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Methods and Paths for Rural Collectively Owned Profit-oriented Construction Land Entering into Trading Market

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Abstract On the basis of analyzing cases of existing rural collectively owned profit-oriented construction land entering into trading market, this paper put forward several thoughts, introduced methods and paths for rural collectively owned profit-oriented construction land entering into trading market, including reforming rural collective land property right system, cultivating new rural collective economy organizations, helping them to become market entities; improving various legal systems, making clear range of construction land entering into trading market; formulating scientific benefit allocation mechanism; establishing fair and transparent decision making mechanism.

Key words Rural collectively owned profit-oriented construction land, The same rights at same price, Land property right system, Legal system, Benefit allocation mechanism

1 Introduction

Since the reform and opening up, with rapid development of China's economy and constant advance in urbanization process, the construction land demand is increasing and the conflict between land supply and demand constantly grows. As essential part of construction land in China, rural collectively owned profit-oriented construction land plays a decisive role in economic and social development. Constant deepening of rural land system reform highlights the direction of rural collectively owned profit-oriented construction land.

In the *Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform* made at the Third Plenary Session of the 18th Central Committee of the Communist Party of China in 2013, it clearly stated that we will allow rural collectively owned profit-oriented construction land to be sold, leased and appraised as shares, on the premise that it conforms to planning and its use is under control, and ensure that it can enter the market with the same rights and at the same prices as state-owned land.

On February 27, 2015, the Standing Committee of the National People's Congress approved the *Decision on Authorizing the State Council to Temporarily Adjust the Implementation of the Provisions of Relevant Laws in the Administrative Regions of Daxing District of Beijing Municipality and Other 32 Pilot Counties (Cities and Districts)*, marking that the reform pilot of three kinds of rural land is entering into the essential implementation stage. Three kinds of rural land refer to rural land requisition, collectively owned profit-oriented construction land entering into the trading

market, and homestead system. Reform of these three kinds of rural land are interdependent and need to promote each other mutually. From the perspective of reform innovation effort and difficulty, the reform of collectively owned profit-oriented construction land entering into the trading market is the key and breakthrough point. Its innovation effort ranks the first place and its success directly influences reform of other two kinds of land. When reform of collectively owned profit-oriented construction land successfully enters into the trading market, it will bring powerful force to reform of other two types of land and the entire rural land system reform will advance swiftly. The rural collectively owned profit-oriented construction land entering into the trading market means rural collectively owned profit-oriented construction land can directly enter into land market like state-owned construction land and realize unified market, the same land and same right as township state-owned construction land.

2 Practice of rural collective operational construction land entering into trading market

Since the Standing Committee of the National People's Congress approved the *Decision on Authorizing the State Council to Temporarily Adjust the Implementation of the Provisions of Relevant Laws in the Administrative Regions of Daxing District of Beijing Municipality and Other 32 Pilot Counties (Cities and Districts)*, Zhejiang Deqing and Guangdong Nanhai have implemented rural collectively owned profit-oriented construction land entering into the trading market.

On August 19, 2015, Deqing County in Huzhou City of Zhejiang Province sold the domestic first rural collectively owned profit-oriented construction land through agreement; according to statistics of department of land and natural resources of Deqing County, by December 31, 2015, Deqing County had completed 41 parcels of rural collectively owned profit-oriented construction land entering into the market, the area reached 373.02 mu and the

gross turnover was up to 96.1483 million yuan. In the early stage, Deqing County carried out extensive preparatory works in "confirming rights, investigation, planning, and regulation formulation" of rural collectively owned profit-oriented construction land. Firstly, it made clear basic situation of rural collectively owned profit-oriented construction land. Secondly, taking the pilot county of "integrating many regulations into one" opportunity, Deqing County included rural collectively owned profit-oriented construction land into planning connection scope, and made comprehensive analysis combining land use, ecological environmental protection, industrial development, and urban and rural construction plans. Thirdly, Deqing County took establishment of regulation as the core project. Fourthly, Deqing County takes safeguarding interest of farmers as the fundamental part. In order to ensure orderly operation of pilot work and systematic and strict features of land market reform, Deqing County put forth effort in policy formulation, oriented towards integrating urban and rural construction land market, carried out repetitive survey and study of transaction rules and income allocation, and had released a package of policy designs, and established policy system of "one method, two opinions, five regulations, and ten models". Besides, Deqing County incorporates the collectively owned profit-oriented construction land into public resource transaction center, and establishes multi-part cooperative market supervision service mechanism, realizing unified transaction platform, unified market rules, and unified service supervision with state-owned construction land.

Daxing District is the only one pilot district of Beijing. Since rural collectively owned profit-oriented construction land of Beijing entered into the market, the first transaction land parcel was No. 2 Land B (2-004) F81 in Xihongmen Town of Daxing District. Land use right is sold by hanging out its shingle. Local and overseas enterprises, entities and individuals can participate in the auction, but joint purchase is not accepted. For this parcel of land, 5 development and construction conditions are imposed: (i) provide priority jobs for labors in Xihongmen Town; (ii) investment amount should not be lower than 120 million yuan/ha; (iii) the annual taxable amount should be not less than 6 million yuan/ha; (iv) during construction, the construction tax should be paid locally and operation company should be registered in local area; (5) to ensure smooth implementation, the parties should select 3400 square meter operational building as performance guarantee. When agreement is concluded, the winner should sign land selling contract with the seller. Land transaction fees should be paid off in a lump sum. And certain proportion of land transaction fees should be paid to Daxing District Finance as land appreciation income adjustment fund. Beijing Shengshi Hongxiang Asset Management obtains the remaining land transaction fees and rural collective economic organizations participate in allocation according to their shares in the company.

On February 28, 2016, Nanhai District of Guangdong Province successfully hanged out shingle of the first parcel of rural collectively owned profit-oriented construction land in public resource

transaction center. This was the first step for Nanhai District marching toward reform of rural collectively owned profit-oriented construction land entering into the trading market. This parcel of land was owned by Beihai Joint Share Cooperative of Taiping Village, Dali Town. The planned use was science and education, with area of 28.93 mu, years of transference up to 30 years, and gross turnover 57.86 million yuan. According to requirements for pilot project of Nanhai District rural collectively owned profit-oriented construction land entering into the trading market, Nanhai District government collects land appreciation at 10% of land transaction fees, fully manifesting the spirit of reform of rural collectively owned profit-oriented construction land entering into the trading market. Since the implementation of pilot work, Nanhai District of Foshan City actively built "1 + N" pilot policy system, steadily promoted reform tasks, issued pilot implementation schemes, tentative management methods, appreciation income adjustment funds, and tax collection and use management method, improved detailed rules for policy implementation, and carried out basic data and subject willingness survey, and made overall planning and adjustment of rural collectively owned profit-oriented construction land, and made effort to realize full coverage of construction land at the end of 2016.

3 Existing problems of rural collective operational construction land entering into trading market

In the process of promoting rural collectively owned profit-oriented construction land entering into trading market, it has made considerable achievements. With deepening of the reform, it is difficult for local government to make breakthrough in system limitation, non-standardization of policies, lack of systematic restriction, which will impede smooth process of rural collectively owned profit-oriented construction land entering into trading market. Major problems in rural collectively owned profit-oriented construction land entering into trading market: (i) unclear property right, vacancy of system, involving many entities, and diversified benefit demands; (ii) imperfect laws and regulations and difficulty in practice; (iii) difficulty to define objects entering into the market; (iv) high risk of pilot and difficult to form decision-making mechanism^[1].

4 Methods and paths for rural collectively owned profit-oriented construction land entering into trading market

4.1 Reforming rural collectively owned land property right system

Clear property right is a precondition and basis of market economy. However, at present, rural land property right is not clear. In the collective land ownership, all villagers own the collective land, but the amount of property right is very fuzzy. Firstly, it clearly specifies subject position of farmer collective over rural collective land in laws. Land users will not face directly to individual farmer household, and will not increase transaction process and cost. Secondly, it specifies that rural collective eco-

economic organizations exercise rural collective land ownership and rebuild rural collective economic organizations in accordance with legal person administration structure of "separation of three powers" of modern company. The task of rebuilding is to assign vigorous organism and soul, to establish market entities with excellent decision-making mechanism and supervision mechanism. Finally, it is recommended to improve powers and functions of collective construction land ownership, make definite usufructuary right attribute of collectively owned profit-oriented construction land use right, guarantee equal legal status as state-owned construction land use right, to realize the same construction land, the same right, and the same price^[2].

4.2 Improving related legal system Laws of China prohibit selling, transfer or leasing of rural collective land to non-agricultural construction, forbid mortgage of rural collective construction land, specifies that any entity should file application before using state-owned construction land, and collective land may be sold only through land requisition. At present, most parts of urban new construction land should be used through land requisition procedure, changing rural collective construction land into urban state-owned land. On the one hand, this means that no matter for public interest or non-public interest, the new demand for urbanization and industrialization must be satisfied through land requisition (namely, changing rural collective land to state-owned land). On the other hand, laws stress that the state should not requisition land except for public interest. Evidently, satisfaction of the first requirement will violate the second requirement, and stick to the latter requirement will result in failure to satisfy the former requirement^[3]. In addition, *Property Law of the People's Republic of China* and *Guaranty Law of the People's Republic of China* expressly specify that the use right of rural collective land should not be used for mortgage and guarantee, land developers will not take the land as mortgage and guarantee, which will hinder the construction process. Therefore, it is required to promptly revise and improve legal provisions impeding urbanization.

4.3 Narrowing area of land requisition For definition of scope of public interest, we can draw reference of Taiwan of China. In Taiwan, land requisition includes general requisition and policy requisition. For land used for public welfare undertaking, general requisition is adopted, and it lists items of public welfare undertaking. For public welfare land for implementing national economic policies, policy requisition is applied. Specific compensation, land allocation, and land selling at premium implement sector requisition. Sector requisition in fact is overall development of land with government mandatory feature and cooperation between government and citizens. Practice of sector requisition and reform of collective construction land use right entering into the market can realize excellent connection^[7].

4.4 Accurately defining rural collectively owned profit-oriented construction land (i) Inventory profit-oriented construction land. This is inventory profit-oriented construction land conforming to planning and use regulation. Any such land conforming

to land use conditions and criteria can be circulated. For land in remote area and impossible to enter into the market for the time being, it is recommended to exit the development right through original profit-oriented construction land, transfer development right to other areas which conform to planning and are suitable for development and use. It is recommended to change such land to profit-oriented construction land and then allow its entry to trading market for future development.

(ii) Incremental profit-oriented construction land. Government can change original non-profit-oriented construction land into profit-oriented construction land through planning and also can change profit-oriented construction land into non-profit-oriented construction land. Therefore, to implement economic policies, government may allow incremental collectively owned profit-oriented construction land to enter into market in large development and construction area and change non-profit-oriented construction or agricultural land into profit-oriented land. Implementing exit and transfer of inventory profit-oriented construction land development and use rights and implementing the policy of incremental profit-oriented construction land use right entering into the market will be an effective approach for invigorating much idle rural collectively owned construction land, and will provide broader space for profit-oriented construction land entering into the market^[8].

4.5 Adjusting benefit allocation In market circulation of rural collectively owned profit-oriented construction land, proper treatment of circulation benefit is a core issue. Equitable allocation is a basic principle for maintaining social harmony. In traditional rural areas, equity is a fundamental requirement. Only when the equity is realized, may the support for circulation of rural collectively owned profit-oriented construction land be implemented. Facing multiple parties in circulation of rural collectively owned profit-oriented construction land, it is required to pursue equitable and just benefit allocation and reduce social conflicts to a maximal extent, and also required to take full consideration of role of different entities in circulation of rural collectively owned profit-oriented construction land, especially working enthusiasm of organizers. Then, it is expected to increase circulation efficiency and promote conserved and intensive use of land resources. As land owners, village collective should become the largest entity obtaining benefit from rural collectively owned profit-oriented construction land entering into the trading market. As to benefit allocation of village collective members, it should be discussed within the collective. It is recommended to encourage using rural collectively owned profit-oriented construction land for public welfare undertaking for share by all villagers. The grass-roots local government, on the one hand, plays a dual role of organizer and supervisor in rural collectively owned profit-oriented construction land entering into the trading market and plays a key role in circulation efficiency; on the other hand, it brings into play great role in improving infrastructure construction, optimizing land use environment, and increasing land use value. However, on the principle of "government not competing for benefits with citizens", it is re-

quired to minimize the proportion of village collective in benefit allocation of circulation of rural collectively owned profit-oriented construction land. Certainly, above-ground structures or facilities should not be included into benefit of circulation, instead, these should be separated from rural collectively owned profit-oriented construction land, and be owned by builders. If they are built by the collective, it can be considered as collective property.

Benefit adjustment should care about and consider income adjustment of collectively owned profit-oriented construction land, and should also consider income allocation relationship in the land requisition, to realize general balance of benefit of the state, collective and farmer individuals. Main party receiving benefit from rural collectively owned profit-oriented construction land entering into the market is collective land owner, and its members obtain the benefit according to their shares. The state collects certain amount of land appreciation income in the first time, and collects appreciation income in the form of tax after land circulation. The first income can be monetary or public facility service land with equivalent value, which realizes effective connection with sector requisition of land requisition reform.

4.6 Improving participation mechanism Rural collectively owned profit-oriented construction land entering into the market is a very sensitive subject in rural society. In specific decision-making process of collectively owned profit-oriented construction land, how to implement equitable, just and open principle and take overall consideration of benefits of all parties is a practical problem urgently to be solved. Well established public participation mechanism is of particular importance. It is recommended to widely absorb opinions of interested parties to form publically recognized scheme. In recent years, rural council formed in the construction of new socialist countryside gradually plays an increasingly important role in multi-party benefit coordination of rural social and economic activities. Rural council generally consists of five to nine elderly people (elderly party member, elderly cadre, family clan elder, elderly teacher, and elderly model). They are not village cadres currently in office, but are generally acknowledged responsible, competent and reputable talents. They stick to principles, handle affairs in fair and just manner. They are trusted by villagers. In addition, they show powerful vitality in organizing rural in-

(From page 28)

4.3 Keeping pace with the times and using technology to create urban-rural integration New urbanization promotes the development of wisdom cities, enhances the integration of urban and rural plan and public services, and strengthens rural service network construction. For the development of rural tourism, it is necessary to make good use of network technology and "smart travel" to create new tourism style. It is necessary to strengthen rural infrastructure construction and network coverage, use Wechat, microblog and other media channels for rural tourism publicity, and perfect DIY tourism APP to make rural tourism more convenient. Keeping pace with the times and mak-

frastructure, managing funds, supervising construction quality, and mediating disputes, organizing to formulate rules and regulations for the village and villagers, and realizing autonomous management, independent implementation, self-education, autonomous service, and self-supervision of villagers. Therefore, it is recommended to fully absorb participation of rural council, bring into play its advantages in coordinating benefits of interested parties. This is an effective approach for establishing equitable, just, open, and transparent circulation mechanism for rural collectively owned profit-oriented construction land. In conclusion, for building urban and rural integrated land use market and safeguarding rights and interests of farmers, the core is to properly treat the relation between government and market; regulation of rural collectively owned profit-oriented construction land entering into the market needs strengthening of macro-control; it is recommended to establish and improve systems, to create favorable external environment for bringing into play decisive role of market mechanism in land resource allocation.

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ing good use of technology is the key to long-term development of rural tourism.

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