

Study on Land Law Enforcement of Yunnan Province

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Abstract. The content of the thesis is from a research project entrusted by Department of Land Resources of Yunnan Province, which the author is independently responsible for and has completed—practical research on land law enforcement. The goals of the research are to comprehensively grasp current status and characteristics of land law violations in Yunnan Province, analyze the causes, explore systematic measures to improve law enforcement efficiency, put an end to repeated land law violations, protect land resources, guarantee economic development, and realize the benign interaction of land protection and economic development. The thesis mainly adopts the approaches of field research as well as text study for the purpose of improving the practical value of the thesis. The thesis logically organizes current status, predicaments and causes for predicaments of land law enforcement of Yunnan Province, and puts forward systematic measures to break the law enforcement predicaments.

I. Research Background

Located in southwest border of China, Yunnan has national territory 394,000 km², ranking in the 8th place in China. On one hand the land resources of Yunnan is limited, low in quality, and distributed unevenly, and the land use varies greatly and the use ratio is low; on the other hand, the economic society development of Yunnan is behind national average level, so Yunnan is an underdeveloped border area, and the government and public have strong desire to promote economic development. Therefore, the land demand and supply contradictions are very sharp, land law violations repeat, and the pressure for land law enforcement is huge. It is a problem for Yunnan Province to effectively resolve during the “13th Five-Year Planning” period to improve law enforcement efficiency and contain various land law violations.

II. General Information and Characteristics of Land Law Enforcement in Yunnan Province

The illegal land use dominated by the government is more covert. Major violations are mostly associated with government factors. Under the pressure of developing local economy and the influence of one-sided political achievement concept, some local governments keep silence to, wink at and even dominate land law violations, and make fortune with land by using land without approval, dividing approved land, appointing land grant prices without authorization, customizing land bidding conditions, false bid, auction and listing, being dependent on lease instead of expropriation, illegal land acquisition, etc. in the name of investment promotion or urban management.

“Land use without approval” is the most severe illegal land use type. According to statistics in the past, it is the most severe type among illegal land use both in terms of quantity and areas. Without applying for land use to land authorities in charge, land use units and individuals commence construction.

Land use violation areas are relatively concentrated. Due to economic development speeds, key project layout, etc., land violation areas in Yunnan are relatively concentrated. According to statistics, land use violations of the Capital City Kunming are the most severe during recent years, ranking first in the whole province in terms of quantity and area, followed by Yuxi, Qujing, Honghe, Dali, etc., which enjoy relatively fast economic development.

It is a grim situation to contain illegal land use of key projects. Socioeconomic development of Yunnan Province is relatively backward, infrastructure is lagging behind, and moreover, under the vigorous support of West China Development, bridgehead construction, etc. of China, a great number of projects will kick off, involving power grids, transportation, water conservancy, reservoir, petroleum and petrochemical, airport and municipal administration, etc., so key project violations are relatively severe, and it remains to be the key emphasis in work of Yunnan Province land law enforcement in future to contain and resolve key project violations.

III. Analysis of Causes for Land Law Enforcement Predicaments in Yunnan Province

3.1 Limited enforcement rights and powers

National land and resources departments do not have compulsory administrative enforcement power, so it is difficult for them to stop uncooperative violations or violations refusing to stop in a timely and efficient way. Mandatory execution of land departments may only be applied to the court, and the executive efficiency is low due to many reasons, like procedures, time limit, court, etc.

3.2 Strong administrative intervention

Local land and resources administrative authority is restricted by local governments in human resources, property, materials, etc., so as for violations involving government factors, it would not like to and dare not to intervene. The accountability for violations is hard to be implemented, and the governmental violation impulses are hard to be contained.

3.3 Laws and regulations are incomplete

“Land Administration Law”, etc. are severely backward, the punishments for violations are too light, and legal responsibility clauses are not operable in practice and hard to be executed completely, so it is universal to impose penalties rather than enforcing laws.

3.4 Uniform national land administrative policies of the state do not conform to situations of each province in west China

The state fails to grant different land policies about infrastructure construction, industrial undertaking, rural homestead, mild slope and gentle hillside, etc. with consideration to current development stage and situations of Yunnan. National land law enforcement authority is facing comparatively huge pressure in law enforcement orientation, capacity and manners when dealing with reasonable but unlawful land use necessary for socioeconomic development.

3.5 National land enforcement team building is backward

Firstly the headcounts is not enough. The headcount of land law enforcement in Yunnan Province is too small, and on average every person supervises 286 km². Secondly the funds guarantee is low. The basic work funds of land law enforcement is disbursed from the cost and expenses of government finance, but the guarantee standard is not high and only meets routine law enforcement, and law enforcement supervision post subsidy, personal insurance, accident insurance, etc. cannot be provided; thirdly the equipment is backward. Most national land enforcement authorities in Yunnan are not equipped with special vehicles for law enforcement, and other equipment necessary for law enforcement is relatively scarce.

IV. Strengthen Land Law Enforcement Measures of Yunnan Province

4.1 National level

Firstly institutional reform. On one hand, focus on the fundamental law enforcement system, and fulfill the law enforcement institutional reform, which is one of the highlights for land and resources

administration institutional reforms. Raise the priority of land law enforcement in land and resources administration institutionally, change the situation of “focus on exam & approval and negligence of supervision” substantially, appropriately intensify the relative independence of land law enforcement, and gradually change the situation of dual administration and low law enforcement efficiency. On the other hand, promote exam & approval system reform actively, streamline application & approval procedures, shorten application & approval periods, cut down application & approval costs, establish complete, lawful, reasonable and scientific land and resources exam & approval system, and lower the passive violation incidence rate to the maximum extent.

Secondly straighten out the mechanism. Prepare national land and resources law enforcement supervision institution setup standards, define law enforcement institutions’ levels and qualifications, headcounts, equipment, benefit package, incentive & rewards standards, provide high level policy basis for national land departments of all levels to strengthen law enforcement institution building, raise law enforcement personnel, equipment, funds and social benefit security levels, and fulfill the law enforcement supervision incentive systems, and greatly promote national land law enforcement agencies’ standardization construction. Further promote common responsibility mechanism, and coordinate with long-term law enforcement and supervision mechanism building such as leakage mechanism, so good mechanism will facilitate good and flexible national land law enforcement supervision work.

Thirdly complete the legal system. Appropriately amend national land and resources administration laws and stipulations, feasibly fulfill regular law and stipulation amendment systems, make legal articles to conform to social realities, and reduce the lag. Detail laws and stipulations, shrink the discretionary power of administrative penalties, and improve the operability of laws and stipulations. Define vague content in current national land and resources administration laws and stipulations by legislative interpretation, administrative interpretation, judicial interpretation, etc., and provide explicit operation basis for law enforcement practice. Reinforce punishment for land violations, raise violation costs sharply, and break the strange circle of “low violation costs and high law-abiding costs”.

4.2 Local government level

Firstly guide the regional economic development with the scientific development concept, abandon the economic growth mode by making fortune of land, formulate scientific and reasonable unit GDP land consumption standard and energy consuming standard, conduct strict assessment, and regard land saving and energy-saving green development and scientific development as an important move in building a powerful green and economic province. Transform economic development means with consideration to actual circumstances of places in Yunnan, give consideration to sustainability, promote the transformation of development from depending on material resources consumption to mainly depending on technological progress, labor qualification improvement and management innovation. Realize the economic transition of Yunnan from quantitative expansion to qualitative development.

Secondly administrate land pursuant to laws. Strengthen the legal awareness of land administration and use and responsibility awareness. Based on Yunnan Province’s law-based government, responsible government, sunshine government and efficiency government construction, earnestly fulfill major resources development and use project exam & approval, major investment project exam & approval and check & approval, major decision-making hearing systems, lower key engineering projects’ illegal land use proportions, and seriously look into responsibilities of personnel dereliction of duty in land administration.

Thirdly promote law enforcement institutional reform actively, and raise the institutional headcounts and benefit packages. Substantially guarantee national land law enforcement and supervision work funds of all levels, allocate necessary transportation and telecommunication tools necessary for law enforcement and case handling equipment, provide personal insurance and personal accident insurance for law enforcement personnel, grant law enforcement subsidy, and create a good

law enforcement environment. Fulfill law enforcement supervisory and incentive mechanism, define reward standards and ranges for national land and resources law enforcement and supervisory institutions and personnel of all levels, and get funds for rewards into financial budget and guarantee it. Explore to build special reward foundation for national land law enforcement and supervision, and form a long-term incentive mechanism.

Summary

At present, on the whole Yunnan Province's land law enforcement work is difficult in "discovering, stopping and looking into land use violations", and land law enforcement work has pretty many contradictions and relatively large differences, greatly restricting law enforcement efficiency and levels. The key to solving this problem lies in the government's emphasis, determination and measures. The most strict land protection regime in China needs the local governments to do their best to protect land resources, especially the farm land resources.

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