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Problems and Countermeasures of Collective Land Ownership Disputes in Beijing

Ying QIAO^{1,2}, Kening WU^{1,2*}, Hongjuan WANG³, Qi ZHANG^{1,2}

1. School of Land Science and Technology, China University of Geosciences, Beijing 100083, China; 2. Key Laboratory of Land Regulation Ministry of Land and Resources, Beijing 100035, China; 3. Beijing Municipal Bureau of Land and Resources, Beijing 100013, China

Abstract In 2010, No. 1 document of central government demanded strengthening mediation and settlement of ownership of rural collective land, to complete confirmation of right and registration and issue of certificate of rural collective land in 3 years. However, the mediation and settlement of land ownership in China still remain at starting stage, and there are many problems in both theory and practice. In this situation, this paper summarizes current situations of disputes about ownership of collective land in Beijing, analyzes causes of disputes, introduces existing working mechanism, methods and problems of dispute mediation and settlement, and finally presents feasible recommendations, in the hope of providing guidance for mediation and settlement of land ownership disputes.

Key words Beijing, Ownership of collective land, Types of disputes, Dispute mediation and settlement mechanism

Collective land has economic and social security functions, so its status can not be shaken especially at present time of increasing improvement of various systems. Confirmation, registration and certificate issue of collective land ownership are practical demands for safeguarding farmers' interests and rights and promoting harmony and stability of rural society, and also pressing hopes of laying solid foundation for agricultural and rural development, and promoting integrated urban and rural development. In the process of confirmation, registration and certificate issue, there will be disputes about collective land ownership. Proper mediation and settlement of these disputes are greatly favorable for upholding public ownership system of socialism, safeguarding farmers' legal rights and interests, and promoting reform and opening - up and economic development.

1 Current situations of disputes about ownership of collective land in Beijing

1.1 General situations of study area Beijing (39°28'N – 41°25'N and 115°25'E – 117°30'E), located in northern part of the North China Plain, is the capital of the People's Republic of China. It faces Tianjin in the east and surrounded by Hebei Province in other sides. Beijing is the political, cultural and educational center of China, and decision-making management center of China's economy and finance. Since the *Notice on Speeding up Promoting Right Confirmation and Registration and Issue of Certificate of Rural Collective Land* [No. : 2011(60)] was issued jointly by Ministry of Land and Resources and other two ministries, Beijing Municipality has been ensuring strict implementation to push forward confirmation of right confirmation and registration and issue of certificate.

1.2 Types of disputes As listed in Table 1, we divided disputes according to difference in dispute subjects of land ownership. Between villages and between villages and towns, there are 1 564 cases; between towns and state-owned organizations, there are 1 416 cases. Considerable difference exists between collective and state-owned organizations in districts, counties and towns. Conflicts of Chaoyang District, Fangshan District, Tongzhou District, Daxing District, Pinggu District, Miyun County and Yanqing County mainly lie in disputes about ownership of village and town collective, while conflicts of Haidian District, Fengtai District, Shijiangshan District, Mentougou District, Shunyi District, Changping District and Huairou District lie in disputes between collective and state-owned organizations.

Disputes about land ownership between village and town collective and state-owned organizations mainly lie in linear objects, such as road and water affairs. Because of involving much land and widespread area, linear projects are important factors influencing rural stability and harmonious development, and also major conflicts to be resolved in the process of confirmation, registration and certificate issue of collective land in Beijing.

From the above analysis, we can know that conflicts mainly exist in suburban developed areas, including Changping District, Tongzhou District, etc. Most dispute cases involve collective land use right, road, water affairs, and ownership of collective land. Therefore, it is necessary to analyze current situations of disputes about ownership of collective land, and find out rules and causes, so as to provide guidance for future work of Beijing Municipality and provide certain reference for relevant works of other areas in China.

1.3 Cause analysis As listed in Table 2, main factors influencing changes of land ownership include: economic development and improvement of urbanization and people's living conditions^[1], and political factors (such as incomplete historical policy and administrative system)^[2]. The provision is not definite for ownership of collective land in the *Constitution of the People's Re-*

public of China and *Land Management Law*, leading to law-executors' difficulty in grasping the degree in practice. Besides, separate registration of land ownership by Ministry of Land and

Resources, Ministry of Forestry and other relevant departments seriously influences consistency and authority of land ownership confirmation^[3].

Table 1 Distribution of disputes about ownership of collective land in Beijing

No.	District or County	Between villages or between villages and town collective	Between villages and towns and state-owned organizations						Total
			Road	Water affairs	Army	Central authorities	Farm and forest farm	Others	
1	Chaoyang District	72	0	7	4	4	0	42	129
2	Haidian District	15	1	9	2	0	6	27	60
3	Fengtai District	0	0	0	0	0	0	8	8
4	Shijingshan District	0	0	0	0	0	0	0	0
5	Mentougou District	44	236	106	4	25	0	12	427
6	Fangshan District	229	3	2	2	0	0	19	255
7	Tongzhou District	378	1	19	3	0	0	14	415
8	Shunyi District	80	2	203	0	0	0	5	290
9	Changping District	148	111	42	50	7	85	14	457
10	Daxing District	26	0	0	0	0	4	18	48
11	Pinggu District	36	0	2	0	0	4	2	44
12	Huairou District	152	17	91	0	0	0	66	326
13	Miyun County	261	0	2	0	0	0	17	280
14	Yanqing County	123	3	4	1	0	1	109	241
15	Total	1564	374	487	66	36	100	353	2980

2 Mediation, settlement and security mechanism for ownership confirmation

2.1 Scientific institutional setup Mediation and settlement work of land ownership dispute is a trans – departmental and cross-system project, but responsibility separation system of government departments leads to lagging of dispute settlement. In this connection, Beijing Municipal Government organized and set up a leading team and team office for rural land ownership confirmation, registration and certificate issue (hereafter referred to as the Cer-

tificate Issuing Office), and established the land ownership dispute settlement team to strengthen mediation and settlement of land ownership disputes. Through setting up such platform to consider interest of relevant state-owned organizations, it is favorable for making integrated decision of the whole city, and also helpful for specifying principle of ownership confirmation of linear projects, such as river, road and Great Wall, so it greatly increases working efficiency.

Table 2 List of relevant parties and causes for disputes about ownership of collective land in Beijing

Subjects	Parties at interest	Causes
Farmer collectives	Farmer collectives	Serious problem of land belonging to one production unit but enclosed in that of another; problem caused by land policy adjustment
	Township farmer collectives	Ultra vires land expropriation; not completed in the formalities for land expropriation; ambiguous compensation standard implemented; compensation policy and basis selected in dispute; changes in compensation policy and regulation; changing land use purpose by force
	Traffic	Illegal land expropriation procedure; not transparent land expropriation details; demolition and land consolidation by force; not transparent, unreasonable and unfair calculation of compensation standard
	Water affairs	Illegal land expropriation procedure; not transparent land expropriation details; demolition and land consolidation by force; not transparent, unreasonable and unfair calculation of compensation standard; ambiguous record of ownership certificate; inconsistency between record of ownership certificate and actual situation; conflict in ownership certificate issued several times; dispute in changes of seasonal riverbed
	Army	Material of ownership source missing; original land use purpose changed; land allocated to the army for free left unused; ambiguous ownership and use right for farmers' production activities on such land
	Central authorities	Material of ownership source missing; irregular land use; original land use purpose changed, certain extent of reconstruction and extension
	Farms and forest farms	Ambiguous record of ownership certificate; inconsistent certificates of the same land; difference in limit of ownership surveyed for many times
	Others	Dispute about definition of historical relics, the Great Wall, for instance

2.2 Executable policy guarantee In January, 2010, the General Office of Municipal Government issued the *Notice on Printing and Distributing Pilot Work Program of Rural Land Ownership Confirmation, Registration and Certificate Issue and Determining*

Methods of Rural Land Ownership and Collective Construction Land Use Right (for Trial Implementation) [No. : 2010(7)], providing important policy basis for smooth implementation of pilot work. Later, it announced *Implementation Rules for Rural Land Owner-*

ship Confirmation, Registration and Certificate Issue Pilot Work in Beijing (for Trial Implementation), Opinions on Speeding up Promoting Right Confirmation and Registration and Issue of Certificate of Rural Collective Land, and Emergency Preplan for Rural Land Ownership Confirmation, Registration and Certificate Issue in Beijing for operation basis.

2.3 Complete working mechanism (1) Establishing meeting system. The Certificate Issuing Office of the municipality and district (or county) should hold regular meetings, report work progress, and discuss and resolve key matters in mediation and settlement of ownership disputes. In case of major events, it should apply for holding leading team working meeting to study solution. Member units of the municipality and district (or county) leading team should propose holding special meetings according to demands of work for which they are responsible, to discuss and solve specific problems. (2) Establishing written report system. In case of complex disputes during actual work, districts (or counties) should report to the Certificate Issuing Office of the Municipality in written form, and the latter should research and make reply accordingly. (3) Establishing working progress reporting system. It should promptly release working progress to report conditions to municipal leading team member units and districts (or counties). The Certificate Issuing Office of district (or county) should make statistical analysis on mediation and settlement of ownership disputes within respective region, and report to the Certificate Issuing Office of the Municipality and its district (or county) leading team monthly. (4) Establishing the post target responsibility system. The Certificate Issuing Office of the Municipality divides district (or county) to take charge and dispatch special personnel to urge settlement of ownership disputes. (5) Establishing emergency mechanism for unexpected events. All districts (or counties) should formulate emergency preplan in the ownership confirmation, registration and certificate issue works, to promptly and properly handle emergencies in mediation and settlement of ownership disputes, so as to maintain social harmony and stability. (6) Actively launching "Ownership Dispute Mediation and Settlement Month" and its series activities.

2.4 Flexible dispute settlement methods At present, Beijing Municipality adopts Alternative Dispute Resolution (ADR) to mediate disputes about collective land ownership. The Alternative Dispute Resolution mainly includes mediation, arbitration, negotiation and collaborative law, and some other derivative forms^[4]. Such method greatly increases working efficiency and guarantees working progress. Firstly, penetration of traditional manners-controlled society makes villagers still keep traditional idea of "disgusting lawsuit", which makes formal judicial procedure perform no practical function. Secondly, since lawsuit procedure is complex, definite and mandatory, farmers have to consume much man power, financial resources and materials. However, the input of these costs is generally not proportional to benefits obtained from their lawsuit adjudication result. Thirdly, due to lack of legal sense for a long time, a lot of farmers are still legal semiliterate or

illiterate. Strict legal procedure and strange legal terms keep many farmers at a respectful distance.

2.5 Effective supervision mechanism The Certificate Issuing Office of Beijing Municipality supervises and guides districts (and counties) regularly, signs target responsibility statement with district (or county) government, makes clear subject responsibility of district (or county) government in rural land ownership confirmation, registration and certificate issue work, and takes task completion as key basis for assessing annual work performance of district (or county) government. In addition, the Certificate Issuing Office should guide work progress of districts (or counties) according to back scheduling of each district (or county) to complete works as scheduled. Those districts (or counties) completing works on time will be awarded, while those failing to complete works will be criticized. In accordance with provisions of document jointly issued by three ministries, for those failing to complete rural collective ownership registration and certificate issue work by the end of 2012, the approval of converting agricultural land to other use and land expropriation will be suspended, and rural land consolidation project will not be established.

3 Comprehensive assessment of ownership confirmation working effect

3.1 The implementation effect This time of settlement of large scale collective land ownership disputes is helpful for defining clear property right for rural residents' land, laying foundation for future fair adjustment of land ownership, and providing reliable asset reliance for future financial activities of farmers. With advance in mediation and settlement of land ownership disputes, works of collective land ownership confirmation, registration and certificate issue get constantly deepened. By November 2012, the whole municipality has resolved 1 566 cases of disputes about collective land ownership and completed 90% of works of collective land ownership confirmation, registration and certificate issue. This not only increases proportion of certificate issue in the whole municipality, but also significantly improves the relationship between cadres and the masses and neighborhood relationship, and fundamentally improves people's living quality and promotes social harmony and stability. This time of work strengthens leading role of the government, establishes stable leading mechanism, sets up an effective management, mediation and settlement mechanism, and improves national land and resources management level to a certain extent.

3.2 Existing problems and countermeasures

3.2.1 Lack of long-term mechanism. It lacks clear legal basis for grass-roots department of national land and resources setting up institutions responsible for mediation and settlement of land ownership disputes^[5]. The organization established for certificate issue this time is only a temporary institution, so its work capacity is limited. Since mediation and settlement work of land ownership disputes is a long-term work, we recommend government at all levels paying more attention and increasing support, establishing

uniform dispute mediation and settlement mechanism, and establishing and perfecting long-term working mechanism, to raise social recognition.

3.2.2 Lack of reward and punishment mechanism. The reward and punishment mechanism has important function for improving management mechanism. Unfortunately, this receives little attention in present work, or becomes a mere formality. If relying merely on scheme, program and plan, it will be difficult to effectively implement due to lack of legal effect^[6], and it is not favorable for summoning up enthusiasm and initiative of mediation and settlement personnel. For this, we can learn from work experience of other areas, for example, Tianjin Municipality requires taking major leader of government at all levels as the first responsible person and major leader of land administrative department as direct responsible person, and rewards those with outstanding work and punishes those backward districts and counties. Such reward and punishment mechanism can fully summon up enthusiasm and initiative of dispute mediation and settlement personnel, and play certain incentive role in mediation and settlement of land ownership disputes.

3.2.3 Weak local financial support and lack of guarantee for work funds. Work fund is an essential condition for smooth progress of routine work of dispute mediation and settlement organization. With increase of land value, farmers' awareness of going after benefits get stronger and stronger, and cost for resolving land ownership disputes is also increasing. Land ownership dispute mediation and settlement work needs considerable funds for personnel training, remuneration, and daily office. Nevertheless, due to difference in economic development level, most underdeveloped districts (and counties) fail to guarantee their work funds. Lack of work funds will reduce quality of mediation team, work efficiency and increase management difficulty. To ensure work funds, we must incorporate it into legal system. In case of lack of work funds, we can use legal means to solve the problem. In this way, it can ensure implementation of work funds for mediation and settlement of land ownership disputes, provide material guarantee for working personnel, increase enthusiasm and efficiency of working personnel, and promote smooth progress of land ownership dispute mediation and settlement.

3.2.3 Information pool not established for mediation and settlement of disputes about land ownership. The establishment of information pool is a practical direction for future mediation and settlement of disputes about land ownership, because the introduction of "case system" can greatly increase the efficiency of mediation and settlement. The case system refers to a system of jurisprudence based on specific judicial precedents rather than statutory laws^[7]. China is the first country that adopted precedent as judgment basis, so taking the past cases as references has become an established principle in daily works. Typical cases of land ownership

dispute mediation and settlement are real historical records, thus can be taken as basis and reference for resolving new disputes. In future dispute mediation and settlement, the introduction of case system can reinforce guidance on works of mediation and settlement personnel and better guarantee fairness of dispute mediation and settlement.

4 Conclusions

Resolving disputes about collective land ownership and establishing land ownership dispute mediation and settlement mechanism are favorable for implementing China's land system, heightening the masses' and cadres' awareness of basic state polices on land, properly resolving leftover land ownership disputes, effectively controlling group emergencies, safeguarding farmers' interests and rights, and promoting harmony and stability of rural society. However, it is a long process and complex project to improve land ownership dispute mediation and settlement mechanism. We should follow the principle of "respecting the history, facing the reality, implementing policies and ensuring fairness", take reinforcing collective land management as the objective, and safeguard farmers' land interests and rights, to realize all classes of interested parties sharing social development achievements equally.

References

- [1] SU M, SONG JP, FANG LN, *et al.* Analysis on the change of land property in urban fringe—taking the case of Daxing District in Beijing City[J]. Chinese Journal of Agricultural Resources and Regional Planning, 2010, 33 (6): 52–57. (in Chinese).
- [2] Aase T. The use of metaphor in Himalayan resource management, State, society and the environment in South Asia[M]. Richmond: Curzon Press Ltd, 1999
- [3] YU LN. Treatment of collective land property disputes[J]. China Land, 2010(6): 36–37. (in Chinese).
- [4] LIU Y. Construction of the dispute settlement mechanism in rural areas—the perspective of ADR[J]. Public Administration & Law, 2009(9): 58–60. (in Chinese).
- [5] NI HN, WU Y. New ideas on the dispute of land property rights proposed by Wuxi City—five united difficult problems[J]. China Land, 2005(6): 41–42. (in Chinese).
- [6] ZHANG Q, LUO QY, LIU LF. Modus operandi and experience of foreign countries in city town development as a whole body[J]. Chinese Journal of Agricultural Resources and Regional Planning, 2009, 31 (2): 76–80. (in Chinese).
- [7] WANG ZJ. Study on law and judicial precedent[M]. Beijing: China University of Political Science and Law Press, 2001. (in Chinese).
- [8] CAI J, QIU DC, WANG J, *et al.* On challenges faced by the rural collective land ownership of the main building and countermeasures[J]. Journal of Southwest China Normal University(Natural Science Edition), 2013(3): 179–184. (in Chinese).
- [9] LI XY, HE J, FU R. Land reforms and poverty alleviation: a series of academic controversy surrounding redistributive land reforms[J]. Journal of China Agricultural University(Social Sciences Edition), 2008(2): 77–85. (in Chinese).