Study on Illegal Governance of Facility Agricultural Land in China

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Abstract. This paper comes from the research project of the illegal governance of facility agricultural land in Yunnan province which be finished by the author independently in 2016. The main objective of this paper is to look for the ways and means of solve the problem on facility agricultural land illegality. Practice research method is adopted mainly, and literature research method is also be used at some time. With the development of China’s agricultural modernization, facility agriculture is developing vigorously, at the same time, facility agricultural land illegality is becoming a serious type of land illegality, so illegal governance of facility agricultural land is very important for china at present. Facility agricultural land illegality in China includes unique features, such as geographical distribution widely, hidden illegal way, changing land uses without authorization, occupation basic farmland illegally, etc. Which lead to facility agricultural land illegality is made up of parts: scarce land resource, lagged law, inadequate supervision, low illegal cost, weak law enforcement forces. Illegal governance of facility agricultural land in China need take measures from above aspects. The innovation of this paper lies in research the illegal governance of facility agricultural land in China systematically.

I. Research Background

China’s agricultural modernization has seen faster development and remarkable progress since the governance, and growing violations of laws in use of facility agricultural land in its flourishing development, which is important content and concentrated embodiment for agricultural modernization and industrialization, have emerged, and facility agricultural land has increasingly become a universal land illegal use type across the country. It is an important issue concerning socioeconomic development and to be highlighted in the “13th five-year planning” period to find out the exact causes for illegal facility agricultural land, put an end to violations of laws, and implement effective governance.

II. Information About Facility Agricultural Land Violation of Laws in China

The violations are widespread and distributed in most parts of the province. Facility agriculture in these areas ushers in rapid development stage, and the demand for land is surging when China’s agricultural modernization is promoted. However, current institutional design and planning guidance are far behind realistic needs of facility agricultural development, and various violations of facility agricultural land emerge in endlessly. Illegal facility agricultural land exists everywhere, and moreover, it is featured in small scales, scattered distribution and a large coverage, so it is difficult to oversee and enforce the law in place.

Key areas of violations are concentrated on fast economic growing areas. Regional development in China is unbalanced, so socioeconomic levels of provinces (autonomous regions and municipalities directly under the central government) are different, and agricultural development levels are the different, too. Fast economic growing areas have relatively large demands for facility agricultural land, and their violations are relatively more, too. Properly govern violations about facility agricultural land in key areas, and significantly cut down the proportion of violations nationwide.
Violations mainly include construction without application or approval or alongside application. Firstly rural households and operators are not quite aware of laws. They think facility agricultural land’s use rights belong to themselves, audit and filing is not necessary, so they carry out construction without application. Secondly some facility agricultural land indeed needs to cover basic farmland. Although in principle it may be allocated later, it is in fact quite unfeasible because facility agricultural land is not large in area and scattered. Thirdly some rural households and operators take advantage of the loopholes of the state and government about protecting rights and interests of farmers and supporting modern agricultural development, exploit loopholes of laws and policies, enforce the construction alongside application even if they know the construction does not meet relevant regulations, and cause a fait accompli.

Illegal occupation of basic farmland happens time and again. Ministry of Land and Resources stipulates that facility agricultural land is prohibited from occupying basic farmland except that supporting facility construction involved in scale grain production in plains need to occupy basic farmland. However, quality farmland in China is mostly basic farmland, and the fact exists that some facilities of the planting industry such as vegetables and fruits cannot avoid occupying basic farmland. There is a trend to concoct various pretexts for the purpose of violations. At present Chinese land management order is increasingly strict and good, and strictly restricted by farming land shifting into expropriation and land use planning indicators, some areas use it as pretext to apply for facility agricultural land, and occupy farmland by borrowing agricultural facility projects in various excuses. Furthermore, fake “agricultural facility” projects acquiesced and indulged by governments appear in some places, and these projects generally cover large and concentrated area with a relatively large scale.

III. Causes for Violations About Facility Agricultural Land in China

Unbalanced land supply and demand. The land resources is not distributed in a balanced way in China, land use varies greatly, arable land is huge in total quantity but low in quality, the basic farmland proportion ratio is large, wasteland resources appropriate for development is not much, and reserved land resources is limited. However, industrialization, urbanization and agricultural modernization process in China need a great amount of land resources, so the land resources contradiction is sharpening.

Severely backward legal system. China’s modern agriculture has entered in a fast growing period since the end of last century, and facility agriculture is developed and expanded increasingly. However, the state fails to build the facility agricultural land legal system, which is severely mismatching with the agricultural modernization development trend, one of core national strategies of contemporary China. In early 21st Century, the Ministry of Agriculture and the Ministry of Land and Resources prepared some department files concerning supporting facility agricultural development and regulating facility agricultural land governance, but because of legal hierarchy, shortage of experience, etc., these files have flaws like inadequate authority, vague stipulations, divorcing from realistic needs, etc.

Local interests interference. Current land management laws and regulations are centered on land purpose control, and construction land use and farmland protection are highlighted. Based on the most strict arable land protection system, the facility agricultural land management is pretty “rigorous”. However, under the circumstances of land use index shortage, heavy arable land protection tasks and giant economic development pressure, some governments know very well that the modern agricultural production and operation mode with the high integration of the primary, secondary and tertiary industries is the highlight for economic development in the new business type. Therefore, out of consideration of local interests as well as tax revenues, employment, GDP, etc., they implement relatively loose, weak and soft regulation over facility agricultural land.

Low costs of violation. The too light punishment for violations as per the present “Land Administration Law” of China seriously does not match the most rigorous land protection policies of
China. For example, as for illegal occupation of arable land, demand for amendment or governance before a deadline, and impose a penalty which is below two times of arable land reclamation fees; in case of converting farmland into construction land without approvals, dismantle buildings and structures before a deadline and impose a penalty which is below RMB 30/square meters; if farmers occupy land illegally to build residential buildings, they are required to return the land and dismantle houses before a deadline. The punishment standard is not deterrent enough and difficult to effectively suppress impulses of breaking the law.

**Vague scope definition.** Law-based administration and law enforcement requires land enforcement personnel to have specific and explicit legal basis for facility agricultural land law enforcement, and law enforcement without express legal stipulations is prohibited. However, stipulations concerning facility agricultural land in present legal framework and policy systems are comparatively rough, therefore making law enforcement even more difficult. Agricultural pillars and dominating industries in different places of China are different. Meanwhile, modern facility agriculture shows the development trend of technology integration, product variety diversification and factory production, and vertical use of the same land gives rise to various purposes, which leads to new problems to judge the nature of facility agricultural land.

### IV. Governance Measures for Violations of Facility Agricultural Land in China

#### 4.1 Complete facility agricultural land management laws and standards

The definition, scope, ways of use, construction scale, etc. of facility agricultural land are not defined in “Land Administration Law” and “Implementation Rules of Land Administration Law”. Define the entitlement relation of facility agricultural land in “Property Law”. Under the backdrop that the states needs a long time to complete national laws and systems, provinces may formulate provincial level local arable land protection regulations or local government rules based on respective circumstances, and regulate facility agricultural land use, governance, supervision and law enforcement in a special chapter.

#### 4.2 Define the scope of facility agricultural land in a scientific way

In principle the definition of facility agricultural land scope should follow the vague and express principles. Vague principle is applied for definition of nationwide universal and homogeneous facility agricultural projects, because they are commonly used nationwide; the express principle should be followed for definition of facility agricultural projects within feature agriculture scope in each province due to the special and heterogeneous characteristics in agricultural production, external embodiment, land needs of auxiliary and supporting facilities, etc., to define the scope of land for production, auxiliary and supporting facility.

#### 4.3 Exert the controlling and guiding role of facility agricultural land planning

According to the needs of facility agricultural development, prepare local facility agriculture development planning with consideration to environment protection, health and disease prevention, regional landform characteristics, etc. give overall consideration to the scale and layout of facility agricultural land of various regions and varieties. Give priority to key areas, industries and project construction, and give key support to agricultural facility construction to improve production conditions, explore the facility land allocation plan of mixed circular facility agriculture, give the guiding role of the planning into play, and improve the practicability of the planning.

#### 4.4 Strengthen administrative law enforcement power of facility agricultural land

Relatively centralize the administrative enforcements power. Accelerate the comprehensive administrative law enforcement reforms, and guarantee efficient enforcement with centralized law enforcement power. Before comprehensive law enforcement is realized and local stipulations or local government regulations about facility agricultural land are in place, the land authority performs duties
about facility agricultural land enforcement. Administrative enforcement rights are applied for facility agricultural land enforcement. Within the framework of separated law enforcement jurisdiction and enforcement power, give national land authority the mandatory rights of deterring and enforcement power about agricultural land (especially arable land enforcement), which is in conformity with worldwide the strictest arable land protecting system of China.

4.5 Reinforce rewards, punishments and incentives of facility agricultural land

Strengthen arable land protection examination and audit in facility agriculture, and raise the importance attached to facility agricultural land governance by local governments and leaders. Put facility agricultural land management into annual objective and responsibility system assessment of national land and resources, detail facility agricultural land supervision and enforcement, and urge national land and resources authorities of every level to improve and beef up facility agricultural land comprehensive governance. Substantially fulfill relevant accountability systems. Seriously look into party and political responsibility and legal responsibilities of civil servants and leaders with dereliction of duty or jobbery, and raise the vigilance of local governments in resolutely avoiding it that facility agricultural land occupies arable land or even basic farmland illegally.

Summary

To sum up, facility agricultural land violations are on the rise during recent years, and it is an issue which must be resolved with all-out efforts during agricultural modernization of China. The causes for facility agricultural land violations in China are relatively complicated with subjective and objective reasons, but the main cause is the backward legal system building and insufficient supervision on the national level. As a result, facility agricultural land violation governance is also a systematic matter, and it is necessary to build a benign mode with the state’s legal governance, local government’s enforcement based on laws, and land user’s land use as per laws.

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References


