

Study on the bottleneck and countermeasures of the right to use the residential base under the background of "three rights divided into three places"

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Abstract

In the context of the existing residential base system lagging behind the reality, the real demand for revitalization of idle residential bases has arisen. This paper focuses on the right of use in the system of "three rights of separation" of residential base, starts from its basic concept, analyzes the dilemma faced by the right of use of residential base in rural areas, and puts forward corresponding suggestions, in order to better improve the realization path of the right of use of residential base, enhance the sense of access and happiness of farmers on the road to common prosperity, and then promote the implementation of the strategy of rural revitalization. In order to improve the realization path of the right to use homestead, enhance the farmers' sense of gain and happiness on the road to common wealth, and promote the implementation of rural revitalization strategy.

Keywords

Three rights, rural revitalization, residential land use.

1. Introduction

With the rapid development of the market economy, the value of rural land has been further explored, the traditional residential base system is mainly aimed at the needs of farmers' residence, but in the current economic environment, a large number of farmers go out to work all year round, and even move their families to settle in towns and cities, and the relationship between farmers and the land is gradually loosened, so a single residential function can no longer satisfy the diversified needs of the development of the farmers and the countryside, and the reform is inevitable.

Reviewing the evolution of the homestead system, we can clearly see the process of change from the "separation of two rights" to the "separation of three rights"⁰. On December 29, 2018, the seventh meeting of the Standing Committee of the 13th National People's Congress amended the Law of the People's Republic of China on Rural Land Contracting to clarify the status of the "separation of three rights" at the legal level. The seventh meeting of the Standing Committee of the 13th National People's Congress amended the Rural Land Contracting Law, clarifying the status of "three rights relocation" from the legal level. However, even though the system of "separation of three rights" has been affirmed at the legal level, the existing legal system is still within the framework of "separation of two rights", which is unable to appropriately cope with the reform of "separation of three rights" of residential land. The reform of the "separation of three rights" of residential land has encountered many challenges in practice.

Appropriately revitalizing the right to use residential land, improving the level of utilization of rural residential land and increasing farmers' incomes are the important goals of the right-to-

use system under the "three-rights-division". However, the lack of relevant legal provisions on the right of use system has led to obstacles to its promotion.

2. The main content of the right of use in the "three rights of residence"

2.1. Connotation of the right of use in the "three rights of residential land"

The reform of the "three rights of residence" is an important step in rural land reform and a key part of rural revitalization. Therefore, it is first necessary to clarify the concept of the homestead and the intrinsic relationship between the three rights and the powers of the "three rights", and then further explain the connotation of the right of use.

Homestead is the collective construction land used by farmers to build homes and their ancillary facilities, including housing, ancillary houses and courtyards, and is not only a farmer's place of residence, but also an important foundation for his or her production and life. The key to the homestead system lies in the unification of ownership, the qualification right of farmers as members of rural collective economic organizations and the right of use^[2], which plays an important role in safeguarding the collective rights and interests of farmers and the efficient use of land resources.

The focus of the reform of the "three rights of ownership" of homesteads is to implement the collective ownership of homesteads, to ensure the eligibility of farmers for homesteads, and to appropriately revitalize the right to use homesteads. First of all, collective ownership is the foundation of the "three rights", collective ownership ensures that the residence base is owned by the collective economic organization. Secondly, the qualification right is an important part of the reform, which refers to the right of farmers to enjoy the right to use the residential base according to the law, which is conducive to safeguarding the rights and interests of farmers^[3]. Finally, the moderate liberalization of the right to use the residential base is the core of the reform, that is, farmers can more freely use the residential base for production, business or other legal purposes.

It should be noted that the concept of the right of use under the "separation of three rights" is different from the concept of the right of use of the residential base under the "separation of two rights", which is a mature usufruct right, while the right of use under the "separation of three rights" is the right of use of the residential base acquired by the civil subject through civil contract. The right to use the residential land under the "separation of two rights" is a mature usufruct right, while the right to use under the "separation of three rights" is the right to use the residential land acquired by the civil subject through the civil contract and other ways. This change is an innovative development of the identity limitation of the right to use the residential land, limiting the identity attribute of the right to use to the distribution level. Moreover, the reform of "separation of three rights" emphasizes the "moderate relaxation", which means that the implementation of the strategy is adapted to the actual situation in rural areas, and the scope of the subjects exercising the right to use the residential land is expanded under certain conditions. Compared with the right to use residential land under the "separation of rights", the newly created right to use can break through the original identity restrictions, so that the value of unused residential land has been jumped up. In addition, there are also differences in the duration of use between the two, with the newly created right of use having a limited duration as can be seen from the normative policy documents in the pilot areas, such as Lu County, which stipulates that the duration of use of the residential land for commercial purposes is 40 years, and the duration of use of the residential land for residential purposes is 70 years.

Based on the above analysis, the right of use in the "three rights of residential base" can be summarized as the right to use the residential base of all kinds of subjects based on the civil legal act of obtaining, specifically, it is the right to use the residential base of the nature of the usufruct right acquired by the farmers through the exercise of the right of membership in the

collective economic organization, and transfer part of the right to the outside of the new type of right with the content of the use and income in a certain period of time. Specifically, it is the right to use the residential land acquired by farmers through the exercise of the right of membership in the collective economic organization in the nature of usufruct, and the transfer of part of the right within a certain period of time.

2.2. Characteristics of the right of use in the "three rights of residential land"

Firstly, the right of use emphasizes more on the nature of property right. As a usufruct, the right of use itself belongs to the property right, but before the residence base mainly undertook the residence function, thus limiting the realization of its property nature. In today's rapid economic development, farmers' housing problem is basically solved, the property nature of the right of use has more space to play.

Secondly, the right of use is transferable. It has broken the former systematic restriction that prohibits the transfer of the right to use the residential land, and is no longer limited to the scope of the subject of the transfer, so that the moderate transfer of the right to use can be realized through leasing, gifting, inheritance and other ways.

Thirdly, the right of use is of limited duration. Moderate liberalization of the right of use is not the same as a completely unrestricted alienation; the right, as a farmer's property interest, requires special protection, and the rights and interests of farmers can be better protected by limiting the rights of unspecified transferees through the setting of a reasonable period of time.

3. Problems of the right to use residential land in the context of the "three rights of separation"

3.1. Differences in the understanding of the legal attributes of the right of use

The lack of clarity in the ownership of residential land is the key to the ambiguity of the legal relationship. Under the leadership of the existing policy, the legal connotation of the right to use has changed and more possible rights have been granted, but the relationship between the qualifying right holders and the right to use holders is more confusing due to the long-term historical reasons and the imperfections of the land management.

According to the current pilot situation in various places, due to the inconsistent understanding of the legal attributes of the right of use, it is difficult to accurately distinguish the right boundary between the right of qualification and the right of use, among which, the power of the right of use is mainly realized through circulation, which makes the ownership issue in the process of homestead circulation more complicated, resulting in more disputes in practice. For example, in zhejiang anji, the right to use the residential base is considered to be the right to lease, but the implementation of the right to have the characteristics of materialization. Yiwu pilot will be the right to use the right to see the role of property rights, and set the maximum flow of 70 years, in the agreed period of the transferee to obtain the right to use the residential base and the corresponding revenue, is the practice of the right to use the residential base of innovative practices.

Due to the different understanding of the legal nature of the right of use in the "three rights of residential land" in the pilot areas, the measures and effects of the pilot reforms in different areas are also different, which needs to further deepen the theoretical exploration and practical research, clarify the legal nature of the right of use of residential land, and set up the reform strategy according to the local conditions.

3.2. Contradiction between the current legal provisions and the policy direction of "separation of three rights"

Although the seventh meeting of the Standing Committee of the 13th National People's Congress clarified the status of "separation of three rights" in the legal sense, the specific legal provisions of the Civil Code are still under the framework of "separation of two rights", which leads to the conflict between the existing legal provisions and the policy orientation of "separation of three rights". This also leads to the conflict between the existing legal provisions and the policy orientation of "separation of three rights", which hinders the innovative development of the residential land system and the effective transfer of residential land. For example, the Civil Code provides that the right to use the residential base shall not be mortgaged. However, the right of use under the "three rights of separation" is a right with prominent economic attributes, and should have the ability to be transferred and mortgaged so that farmers can make economic use of it to improve their personal income. In addition, the emergence of the "three rights" is more to solve the problem of idle residential land abandoned or inefficient use, so to broaden the transfer channels to make better use of residential land in the transfer of the intensive value, to achieve the efficient use of rural land, but the current law prohibits the acquisition of residential land by urban residents. Similar conflicts make the reform of "three rights" hindered, need to amend the current law as soon as possible, and strengthen the management of the transfer of residential land, to better promote the long term development of the right to use residential land in an appropriate way.

3.3. Regional disparities make it difficult to replicate the pilot experience on a wide scale

Due to the differences in geographic environment and humanistic customs and other factors in different regions of China, the strength and mode of reform of the "three rights" are different in different regions. In economically developed areas, where commerce and industry are relatively prosperous, the economic attributes of rural residential land are more pronounced, the market demand is greater, and the property value is relatively higher. For example, Yiwu, Zhejiang Province, through the way of compensated selection, so that the market independently formed the transfer price of the right to use the residential base, part of the good location of the residential base therefore has a higher economic value. Compared to China's central and western regions, remote rural residential base market demand is lower, the corresponding property value is naturally reduced, therefore, in assessing the effectiveness of the reform of the pilot areas, to determine the direction of the future development of the law should not be purely based on economic indicators to define which mode of development is more appropriate, and should be assessed taking into account a variety of factors.

Therefore, the implementation of the reform of homesteads must not be a one-size-fits-all approach, but should be tailored to local conditions to explore the path of reform, but this approach will objectively lead to difficulties in learning from the experience of reforms in various places.

4. Suggestions for the improvement of the system of the right to use residential land in the context of the "separation of rights"

4.1. Clarifying the boundaries of the exercise of "moderate liberalization" of tenure rights

4.1.1. Determine the period of use

Due to the private property of the right to use the residential base, the transfer of the period of time mainly by the parties to the negotiation, but it should be noted that the residential base itself has the function of guaranteeing the residence of farmers, so the transfer of the period of

time to impose a reasonable restriction is necessary. In the academic community, some scholars believe that according to the transfer method to determine the use of the period, to lease the transfer of the use of the period of up to 20 years, to transfer the transfer of the use of the period of up to 70 years^[4]. Other scholars believe that the original acquisition of the right to use the residential base can be limited to the period of time, and then under the "separation of rights" the duration of the right to use the remaining period of the right to use the residential base^[5]. On the basis of understanding the current views of the academic community, this paper believes that the use of the term is too long or too short have adverse effects, according to the transfer mode and the use of the transfer of the right to determine the duration of the transfer of the right to use is more appropriate. Specifically, the lease use should not exceed 20 years, commercial use should not exceed 40 years, and residential use should not exceed 70 years.

4.1.2. Restrictions on use

For a long time, residence has been the main function of homesteads in China, and existing laws limit the use of homesteads to residence. But with the development of rural economy, the use of residential base is also increasingly diversified, the use of residential base to carry out business activities are common phenomenon. In this paper, we believe that in order to activate the right to use the residential base, we should appropriately open up the use of the right to use, and allow the use of the right to use the residential base in accordance with the land planning and rural revitalization strategy on the basis of the transformation of the residential base, to open up the business use. Of course, the opening up is by no means unlimited, for the use of residential land to meet personal enjoyment or the use of residential land in a way that causes serious damage or pollution to the rural ecology should still be strictly prohibited.

4.1.3. Clarification of post-period vesting

The attribution of the right of use after the expiration of the right of use in an across-the-board manner directly back to the original right of use will undoubtedly create many problems, on the one hand, if the use of a longer period of time, decades after the death of the original right of use, the attribution of the right to disputes; on the other hand, if the original right of use of the original right of use of the right of use of the original owner of the use of the right of inheritance, etc., the occupancy of the residential base has reached the maximum size of the limit, the right of use of the right of use of the return will make the over-occupation of the residential base, resulting in On the other hand, if the original right of use owner is transferred the right of use due to inheritance or other reasons, the area of the residence base has reached the maximum limit. Therefore, it is necessary to analyze the attribution of the right of use after the term for different situations. The transfer of the right of use in the form of debt, the use of the expiration of the original right to use the original user to recover the residential base and the ground house; the transfer of the right of use in the form of property, according to the principle of "house with the ground", the expiration of the period of use of the ground house and the residential base back to the original use of the right to use the original person, and then by the negotiation of both parties to the relevant compensation issues. Under the transfer of the right to transfer, the collective economic organization to recover the right to use the construction land, and then convert it to the right to use the residential base, and ultimately returned to the hands of the original right to use. Finally, in the case of a farmer who loses his collective membership, the owner of the homestead shall recover the homestead and the house on the ground after the expiration of the right of use.

4.2. Exploring diversified methods of transferring the right to use residential land

Nowadays, the conventional transfer of the right to use the residential land is transferring and leasing, in addition, new transfer methods such as shareholding, exchange, mortgage financing and so on need to be continuously explored. As a kind of usufruct right, the right to use

homestead land under the "three-rights separation" can be used as a share capital to participate in cooperative management, thus obtaining dividend income. The shareholding can be done either by individual farmers or by a collection of farmers participating in the cooperative management. The essence of shareholding in a rural collective economic organization is to return the right to use the residential land to the collective economic organization and obtain income. Individual farmers' shareholding is a transfer of the right to use, meaning that the right to use for a certain period of time is converted into shares, which are invested as resource elements in the operation of the business in order to obtain income. At present, there are fewer pilot experiences related to shareholding, but there is more room for the development of this transfer method, which needs to be further explored.

With the continuing development of urbanization, many rural lands have been incorporated into urban areas, and many farmers have lost the land on which they depend for their production and development; thus, "replacement" has become a way of solving this problem. The core idea of homestead replacement lies in rational use, allowing landless farmers to obtain a more suitable production environment through replacement, and allowing farmers who have lost their homesteads as a result of urban expansion to exchange their homesteads on the outskirts of the city for high-quality arable land or forest land far from the city. On the basis of promoting the process of urbanization to provide farmers with a broader space for development, to achieve a win-win situation. However, the system faces problems in practice, such as the subjective will of farmers and the criteria for measuring the conditions of exchange, and still requires strict supervision by the relevant organizations.

The core of mortgage financing of the right to use residential land lies in transforming static assets into dynamic capital. In traditional agriculture, farmers often face the problem of shortage of funds, in the case of their own rights and interests of residence are guaranteed, the mortgage financing of the right to use the residential base can bring funds for farmers, so as to alleviate the financial difficulties, improve the infrastructure, promote the long-term development of agriculture, and add new impetus to the revitalization of the countryside. However, it should be noted that the mortgage financing of residential land use right needs to be based on the premise of scientific and reasonable appraisal system and strict supervision and management in order to really play its role.

4.3. Establishment of a rational mechanism for assessing the value of homesteads

China lacks a clear assessment standard and professional assessment mechanism for the value of residential land use right, which makes it difficult for banks and other financial institutions to accurately grasp the actual value of residential land use right, thus leading to the obstacles encountered by farmers in financing. The construction of this mechanism can start from three aspects: the main body of assessment, dynamic assessment and adjustment mechanism and information disclosure.

First, develop a diversified assessment body. In addition to government-led official assessment organizations, private professional assessment organizations should also join in to enhance the fairness of assessment. Government-led assessment bodies have authority and credibility, but a single assessment body may lead to difficulties in supervision, while the independence and specialization of private institutions can appropriately complement them, making the assessment results more objective and truthful.

Secondly, a dynamic assessment and adjustment mechanism needs to be established. The system should cover assessment indicators, assessment methods and assessment cycles. The appraisal indicators should comprehensively cover all aspects of the right to use the residential land, such as geographic location, transportation convenience, and surrounding facilities. The appraisal methods should be scientific and reasonable, such as market comparison method and

cost method, to ensure the accuracy of the appraisal results. The appraisal cycle should also be reasonably set according to the actual situation to ensure that the appraisal results can reflect market changes in a timely manner.

Finally, it is necessary to strengthen the information publicity. In the process of transferring the right to use the residential base, information disclosure plays an important role, the price of the right to use the residential base to assess the results of the public, to help farmers truly understand the actual value of the residential base. It is convenient for farmers to rationalize the pricing according to the actual situation in the transaction process, so as to avoid the rights and interests being damaged due to unequal information. In addition, the disclosure of assessment results also helps to improve the transparency of the rural land market, standardize the market order, and create a fair trading environment for farmers.

Acknowledgements

This work is supported by the Key Support Areas of Innovation and Entrepreneurship Training Project for College Students of Anhui University of Finance and Economics in 2023, Project number: 202310378004.

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