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A Probe into Reform of Rural Homestead Acquisition System

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Abstract Using the methods of literature research, normative analysis, and empirical analysis, this study is intended to analyze the acquisition system of homestead in rural area of China. By adopting questionnaire survey and face-to-face interview, this study explores the problems of current homestead acquisition system and the dilemma of homestead management. The results indicate that homestead acquisition reform is the key aspect to the homestead management system reform. A new homestead acquisition system, which includes primitive acquisition, inheritance acquisition, and supporting system, is suggested in this study. The findings of this study will provide important policy implications for rural homestead system reform. The new homestead acquisition system could guarantee the farmers' property right and help improve social justice and rational utilization of nature resources.

Key words Homestead, Original acquisition, Derivative acquisition

1 Introduction

Strict regulations on the usage of agriculture land and high efficiency of rural construction land allocation based on market mechanism are vital in the urbanization and industrialization of China. The overall development of urban and rural areas has to secure the property right on the one hand and expand the channels for farmers' property income on the other hand, thus encourages those farmers with proper conditions relocated into small towns. Lack of laws and regulations on this specific area makes the sales and rent of rural homestead a coveted transaction, which raises an urgent call of rural homestead use system reform. The common focus of previous scholars was low utilization efficiency of the rural homestead use system. The solutions to this problem were suggested as (1) strengthening village and township planning of centralizing farmers' housing; (2) enhancing homestead management by strictly managing original acquisition and derivative acquisition^[1]. The key point of this problem is whether the homestead use right should be circulated or not. Most scholars supported circulation of homestead through market mechanism to maximize the benefit of resource allocation^[2]. From the perspective of *Economics of Law*, waste and confinement of enormous wealth inflict dramatic loss of overall effect of national economy^[3]. The science of civil law perspective argues that circulation of rural homestead use right can adopt the principle of legal leasehold in civil law. In other words, the transferee could have the legal leasehold of rural homestead after he buys rural house, which includes the rights of possession, use, and usufruct, as well as prescribed or agreed obligations. By contrast, those scholars who objected the circulation of homestead use right believed that homestead had the attribute of social welfare status for the farmers. The forbiddance of transaction of homestead should be an integral part of rural homestead allocation sys-

tem. The methods of homestead acquisition include original acquisition and derivative acquisition. Logically, the homestead acquisition is a precondition and fundamental prescription of the homestead system. Reasonable and legal acquisition is the cause, while reasonable and legal use is the effect. Thus, homestead circulation is, in fact, closely connected to derivative acquisition of homestead. Diversity of homestead circulation methods determines the diversity of derivative acquisition of homestead.

2 Evolution and characteristics of China's rural homestead acquisition system

2.1 Evolution of China's rural homestead acquisition system

Homestead is a distinct characteristic of Chinese rural land system. Land reform at the beginning of liberation broke the initial feudal ownership of land. Land property system was implemented in rural areas according to the principle of "Land to the Tiller". Farmers with no or little land were distributed with respective land. Cultivated land and homestead were privately property of farmers. After the cooperative transformation of agriculture industry, land became collective-owned. Homestead was owned by the collective but used by farmers, and the circulation was restricted. Household contract responsibility system of rural land was widely implemented in rural areas since the reform and opening. "One Family, One House" planned system was implemented for the management of homestead. In 2007, the *Property Law of the People's Republic of China* was established and implemented, rural land contractual management right and homestead use right became special rights enjoyed by farmers in collective land^[2].

2.2 Characteristics of China's rural homestead acquisition system

The characteristic of China's rural homestead acquisition system includes three aspects. Firstly, it is designed on the basis of its social welfare and security function. This fundamental characteristic of the system makes it extremely difficult to make breakthrough in circulation and mortgage of rural homestead. Secondly, this system is closely related to the basic state policy of protecting cultivated land. The only permitted is adjustment of the homestead

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area in different regions. Lastly, it is a result of a dual land system divided by urban and rural areas. Urban government plays the leading role while considers the rural customs in the design of system. Owing to its relative independence and lack of supporting systems, the usage of homestead is low efficiency and problem of serious waste of old homesteading widely exists.

3 Existing problems of rural homestead acquisition system in the study areas and farmers' reform willingness

3.1 Basic information of the study areas This study selected 12 typical areas to conduct an on-the-spot survey, namely Pinggu District and Yanqing County in Beijing, Shijiazhuang City and Luquan City in Hebei Province, Yuzhong County and Linxia City in Gansu Province, Lingwu City, Zhongwei City and Pingluo County in Ningxia Autonomous Region, Fuzhou City and Xiamen City in Fujian Province, and Shimen County in Hunan Province. By setting up meetings with and sending out questionnaires to staff in grass-roots land management department, rural cadres and farmer representatives, we investigated existing problems in rural homestead system, and explored rural cadres' and farmers' reform willingness.

Sample data indicated that about 1/2 farmers in relatively developed areas and suburban areas had received senior middle school or special secondary school education. Non-agricultural income of these farmers accounted for 2/3 of their total income. However, more than 1/2 farmers in rural districts and counties had received education of only junior middle school, and 2/3 of their income came from agricultural production. The study areas were fully covered by the new rural cooperative medical system started during the Eleventh Five-Year Plan period. In the study areas, about 1/4 farmers participated in pension insurance, and about 1/5 farmers bought commercial insurance. The overall social security and welfare of farmers' were at relatively lower level compared with urban residents.

As to the homestead in the study areas, original acquisition of homestead accounted for nearly 70%, and the rest 30% were derivative acquisition (most were inherited, and few were transferred from other people). More than 80% farmer households had only one homestead. In economically developed areas and suburban areas, about 15% households owned two homesteads. Very few households held three or more homesteads. The number of houses the household owned was positively correlated with the economic development level, and more than half of those households with two or more houses left the excessive homestead idle.

3.2 Existing problems of homestead acquisition system in study areas

3.2.1 Preference for sons still exists in the homestead allocation. The existing laws stipulate that members of collective economic organizations are entitled to apply for homestead, regardless of sex limitation. However, in the study areas, there is a common phenomenon of "allocating homestead only to boys, not to girls".

82% respondents supported this discriminative phenomenon, while the rest 18% rejected. In some less development regions, the situation was even worse. Through the interviews, it is found that it is difficult for some rural women to apply for homestead in the following 3 circumstance: (1) the woman would like to set up the new household in her origin villages after married to a farmer from other villages; (2) the woman would like to stay in her origin villages after she married to urban residents; and (3) the divorced woman who would like to build a new house to a homestead in her ex-husband village or return to her origin village.

3.2.2 "One family, one house" system has legislative conflict. According to the civil laws of China, like *Law of Succession of the People's Republic of China*, rural legal house is a type of property which could be granted as a gift or pecunia hereditaria. In accordance with the principle of house transferred with land, villagers can acquire another homestead in the form of gift or succession. Urban residents who had moved out from rural areas can also acquire rural homestead in the same way. This leads to the conflict between legal acquisition process and the provision of "One Family, One House". According to the survey, about 32% respondents acquainted their homestead by succession out of the options of application, purchase, and others. The indistinct definition of "household" and lack of specific guideline for "One Family, One House" lead to puzzlement of land management at grass-roots.

3.2.3 The process of homestead application is complex. In the study areas, many rural cadres stated that the existing homestead acquisition application had to go through many complex procedures. Apart from approval of construction, planning, and land management bureaus, the transition of farmland into homestead requires formal examination and approval from the provincial level government. These time-consuming procedures lead to series of problems such as simultaneous construction while application, construction prior to approval, and illegal occupation and abuse of land. Governments at county and township level approve the homestead application by only examining the application rather than field investigation. Some village cadres abused the right and made profit out of homestead allocation owing to lack of effective supervision which leads to corruption. Moreover, in the investigation and approval for the transition usage of agricultural land, governments of many places put towns at the priority at the expense of overlook villages.

3.2.4 Lack of laws and regulations on succession of homestead use right. There is no clear provision of succession of the homestead use right in current Law system in China. *Law of Succession of the People's Republic of China* clearly specifies that citizens' legal house can be inherited as property. Therefore, the rural homestead could be inherited according to principle of "land being transferred along with house". 71% of respondents in this survey agreed that homestead can be inherited in this survey. Thus, the key question is how to inherit. To be specific, if the successors become urban residents, whether they still have the right to inherit the homestead? Whether daughters could have the equal right of

succession like sons? ^[3]

3.2.5 It is difficult to make breakthrough in mortgage financing. The existing laws prohibit mortgage of use right of collective land with only two exceptions: the use right of wasteland acquired through market actions and the use right of construction land for township enterprises if the accompanied building was mortgaged. This rule makes farmers unable to apply for mortgage loan by pledging their homestead or house to improve their living conditions. It is difficult for financial institutions to dispose farmers' homestead when credit risk appears owing to lack of relevant supporting system. In the study areas, grass-roots cadres stated that the limitation of financing channel acting as an obstacle for vitalizing rural land assets and invigorating rural collective economy as well as hindering farmers' development. 29% of the respondents in this survey stated that the option of selling their homestead and house would be their first option if the property system is reformed. And 68% of the respondents would consider mortgaging their homestead when they encountered economic problem if it is allowed.

3.3 Analysis on reform willingness of farmers

3.3.1 There is distinct difference in reform willingness. These results show that farmers in better developed areas had stronger willingness of homestead system reform. The willingness decreased progressively as the distance from the cities increased, from inner suburban to outer suburban areas. The implementation of policies was influenced by respondents' educational level through the effect of education impacting on their understanding of relevant homestead system and policies on the capability of acquiring external social and economic development information, as well as on their values.

3.3.2 Emergence of mortgage of homestead use right induced by development. The establishment and implementation of the *Property Law of the People's Republic of China* triggered farmers' awareness of market economy and protection of land property right. In the study areas, urbanization process makes more farmers moved to secondary and tertiary industries. Among the diversified income channels of farmers', non-agricultural income took up larger and larger portion. This indicates that China's rural labor had been gradually detached from farmland, which provides a favorable condition for scale farmland operation. Most farmers believed that mortgage of house or homestead was a good financial method for developing agricultural production or improving living conditions. The farmers in remoter areas had stronger willingness of mortgage of house and homestead probably owing to lack of income from other channels.

3.3.3 Compensated and terminable homestead use is the trend. For the case of "one family occupied several houses", about 61% respondents thought that compensated usage should be adopted. About 35% farmers thought that the excessively occupied homestead should be reclaimed back, and 4% agreed to keep the current situation. More than 2/3 farmers in inner-suburban areas rented out their excessive houses and homestead for stable and long-term rental benefit. This area had the strong housing demand for people from other places. However, farmers in outer-suburban areas preferred to sell their houses and homestead owing to lack of

rent demand.

4 Probe into reform of rural homestead acquisition system

4.1 Reforming the ration system The situation of large population but deficient resources of China makes it necessary to implement the "One Family, One House" system in rural areas. It is also vital to regulate the phenomenon of "one family, many houses" in urban areas through taxation system in order to fulfill the goal of equal allocation of resources. The land equalization system implemented from Northern Wei Dynasty to Tang Dynasty is worth referencing to. This study argues that the original acquisition of homestead shall be coordinated with acquisition of civil right in civil laws. Specifically, rural residents should have the right to acquire homestead upon birth. However, the application and usage of homestead should through the unit of "household". Only in this way can effectively promote efficient usage of homestead and guarantee the right of each family member, especially of the elders and women when dividing the household and property. It could also provide property basis for subsequent distribution of income gained from homestead circulation, thus reduce relevant property conflict ^[4].

4.2 Setting up cost difference system and withdrawal mechanism of homestead acquisition system As members of a collective organization, farmers can acquire homestead use right at low cost or free of charge. If the acquiring the homestead use right through legal succession makes the household has more than one homestead, the household should pay the land use expenses or rental fee annually for the succeeded homestead. The payment of the expense of fees should end at the circumstances of (1) the building on the homestead loses its value; (2) the collective economic organization takes back the homestead; (3) the use right of homestead is transferred. It is recommended to set up incentive and pressure mechanism for withdrawal of homestead. The incentive mechanism is to encourage farmers to actively withdraw extra homestead by economic means, and to allow conditional circulation of homestead. While the pressure mechanism is to make the holding cost higher than the benefit in order to force farmers withdraw extra homestead ^[5].

4.3 Determining compensated and terminable derivative acquisition of legal rights of superficies Compensated use of homestead has theoretical support from legal rights of superficies in traditional civil laws ^[6]. China can issue relevant policies, adopting "legal rights of superficies", to clearly specify that the transferee can acquire the homestead use right at the time of circulation, succession, grant and mortgage of house on the homestead. However, for transferee who is not qualified for homestead application, the use of homestead should be terminable. The homestead usage right period shall not exceed the service life of the corresponding building. Government should formulate standard land price for the reference of collective economic organizations in different regions. If the transferee is a member of collective economic organization, the basis land price of homestead may be lower. However, if the transferee is not a member of collective economic organization, the annual cost for use of homestead can be determined according to the basis land price.

5 Conclusions

The vast rural areas of China are gradually setting up multi-level social security system to substitute for security function of homestead. The security system is designed as that government security is the primary base and village collective and family security acts as auxiliary part. We should follow the basic principle of acquisition of jus in re aliena when assessing original acquisition system of homestead use right. The collective economic organization should play the leading role in homestead allocation the use right of collective homestead to the farmers. Government should replace administrative approval with administrative registration for purpose of efficiency management, and adopt registration system to guarantee property right and enhance public notice functions^[7]. In the derivative acquisition of homestead use right, it should keep consistent with the transition from valuing ownership to valuing usage in accordance with the *Property Law of the People's Republic of China*. This transition will enhance the usufructuary right and real right of pledge of the homestead. While increasing uncovered small amount loan to support agricultural development, it is feasible to moderately release mortgage finance of rural house and homestead for supporting farmers in agriculture-related industries development and house improvement.

The problems of high price of house in urban areas and one family owns several homesteads in rural areas are severe in China. To solve these problems, the most effective measure is to establish uniform real estate registration system both in urban and rural areas.

(From page 46)

and other natural and social factors, the farmers' land use behavior in the hilly areas and plain areas shows many differences. This article conducts study from labor allocation, agricultural land use patterns, utilization scale and utilization structure, and draws the following conclusions:

(i) In terms of the labor allocation, the agricultural labor forces are generally older than the non-agricultural labor forces, but their educational level is lower than that of the non-agricultural labor forces; in comparison with the plain areas, there are more old labor forces, less educated labor forces, less pure farming type labor forces and more female labor forces in the hilly areas. Overall, the agricultural output and opportunity costs of agricultural labor forces in the plain areas are higher than in the hilly areas.

(ii) In terms of agricultural land utilization patterns, the mechanical utilization rate, utilization rate of agricultural land and farmers' farming willingness in the plain areas are all higher than in the hilly areas, resulting in serious abandonment of agricultural land in the hilly areas.

(iii) Farmers' agricultural land utilization scale in the plain areas is larger than in the hilly areas, but there are more abundant crops in the hilly areas. The agricultural products harvested by the farmers in the plain areas are mainly used for market transaction, and they pursue maximization of agricultural land income; the farmers' purpose of agricultural land utilization in the hilly areas is mainly used to meet their own needs, and the farmers seek to maximize their own utility of consumption.

as. Full and accurate registration information can reflect distribution and concentration of real estate. This system provides the information of the quantity and value of the real estate owned by a person, household or entity of legal person for the state. Thus it lays a solid foundation for policies establishment for fair distribution of rural homestead and urban housing construction land and levying property tax.

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(iv) In the past 30 years, whether it is plain or hilly areas, the cropping index of agricultural land utilization has been reduced, and the growing area of food crops has been decreased rapidly. But due to the support of agricultural technology and rising opportunity cost of labor, the pesticide and fertilizer input is increased, and the use of pesticides in the plain areas is 2 times that in the hilly areas. Excessive use of pesticides and fertilizers has brought great crop and environmental pollution problems while increasing agricultural output.

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