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Dislocation and Regression of the Role of Collective in Land Transfer

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Abstract This paper expounds the origin of "collective" in the process of collective land transfer, and analyzes the dislocation phenomenon of the role of collective in the process of collective land transfer as follows: deviation of the role under the conflict of identity; offside of the role under the limitation of democratic construction; omission of the role under the segmentation of interests. In order to protect the legitimate rights of farmers, we should make the role of collective to revert on the basis of township government, farmer and collective, so that the role of collective is restored under the management of government; the role of collective reverts under the supervision of farmers; the role of collective returns under its own strengthening of democracy.

Key words Land transfer, Role of collective, Dislocation, Regression, China

Since lifting the ban on transfer of agricultural land, in the actual land transfer, the collective deviates from the role orientation as the representative of the community interest, but plays the role of grabber of pursuing maximization of self-interest in land transfer, and the role of henchman of the interest of its agency. Critical role dislocation encroaches on the legitimate benefit of other farmers in the collective. Therefore, on the basis of expounding the origin of "collective" in the process of collective land transfer, we analyze the dislocation phenomenon of the role of collective in the process of collective land transfer, and put forward corresponding countermeasures and suggestions on the basis of township government, farmer and collective, so as to make the role of collective to revert.

1 The origin of "collective" in the process of collective land transfer

As the provision of Article 10 of *Land Management Law of the People's Republic of China* states: the collective land owned by farmers belongs to the collective of village according to law, and it is operated and managed by rural collective economic organization or villagers' committee; the land that has belonged to more than two rural collective economic organizations in village, is operated and managed by all the rural collective economic organizations in village or the villager group; the land that has belonged to the rural collective in the town, is operated and managed by the rural collective economic organizations in the town. The provision of Article 59 of *Property Law* states: the immovable and the movable, owned by the rural collective, are possessed by members of the collective. From the above articles, we can know clearly that the owner of rural collective land

should be the "collective". The "collective" is abstract, but not void. First, the "collective" is not "collectivity", with a high degree of abstraction. The collective covers all the group members, but not the scattered members. Second, the "collective" emphasizes "win-win". The members of collective conduct certain limitations and partial transfer on their own rights, but obtain their own rights in the collective, achieve more favorable conditions and create the a win-win situation. However, the collective, in the strict sense, is not organization, but a form of organization. Therefore, in real life, the collective often takes some organizations, such as collective economic organization, village committee, villager group and so on, as its representative, to exercise its rights and fulfill its obligations. The collective economic organizations' function of organizing, managing, and controlling production and life, is the outcome of people's commune era, which violates the laws of economic development. Since the implementation of household contract responsibility system for three decades, now the economic organizations that evolves from the former collective economic organizations have been nearly extinct, and actually what exercises the ownership on behalf of the collective is often the village committee or villager group.

The land transfer has two types: one is the transfer of the land use right among the agricultural use land; the other is the transfer of transformation of agricultural use land into non-agricultural use land along with the change of land ownership relations^[1].

The operation model of household contract management system, improves the agricultural productivity, but at the same time, to some extent, blocks the process of agricultural scale operation, which objectively inhibits the timely adjustment of agricultural land and rationalized flow^[2]. In recent years, with the adjustment of agricultural structure, the process of urbanization and the development requirements of modern agriculture, the rural land transfer shows the trend of acceleration. Land is regarded as the most principal means of production in agricultural production, whose importance to the rural economy and farm-

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ers is self-evident. However, the village committee, as the representative of "collective" in rural collective ownership, or power exerciser of the collective ownership, has not high spirit in regulating, managing, operating and even supervising the preceding transfer, namely the transfer among the agricultural use land. In most areas, particularly in underdeveloped areas, we can even say that the village committee has lost the function of managing and controlling agricultural production activities, and the farmers themselves play the actual role and make decision in this transfer. Because, the two-tier management system of household contract responsibility system has already determined the core position of rural household in agricultural production, which in fact, has dismembered the function of village committee which is as the economic organization.

As for the second transfer, namely the transfer from agricultural use land to non-agricultural use land, all the participatory subjects that are linked with the land relations in the rural areas, have unprecedented enthusiasm, wherein the farmers also have the extraordinary enthusiasm. The reason of extraordinary enthusiasm of the government of cities and countries is that the finance of land in China at present nearly accounts for the half of local fiscal revenue in China; the land of rural collective ownership is purchased from the farmers at low price so as to be transformed as the land of the national ownership, and by listing various kinds of tax indicators, considerable financial revenue and taxation have been gotten; the land is then be auctioned, thus substantial financial revenue and taxation have been gotten again. The developers or the land-expropriation institutions pay, while the two-level government gains benefit without costs and risks via the power of managing the land transfer; the reason of extraordinary enthusiasm of the town government or the agency is that through introducing merchants, attracting investments, developing industries, and promoting the urbanization, the town government or the agency is in pursuit of GDP so as to show their performance, because the achievements in official career are easy to be summed up and reported, which can indicate the working ability, and conduce to the promotion; the reason of extraordinary enthusiasm of the village cadres is that through selling and transfer, the village cadres can obtain transfer fees of land, relocation fees, and demolition fees like other farmers, and plan new housing sites. The village cadres can be as the representatives in the negotiation, and they can take advantage of a variety of hidden rules, or the tacit rules to pursue rent, and some even brazenly seek rent straightly; the reason of extraordinary enthusiasm of some farmers is that the comparative advantage of agriculture is low, especially the comparative advantage of the suburban agriculture is lower, and the aforesaid various kinds of compensations due to land expropriation are greater than the agricultural income. It is just because that due to land expropriation, the farmers draw the life source of the offspring in advance, while the matter of the progeny is inscrutable, so they get the subsidies first, disregarding tomorrow.

This land transfer system, with the extraordinary enthusiasm of all parties, affects the future of the state, rural areas, farmers

and agriculture, so it is necessary to have profound reflection and correction in terms of system, and we try to explore the regression in terms of system, from the dislocation of role of the village committee which is as "collective" in land transfer.

2 Dislocation phenomenon of the role of collective in the process of collective land transfer

2.1 Deviation of the role of collective under the conflict of dual identity

The provision of Article 74 in *Civil Law* states: the land owned by the collective belongs to the rural collective, and it is operated and managed by the rural cooperatives and other agricultural collective economic organizations, or the village committee. The provision of Article 2 in *Village Committee Organization Law* states: the village committee is the self-management, self-education, self-service grass-roots autonomous organization established by villagers, which implements democratic elections, democratic decision-making, democratic management and democratic supervision. The village committee manages the public utilities and public welfare of the village, mediates civil disputes, helps maintain public order, and feeds back the opinions and requirements of the villagers to the government. Thus, we can clearly know that the village committee, namely the village cadre, has dual identity, which is either the manager as well as coordinator of dealing with affairs of the collective in the village, or the villager who is managed and coordinated by the village committee. Apparently, there is no essential difference between the dual identity of the village cadres and the dual identity of the managers who are to deal with company relations, institution relations, community relations and other relations. But under the two-tier management system of family co-production responsibility system, each household is a production unit, but other households of other social relations have no the function of production, which causes the actual problems for the village cadres in the process of managing public resources. In particular, the process of land transfer will finally monetize the maximum public resources they hold, which inevitably causes entanglement on the dual identity of the representatives of collective interests and the pursuers of seeking the interests of the family production units. We put aside social responsibility and moral principles, and purely think in the perspective of rational economic man that subjectively they have no time to do a good job to act as guardian of the villagers, and first they consider how to seek more benefits for themselves, but not consider the benefit for whole villagers. This dual identity in conflict will inevitably bring about the deviation of role of the collective in the process of collective land transfer, so that the benefit of farmers is impaired. In the nearby countryside, we find a strange phenomenon when conducting survey that the collective land of a village is sold to developers to develop real estate, and the village re-plans the house sites and build new houses according to population, for the farmers whose land is expropriated, but the location of newly planned house sites is determined by lot. The results of the lot is that the village head, village secretary, their relatives and some villagers who have

relevant background, get the houses in front of the street, and behind, the houses are got by the ordinary people by lot. Such phenomenon in several villages that are surveyed subsequently is not uncommon. The attractiveness of the post of cadres does not rest with the opportunities of advancement or status and prestige, but rest with the convenience to use public position to obtain economic interests. This is the economic motivation of incident of bribery of village cadres in election which we can often see in the media, and the incident of the evil forces controlling the election of the village committee.

2.2 Offside of the role of collective under the limitation of democratic construction

The provision of Article 18 of *Village Committee Organization Law* states: the village committee is responsible for the villager meetings and makes work report. Villager meetings review the work report of the village committee annually, and appraise the village committee members' work through discussion. That is to say, the villager meeting is the authority ruled by the villagers themselves, and the village committees are the self-government bodies and working bodies for the villagers. The relationship between the village committee and the villager meeting is that the village committee assumes the role of implementing the decisions of the villager meeting, and the important issues are determined by the villager meeting, but not the village committee. But in reality, the villager meeting or the villagers' congress is presided over by village cadres. The village cadres are to release and convey information, and determine the relations of gains and losses by their own thinking and value. The villagers' congress authorizes the village cadres to deal with the external relations, and segment the interest relations amid the villagers. The members of the meeting weigh the maximization of self-interests or strive to minimize the losses in the information released by the village cadres. Thus the interests of collective and the long-term development disappear in the gaming of several interests. Even though some representatives hold dissent and speak out from a sense of justice, these representatives are repressed under the threat of the village cadres or compromise when it comes to their own interests. Due to the limitations of democratic construction in rural areas, it is difficult to ensure that the village committee, as the villagers' autonomous organization, represents the will of villagers. In reality, some village committees and the village cadres overstep their authority to excise the power of decision making owned by the villager meeting, turning the villagers' self-government into self-government of the village committee or the village cadres. Through survey, we find that in the rural areas which are related to land transfer, the villagers also once held the villager meeting concerning the land transfer, but the cadres did not consult with the ensemble of villagers on the methods, principles, procedures and so on, but inform the villagers that the nearly entrenching methods of land transfer were framed. In the meeting, there is no discussion, but information. When the villagers have objections to the land transfer, they can raise objections to the village committee, but the objections are put on the shelf. The collective will of farmers cannot be formed and expressed through certain effective mecha-

nism in fact. The real main body of rights is weakened, while the will offside of the agents of power makes the "agency" replace "principal", and the agency becomes the actual main body of rights, which seriously damages the interests of farmers.

2.3 Omission of the role of collective under the segmentation of interests

The nature of collective ownership of rural land is that the land is regarded as the basic means of production which maintains the subsistence for the members of the collective, and the land is equally and inseparably occupied by the members of the collective. The scarcity and non-renewable nature of land determine that the existing members do not have power to turn the land into their private property. Therefore, the collective ownership of rural land requires that the collective members equally occupy the means of production of land jointly through the way of collective ownership. This indivisibility includes a collective range, and the existing members must not divide the land owned by the collectives according to the principle of private ownership. However, in the actual transfer of the land, in order to develop the land owned by the collective, sometimes the developers do not directly negotiate and consult with the members of the collective, but directly negotiate with the township government or the office, and then the township government or the office negotiates with the related rural households. Here the village committee nominally is on behalf of the collective interests of farmers, but the function of the village committee does not completely exclude the administrative task of the government. In addition, a number of township governments or the offices still take the village committee as their subordinate administrative body, which are accustomed to the traditional order-style or command-style management ways. These township governments or the offices conduct administrative intervention to the self-government of villagers and the work of the village committee. In reality, the self-government rights of the village committee are often encroached upon by the township governments or the offices, leading to the omission. Thus, as owners of collective land, the village committee and the village cadres should be the evident representative in the negotiation relations of the land transfer, but due to the omission of rights, the village committee and the village cadres cannot play the role of negotiator wholly on behalf of the actual interests of the villagers. In order to prevent that the interests of the villagers are scathed, in actual work, we adopt one-to-one negotiation way to make the farmers directly negotiate with the institution that expropriates the land, so as to avoid the "black box operation" which will spark the complaint of farmers, thus the identity of the village committee to represent the holistic interest gets lost naturally, but the farmers are the socially vulnerable group. If they are integrated, the relative strength will increase, and the interests will increase correspondingly. However, the office conducting one-to-one negotiation is equivalent to that the rural collective is again divided into individual rural households, that is, the strength of the farmers is again weakened in the process of land transfer. Negotiation in the final analysis is based on the strength, and if the strength is weakened, the rights of farmers will be definitely trampled.

3 Regression of the role of collective in the process of collective land transfer

The transfer of collective land involves the interests of township government, village cadres, and villagers. As it were, a slight move in one part may affect the whole situation. In order to correct and rehabilitate the role of collective in land transfer, we must proceed from the three aspects to effectively solve problems.

3.1 Regression of the role of collective under the management and adjustment of government Regression of the role of collective is inseparable from the perfection and improvement of relevant national laws and regulations; regression of the role of collective is inseparable from the vigorous macro regulation and management of the government; regression of the role of collective is inseparable from the so-called pure private market transaction or negotiation under the intervention of the local administration. The problem is that the local government cannot represent the rural collective and farmers to make decisions. To further adjust the management behaviors of the government, we should follow the following principles.

3.1.1 Regulate and constrain the power of government. We should use the special law and legal interpretation concerning the problem of land transfer to strip of the power the government and government departments exercise to obtain economic benefits in the collective construction use land market. The government cannot be the athlete and the referee at the same time^[3].

3.1.2 Perfect financial system. We should use the scientific financial system to solve the problem of financial shortage of the local government, and to mitigate or eliminate the current phenomenon of "land finance"^[4].

3.1.3 Eradicate scrambling for fame and fortune with the masses. In the process of land transfer, the government should play the role of macrocosmic designer of system and policy, arranger of land supply, provider of rural public services, regulator of market order, and the protector of farmers' interests. The government should not manage the land transfer through the direct administrative order, so as to use the land to gain profit and use the land for promotion. In a nutshell, the government should not be the interest grabber who monopolizes the land supply and scrambles for fame and fortune with the masses^[5].

3.1.4 Establish and improve the open government information system of land transfer. All the information in the process of land transfer should be made open to the collective and villager whose land is expropriated, which can not only make the farmers have the right to know, but also prevent and eradicate "black-box operation" and "backstage deal", and eliminate the infestation of corruption.

3.1.5 Principle of self-government among villagers. Specific issues of land transfer should be devolved to the village committee, so that under the guidance of national policy, the village committee can fully exercise its power of autonomy. The village committee chairs the villager meetings or the villagers' congress jointly discusses whether and to what to transfer the land in the village, and the higher-level government cannot interfere but offer

macro guidance; The village committee chairs the villager meetings or the villagers' congress discusses the negotiation team of land transfer in the village, and elects the most trustworthy members to take part in the negotiation team, or hires their own experts and lawyers to offer professional counseling and legal advice for the process of negotiation; the village committee makes all the information concerning the process of negotiation open to the villagers in time; the village committee coordinates the relations among the villagers, and takes on ideological work for the household in hardship and "nail household", so as to solve problems and dissipate worries for the government and developers.

3.2 Regression of the role of collective under the supervision and promotion of farmers Land is the most fundamental interest of the farmers, and the farmers have the rights and obligations to conduct management and effective supervision on the land. In addition, the members of the village committee may unavoidably scathe the interests of farmers, out of personal interests and under the pressure of the local township government. Therefore, the efficient and viable supervision of farmers, which can make the role of the collective revert as the representative of the interests of farmers, is the necessary measure to guarantee the interests of farmers.

What the land transfer sells is the means of subsistence for the survival of farmers. The farmers should not only have the right to know, but also have the right of supervision; the farmers should not only supervise the results, but also supervise the process. The supervision can have many forms as follows: implement supervision regularly or randomly; implement collective or individual supervision; actively participate in the supervision on the work of collective or the collective makes report to the rural households regularly. The content of supervision should have many facets as follows: whether the compensation for land requisition is incorporated into the rural collective finance and whether we implement special management and supervision on the compensation for land requisition; whether the finance of the rural collective should be democratic and open to the public; whether the compensation of land requisition for the rural collective economic organizations is distributed rationally among the rural collectives and farmers, and whether the interests of farmers whose land is expropriated are guaranteed; whether there are violations of law and discipline regarding the compensation for land requisition obtained by the rural collective economic organizations in the process of management and use. In practice, there are some effective supervision ways and means in some regions for our reference^[6].

3.2.1 Standardize the rights of village committee. We should implement the system of villagers' appraisal on the village cadres through discussion, strengthen the restriction and supervision of the villagers and the villagers' congress on the village cadres after election, and implement strict regular reporting system.

3.2.2 Promote the quality of villages. The important thing is to educate the peasants. We can refer to the advanced experience of developed countries, take advantage of the slack time

to set up farmer school, and organize personnel to teach school in rural areas' as a charitable cause^[7], so that the farmers gradually can use many kinds of legal systems and policy instruments to protect their own rights.

3.2.3 Strengthen political communication, optimize supervision information and ensure good flow of information. The villager meeting or the villagers' congress is the main channel for the communication of all village cadres; making the affairs of village open to the public is the main method to supervise the village committee; in the villager meetings, we should definitely determine the content, time, place, and form of openness of administrative affairs of village; moreover, after the affairs of village are made open to the public, we need to have someone interpret the content of openness of administrative affairs of village and accept the villagers' questioning and inquiry.

3.2.4 Establish hard constraint system suitable for villagers' implementing democratic supervision. First, establish the system of no-confidence motion. As long as there is one proposal of one villager, and more than half of the villagers second the motion (must be in the form of writing, for verification), we can put forward the motion of dismissal on certain member of the village committee. Second, establish the villager supervision commissioner system. The supervision commissioners are composed of two to three villagers, independent of the village, which have the power to hold village meeting according to the actual operation of the affairs of village, question the political performance of the village committee, and require the members of village committee to answer the questions in the given time and places^[8].

3.2.5 Promote organization level of farmers and strengthen the overall strength of farmers who participate. We should actively support the farmers to establish villagers' non-government organization abiding by the constitution and relevant regulations, such as farmers' associations, farmers' learning group and so on. We should make the force of the masses converge so that it gives play to the maximum effect.

3.3 Regression of the role of collective under the strengthening of collective democracy We should complete the real regression of the role of collective in the process of land transfer. The internal cause is the fundamental factor determining the development and changes of things. We should pay attention to the democratic construction of the collective, and elect the trustworthy village cadres with the relatively high democratic quality to promote the democratic decision making of the village committee.

3.3.1 Strengthen the autonomous voting of villagers and prevent nepotism and any unofficial decision. The methods we can refer to are as follows: establish the group of electing the leaders of the village committee; universally conduct the registration of the villagers, and put up a notice to list the voters; stick to competitive election; the candidates are determined by the primary election of the villagers; elect the election personnel who supervise the votes, call out the name selected in a ballot, and count the votes by the villagers; as for the counting of votes, the candidate is elected by a majority of votes; establish and

perfect special committee of public security, intercession, public sanitation and so on, and elect group leader of villagers; after the new village committee is generated, it needs to hold inauguration speech meeting, and the leaders of the village committee deliver the inauguration speech to the villagers, summarize the experience, look into the future and formulate the goal and planning in the three-year term^[9].

3.3.2 Perfect the democratic decision-making system of village committee and establish and improve standardization and system of decision making. By referring to the "five-step-method" of democratic decision making, we can realize democratic proposal, democratic motion, democratic decision by vote (deciding by vote adopts secret ballot or show of hands, and form written records), promise of entrepreneurship (after deciding by vote, the items which are passed are linked with the promise mechanism of the village cadres, as the work objective of the village cadres), and supervision and implementation. In the process of land transfer, the important issues involving the transfer ways, compensation for land requisition, relocation after the land is expropriated and so on, must have the preceding five steps which are indispensable^[10].

3.3.3 Strengthen the self-learning and consolidate the leading group. The members of the village committee should strengthen learning of democracy and learning of the professional knowledge of land transfer regularly, so as to continuously promote the quality and ability of serving the villagers and make the members of the village committee become the real vindicator and representative of the interests of farmers.

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