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Disputes over Circulation of Rural Land Contractual Management Right and Control Countermeasures

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Abstract On the basis of current situations of disputes over rural land contractual management right, this paper analyzes causes of disputes from four aspects. It states that controlling disputes, regulating and strengthening land circulation in accordance with laws are core works of new socialist countryside construction and rural reform. Finally, it presents five control countermeasures, including improving laws and regulations on circulation of rural land contractual management right, strengthening popularization and guidance of relevant laws and regulations, government departments administering in accordance with laws, stressing management of land contractual management right circulation contract, and establishing and perfecting land circulation intermediaries to realize market-oriented circulation.

Key words Land contractual management right, Circulation disputes, Countermeasures

1 Introduction

Since the implementation of the household contract responsibility system, the circulation of rural land contractual management right has always been the prime focus of the Party Central Committee and the State Council. In 1984, No. 1 central document initially set forth allowing farmers to transfer their agricultural land with consent of their collective. In 2002, *Law of the Peoples Republic of China on Land Contract in Rural Areas* was promulgated and lifted the policy about land contractual management right circulation to legal level. The 5th Plenary Session of the 16th Central Committee of the Party set forth the great disposition of building new socialist countryside. The Third Plenary Session of the 17th Central Committee of the CPC released *Decision on Several Big Issues on Promoting the Reform and Development of Rural Areas* (hereafter referred to as the Decision), which further states that it should allow farmers to transfer land in various forms on the legal, voluntary and compensated principle. In this situation, the circulation of land contractual management right becomes a hot issue. However, due to system factors, many disputes appear in practice, such as anomie in management and out-of-order of operating procedure for circulation of land contractual management right, breach of contract due to economic drive, and out-of-order of land circulation intermediaries, etc. These disputes not only influence legal circulation of land contractual management right, but also impede new socialist countryside construction. Therefore, it is highly significant to study causes of disputes over land contractual management right and probe into appropriate countermeasures, to strengthen circulation of land contractual management right, and promote construction of new socialist countryside.

2 Causes for disputes over circulation of rural land contractual management right

2.1 Anomie in management

2.1.1 Function dislocation of government encroaches on farmers' land contractual management right. The *Law of the Peoples Republic of China on Land Contract in Rural Areas* explicitly sets forth no organizations or individuals may deprive the members of the rural collective economic organizations of their right to undertake contracts or illegally restrict such right. However, in the process of management, some local government, relevant authorities and township or village organizations violate laws and regulations, and infringe upon farmers' land contractual management right. Some grass-roots governments fail to fully implement extension land contract period and provision on right confirmation; contract signature is not standard; certificates of management right are not distributed to farmer households; farmers' land contractual management right fails to be implemented. Some local governments run after performance and expropriate whole or part of contractual land of farmers by administrative means on the grounds of large-scale operation and new socialist countryside construction. Some grass-roots governments collect farmers' contractual land in the form of "Reverse Rent through Inverse Contract", in which township or village organizations take the place of farmer households to become subjects of land circulation. This not only infringes upon farmers' land contractual rights and interests, but also plants seed for disputes.

Some grass-roots governments and village organizations take land circulation as source for increasing financial revenue, take various methods to vie with farmers for benefits, and arbitrarily hold back, embezzle or withhold income of land circulation. In some shareholding form of circulation, farmer households should be entitled to gain rental income and dividends, but due to lack of explicit laws and regulations and inadequate supervision, a large part of rental income and dividends is withheld by village cadres. Some village collectives pay only basic land rent for farmer house-

holds, while large part of differential land rent and added income are intercepted and peculated by village cadres. These actions seriously dampen farmers' enthusiasm for land circulation and cause series of disputes.

2.1.2 Township government and village organization force farmers to transfer land contractual management right or inveigle farmers into circulating their management right. In accordance with *Law of the Peoples Republic of China on Land Contract in Rural Areas*, circulation of land contractual management right is not only a basic right of farmers, but also the agreed contract of circulation parties in condition of market economy. No organization or department shall take the place of farmers or run counter to willingness of farmers to circulate land. In fact, many township governments and village organizations take much administrative means to force farmers to circulate land or inveigle farmers into circulating their management right. Some even issue documents, limit area, index or reward, or cajole farmers into transfer their land. These actions go against farmers' willingness, damage benefits of land contractual households, and harm circulation of land, and lead to disputes^[1].

2.2 Illegal land circulation procedure Existing *Land Administration Law of PRC* and *Law of PRC on Land Contract in Rural Areas* set forth implementation of rural land contractual management right, statutory rights and obligations and procedures. Statutory forms of land contracting include household contracting and other forms of contracting. Other forms of contracting refer to letting land to other organizations or individuals. Disputes and corruption cases resulted from these forms of circulation are increasing in recent years. The *Law of PRC on Land Contract in Rural Areas* sets forth the projects for the contracting shall be agreed to by at least two-thirds of the members of the villagers' assembly or of the representatives of villagers of the said collective economic organizations. Nevertheless, some collective organizations violate statutory provisions and arbitrarily give out contract without consent of more than two-thirds of the members of the villagers' assembly. Some even overstep their authority to infringe upon rights of owners of collective land, accordingly leading to disputes over land contractual management right. In recent years, cases about infringement of land contractual management right take on rising trend, which greatly influences harmonious construction of new socialist countryside^[2].

2.3 More disputes about contract of circulation of land contractual management right In recent years, due to more and more disputes about contract of circulation of land contractual management right, new socialist countryside construction is influenced. (1) Villagers do not sign contracts of circulation. Circulation of land between most farmers is not in compliance with statutory procedure and necessary formalities. Most of them just conclude oral agreement or ask a third party to mediate. Such private circulation often leads to dispute. (2) Contract contents are not formal. Contractual terms and object are not clear, and there is no explicit provision of circulation period, rights and obligations of

the parties and compensation for default, and some terms even run counter to existing laws and regulations. (3) Many land circulation contracts fail to make explicit agreement on planted crops. For example, the parties have agreed on planted crops, but contractor changed the crop due to industrial structural regulation and generated different economic benefits, then disputes appear. (4) Contracts are altered at will. Some economic organizations of villages arbitrarily alter land circulation contract according to information of birth, death and move-in of villagers without agreement of majority of villagers' assembly. (5) Subtracting without consent of the party giving out the contract. Many farmers are weak in legal awareness and take for granted that they can dispose the contractual land at will, and transfer the land many times without consent of the party giving out contract. As a result, intermediate links are complex and participants are many, easily leading to disputes. (6) Many farmers ask to terminate undue contract. A lot of farmers care about only immediate benefits and dispose contractual land randomly when they think planting has no fortune for money. However, as long as planting becomes profitable due to changes in state policies, they will try every means to take back their land. As a result, it will spark off disputes. (7) Farmers ask to increase land rents. With rise of production and living costs, farmers increase land rents by making various excuses. Once contractor rejects their requirement, farmers will not hire out their land. As a result, contractor has to resort to lawsuit to safeguard his rights and interests. (8) Existing land circulation contracts have no definite provisions on land rehabilitation after expiration of the contract. At the time of signing expiration time, few consider the responsibility of land rehabilitation, leading to frequent occurrence of disputes^[3]. In sum, more and more disputes and cases about land circulation contracts become major factors influencing circulation of land contractual management right.

2.4 Non-grain and non-agricultural tendency of land circulation Protecting cultivated land and strengthening grain security are fundamental state policies. Relevant laws clearly state that the use of farmland shall not be changed. Central government and State Council also repeatedly call for no change of use of farmland in the land circulation. However, with acceleration of rural land circulation step and influence of comparative benefit, use of a lot of farmland has been changed, showing serious non-grain and non-agricultural tendency. Some farmland is changed into land for breeding, flower, ecological agriculture or sightseeing agriculture, or even turned into construction land. Local government disregards of laws and state policies and take many measures to evade administrative control of central government and to change farmland into construction land. Consequently, there are more and more disputes over circulation of land contractual management right.

Apart from the above mentioned causes, there are some deeper ones, including drawbacks in rural land property system, imperfect laws and policies, inherent weakness and risk of agriculture, low comparative benefits, as well as problems exposed in the process of industrialization and urbanization.

3 Countermeasures for disputes over circulation of rural land contractual management right

3.1 Improving laws and regulations on circulation of rural land contractual management right Since laws and regulations are not perfect on circulation of rural land contractual management right, and judicial handling opinions are not comprehensive, there are more and more new cases and problems of disputes over circulation of rural land contractual management right. Thus, to prevent and control these disputes, relevant authorities should improve laws and regulations and feasible judicial handling opinions. For example, it is recommended to revise laws to make clear subjects of collective land ownership and scientifically define legal connotation of farmer collective. It should make clear civil subject status of farmer collective, to make them become real owner. In legislation aspect, it should straighten out relationship of rights and obligations between farmers and farmer collective, to make farmers participate in land affairs. In addition, it should make clear specific contents of collective land ownership, and give subjects of collective land ownership the exclusive title of possession, right of income and right of disposition. In the process of land circulation, ownership subjects should not interfere with farmers' land circulation action, but should do a good job in land register work management, guidance and assistance. Furthermore, it should strengthen functions of land contractual management right through revising laws and regulations, and grant contractor complete land contractual right, to provide farmers with possession, use, income and conditional disposition rights of contractual land. It should take the Property Law of the People's Republic of China as basis to confirm property of contractual right and commercialize the contractual right. Moreover, independence of contractual management right should be stressed. Finally, it should grant farmers clear and stable contractual management right, in order to stabilize farmers' expectation of land management, increase medium and long term input, increase comparative benefit of agriculture, expand land circulation space, and avoid disputes. For example, it is recommended to revise and improve relevant laws and regulations, improve rural land contract law, regulate circulation contract, revise contract law, and increase detailed contents (such as provisions of contract of land contractual management right circulation), to avoid and prevent contractual disputes and safeguard farmers' rights and interests of land contractual management right. Legal interpretation should be enhanced and judicial guidance opinions should be offered to provide legal guarantee for disputes over circulation of land contractual management right^[4].

3.2 Strengthening popularization and guidance of relevant laws and regulations In practice, quite a few of disputes over circulation of land contractual management right reflects that township and village organizations and farmers know little about laws and regulations related to land circulation. Relevant functional departments, judicial authorities and land administration department should strengthen popularization and guidance of relevant laws and regulations, especially popularization of legal knowledge for farm-

ers, enhancing farmers' legal awareness and reinforcing their awareness for safeguarding their interests and rights, so as to prevent and control disputes.

3.3 Government departments administering in accordance with laws Many disputes over circulation of land contractual management right are resulted from dislocation of functions of government departments. Thus, government should conduct administration in accordance with laws. This is of great significance to dispute prevention and control. In the process of land circulation, it should not draw support from administrative order, or even strive for benefits with farmers. Government departments must safeguard farmers' contractual rights and interests. Farmers should have freedom in deciding whether to transfer and how to transfer their contractual land. It should actively regulate actions of village organizations, stress propaganda of relevant laws and policies, strengthen guidance, service, management and supervision, to create favorable conditions for circulation of contractual land. In addition, it should reinforce supervision of use of circulated land, and forbid to change use of agricultural land, to ensure grain security. Finally, it is required to correct and investigate illegal actions in the process of land contractual management right circulation, to prevent and control circulation disputes in compliance with laws.

3.4 Stressing management of land contractual management right circulation contract Contracts of circulation of farmers' land contractual management right involve land owners, operators and contractors, so the circulation must be performed in accordance with laws and regulations. It is required to reinforce management of contract of land contractual management right circulation. The circulation parties should sign circulation contract and make clear circulation form, quantity, fixed number of years, conditions, and rights and obligations. Circulation contract should be verified by competent authorities, to ensure regulatory and valid contracts. Government departments should further establish and perfect land circulation registration system, to make land circulation work normal and regulatory. Village committees should conduct an overall check of circulated agricultural land and make orderly management of circulation registration and filing in accordance with actual circulation situations, to prevent and control disputes of land circulation contracts^[5].

3.5 Establishing and perfecting land circulation intermediaries to realize market-oriented circulation In essence, land circulation belongs to market behavior and it is the reallocation of production factors. Establishing a uniform and orderly land circulation market is an essential guarantee for healthy development of rural land circulation and prevention of circulation disputes. This has been proved by facts. Therefore, it is of great significance to establishing market-oriented land circulation mechanism. (1) It should establish intermediaries for land circulation market services. Land circulation intermediaries are economic intermediaries operating under the guidance of government, assume sole responsibility for its profits or losses, and provide transaction platform for

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ership, rural land contractual right, homestead ownership and house ownership, *etc.* The incremental income from land consolidation should be properly allocated in accordance with definite land property right. For agricultural land, especially after consolidation of cultivated land, the boundary of contractual land has already broken, but farmers still can handle paid circulation by their rural land contractual right certificate, such as buying shares, mortgage, letting or transfer. For homestead, farmers also can share its incremental income by their homestead ownership certificate. Naturally, rural collectives also can withhold the respective land incremental income, but this amount should be used in developing rural public welfare to realize the objective of operating rural areas with rural land. Only through this, can it summon up farmers' enthusiasm for participation in land consolidation and changing the negative factors into positive ones.

4.2 Establishing urban and rural integrated land market

In the process of urbanization and industrialization, part of cultivated land will be occupied. However, the occupied cultivated land must obtain index of construction land. At the same time, it should make proper supplementation through land consolidation. Rural residential area is a huge sum of idle assets. With advance of urbanization, more than 42 000 hm² area of homestead in Bengbu City can be withdrawn. The withdrawn homestead should be firstly used for land reclamation, then for construction of beautiful countryside, finally for urban construction. If urban development needs such land, it can obtain through transfer process at collective land market. Therefore, it is urgent to advance comprehensive reform of rural land system and accelerate building urban and rural integrated land market, to show and realize value of rural homestead assets.

4.3 Strengthening rural land consolidation and infrastructure construction

The 18th National Congress of the CPC calls

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land circulation, so as to effectively solve the problem of obstruction in land circulation. (2) It is recommended to establish and improve rural land circulation information network system, to make supplying and requisitioning parties obtain land circulation information timely and accurately, increase transaction success rate, and reduce transactional costs. (3) It is required to establish land circulation price system oriented towards market, to gradually form market price competition mechanism of land circulation, so as to accurately reflect dynamic price change of land, and promote proper allocation of land resource. (4) It should strengthen guidance and supervision of government department on land circulation market, to regulate land circulation market. Finally, it is proposed to gradually improve supporting measures of rural land circulation, to create favorable external environment for rural land circulation. This can achieve the objective of preventing and controlling land circulation disputes and promoting new socialist countryside construction.

for promoting integration of IT application and industrialization, interaction between industrialization and urbanization, and coordination between urbanization and agricultural modernization, thus promoting harmonized development of industrialization, IT application, urbanization and agricultural modernization. Among these, the work of agricultural modernization is most arduous and critical. Without agricultural modernization, there will be no Chinese modernization, and building of a moderately prosperous society in all aspects will be empty talk. Reduction of quality of cultivated land is resulted from "occupying good land but compensating bad land" in the process of urbanization. In view of this problem, government at all levels should get rid of the old approach and improve quality of existing cultivated land through land consolidation. Incremental income of land should be mainly used for rural land consolidation and infrastructure construction. In addition, government should practically implement the guideline of "encouraging industry to support agriculture in return for agriculture's earlier contribution to its development and encouraging cities to support rural areas", so as to halt the trend of decline in quality of cultivated land.

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