to save land.

Introduction

Under the condition of market economy, because the supply of land is inelastic, land will always work for whatever it can earn, it is an essential factor for activities and production. In this article, we will discuss the problem of "small property right house" and land system reform in China.

In recent years, "small property right house" problem has been the focus of the society [1]. To solve the problem it is very difficult in the course of land system reform in China[2]. At present, many scholars think that China's the problem of "small property right house" is unfair system to force out: With tens of thousands of yuan on land, the government, however, auction it for the price of millions of yuan, farmers only get the lowest life guarantee. This is not the constitutional levying countervailing regulations and rules of market economy. The farmers in the countryside and the low-income residents in the city without "small property right house", there is no way to break through the current institutional barriers.

When the State Council repeated ban on urban residents purchasing "small property right house" and the farmer's homestead, there are still many scholars that insist on completely legal the idea of "small property house"[3]. In pilot cities, some managers also enacted public file on "de facto licensing non-local migrant workers to buy limited property rights house and homestead in the countryside". "Land administration law" of the modification will face two kinds of urbanization choice paths, the debate about the "regulations on urban house dismantlement and administration" will further extends to the design of the rural land system too.

Value and Significance of Research the Problem

In order to solve the problems on urbanization path selection and scientific design the disposal system of "small property right house" in China, we have researched some laws and regulations of developed countries, for example, "the French countryside act", "the French real estate law", and "the cultivated land protection system" and so on, to get some inspiration from them. We found that the foreign legal system of the integration of urban-rural the real estate and the achievements of cultivated land protection system only can be less direct reference for China. However, there is still a similar system of the land development rights in developed countries can be reference, such as "countryside act", "agricultural subsidies law", "property tax law", "the second house special tax law", "the government develop housing act" and "low-rent housing law" and other related systems research results. In addition, British and American land development rights trading system, German
real right system, etc. They have certain reference significance for cultivated land protection and the integration of the urban-rural real estate market.

At present, although there are a few discussion of the “small property right house” problem and land system reform from the new rural construction, urban-rural integration, urban house price regulation, urban low-income housing demand, etc. but they is very superficial. To this end, we will utilize the opportunity of the "property" law implementation and revised "land management law", put forward the plan of "staging-classification" to solve "small property right" and to ensure that achieve balanced and sustainable development between urban-rural areas. These solutions include: the hierarchical system of rural collective construction land, the system of farmers directly share land interests, the second house special taxation and urban-rural housing security system, the long-term lease system of rural construction land, strictly protect arable land system by high food prices and high subsidies, limited use system of collective land ownership (including homestead), etc.

The Connotation of "Small Property Right house"

The word of "small property right" originally comes from civil society, it is relative to the "complete property right". Up to now, it is no corresponding definition in the current legal. The limited right of possession and use right without land ownership is called its "Small property right", therefore it also does not have legal rights to transfer, dispose, income, etc. In the sense of it is not the real right of property law. However, the idea that "small property right can't get any legal protection" is not entirely accurate. The economists of property rights theory agree: although the "Small property right" has no effect in the sense of "property law", in fact it's "owner" enjoys certain housing property rights. From legal perspective, the law forbids any infringement behavior of possession and protecting the use right of the legal building; without legal procedure, they shall not be deprived. We believe that farmers building house on homestead, after purchased by urban residents, and should be deemed to be the "Small property right house" too.

The Strategic Direction and the Basic Train of Thought

The Strategic Direction of Solving "Small Property Right House"

In order to solve "small property right" problem and promote land system reform, we must know the following crucial problems and strategic policy:

First of all, we must explore the root cause and the pros and cons on "small property right" by analyzing profit distribution, tax, social security, household registration, litigation of the current real estate legal system. Secondly, we must know the biggest beneficiaries of "small property right house". Finally, we must grasp the historical function of urban-rural land and the future whose interests must be met, and effectively solve the possible problems in the reform of land system. In the future, let go of land examination and approval rights and rural real estate market may cause "enclosure" and "famine", the government must prevent the system vulnerability of wasting farmland in the course of land system reform.

In addition, the government should further improve the system of land management, adhere to the strictest arable land protection system, firmly hold the red line of one billion eight hundred million mu of arable land, step by step perfect rural homestead system, safeguard the usufructuary right of peasant homestead in accordance with the law. Saving the land in the countryside and villages, the first thing is safeguard and reclamation of cultivated land, if saving land is directed at construction land, it must conform to the land use planning and annual construction land plan, and give priority to meet the collective construction land, then make it into market. At the same time, the government should reform system of land requisition and perfect the land requisition compensation mechanism, strictly distinguish between public welfare land and business construction land, gradually shrink the scope of land requisition. By the above measures, in an attempt to fundamentally solve the deeper legal problems of urban-rural land system, food security, land utilization.
The Basic Train of Thought of Solving "Small Property Right House"

First of all, the problem of "small property right house" involve in a variety of practical interest relations, to solve it by means of field investigation and comprehensive analysis of actual case is necessary. Only in this way can we understand China's current deep-seated problems existing in the urban-rural land system and implement path of variety interests balance.

Second, on the basis of recognizing the situation of China's population, land, political system, etc. we must learn from land management experience of urbanization in developed countries, according to the requirement of sustainable development, put forward to effective reform measures of real estate system and permit expanding the scope of the land circulation gradually[4]. On the premise of basic principle, we will organize the specific analysis of all kinds of interest relations in regard to "small property right house".

Once again, we will utilize some universally accepted principle of institutional economics as the tool of understanding and analysis to solve the problem, through the establishment of "small property right" classification scheme model, the method of economics can effective inspect conclusion.

The Path and the Scheme

The Path of Solving "Small Property Right House"

Overall, solving the problem should stick to the combination of perfecting legislation, strengthening law enforcement and the government macroeconomic regulation and control, it can be limited legalization under the premise that comply with the basic spirit of the law [5]. We think that the government only forbid "small property right house " is not really solve the problem, there must be other form a complete set of reform measures to satisfy or balance various legal interests. Based on the above considerations, we put forward some innovative ideas as follows:

Solving “small property right house” problem should establish "the layered use right system of rural collective construction land and farmers' homestead", "three-dimensional-lianjian right system of urban-rural residents". Then let farmer's housing and homestead equality into urban-rural integration market of real estate [6].

In fact, China just from the angle of regional economic to determine and choice the pilot cities, and consider the rural property right system reform, a lot of land system reform lack considering of long-term planning, therefore, we will design the long-term land use planning system according to the population size, especially how to avoid waste land and houses when a large number of population decline (China population will began to decline in 2050). In the short term, the government should explore a number of ways to realize intensive land use, on the premise of strictly protect arable land, to come true land interests distribution of Pareto-Optimality.

How to make the farmers' homestead into the real estate market under the state control system? Historically, land collectively owned can prevent it is been highly concentrated. From national conditions and in the long term, it is imperative to set up the system of three-dimensional-lianjian right. At the same time, the government should levy real estate tax as soon as possible, with the minimum cost spend the peak of population in special historical period.

To Solve the Scheme of "Small Property Right House"

First, in order to meet the immediate interests need of part of the urban residents to live in the countryside. As long as lease contract conform to "contract law" lease regulations and the "urban-rural planning law", the government should limited admit its legal effect, after all, under the current legal framework there is no reason to ban the leasing behavior, of course, policy must explicitly deny behavior contrary to the above two laws and automatic renewal indefinitely.

Second, to prevent speculation psychological of the developers of real estate harm national food security, law enforcement department should firmly to dismantle all "small property right house "of occupying farmland and in violation of urban-rural planning.

Third, to maintain the seriousness of the law, the urban residents had bought the "small property
“small property right house” by legal procedure, and had been achieved rural property right card, the government should require them to cancel it within a time limit. If both sides of the buyer and the seller are willing to turn into 20 years lease, the land administrative departments must change the property right card into ZuLinZheng.

Fourth, to provide legal way of reasonable demand of migrant workers living in the suburbs, for none of the village of farmers purchased the "small property right house" by legal procedure and achieved property right card, the household registration management should require them to shift registered permanent residence to new homes in villages and towns. The land administrative departments should require them to withdraw the original homestead within a time limit.

Fifth, for the "small property right house" of conforming to the urban-rural planning, just against the land use control index of the city suburb, after obtaining land levy index, it should be converted into commercial housing by legal formalities. All charges in handling process are for account of the original buyer and seller of the "small property right", collective organizations of land ownership have the right to participate in the allocation of land revenue.

Look from law designing currently, the use rights of rural collective construction land and homestead is long-term and indefinite, once made it, the farmers can enjoy forever. If the "small property right" of building on such land is legal its use rights will be bigger than the commercial housing on the state-owned land. So, we think the "land administration law" should be set "the limited-period land system of homestead and rural construction land". However, under the premise of "a home a homestead" farmers have renewal right for free.

In order to solve the increasingly serious problem of "hollow village" in rural areas, for rural long-term idle housing or long-term idle homestead, not only is collective has use rights on them, but also can recover it in accordance with the law. Specially, a lot of land in the remote area may still be idle, land reform still not make most of the farmers get real benefit in remote mountainous areas, only make the city suburb farmers get real benefits. Therefore, market and policy cannot solve all problems in the course of land system reform, it may even lead to serious gap between the rich and the poor.

As to open the building right enter the market on rural housing (allows the rights of longitudinal-lianjian on land surface), the main reasons is China's urban-rural real estate management system reform must meet demand of some urban residents live in the countryside. To prevent occupying much of rural land and arable land, we advocate periodic inventory system of the homestead and system of longitudinal-lianjian of urban-rural residents to solve the problem of "small property right house" and boost land system reform. Across the country should stop related formalities land use for examination and approval villa, examination and approval of couplet platoon villa and low density garden villa project will be further controlled, further regulate supply structure the housing and land.

Conclusion

In the course of land system reform, solving the problem of "small property right house" is very crucial. To solve it according to layer, classification, stages is essential. The government should ban the rights of transverse-lianjian of land surface. On the contrary, in order to save land and promote land system reform, it is very necessary that encourage the rights of longitudinal-lianjian on the farmers' homestead and collective construction land.

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References


