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The Plights and Solutions of the Farmers' Land Rights Protection

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Abstract The current plights of farmers' land rights in China are analyzed. They cover the vain installation of the security of farmers' land rights, vain position of the dominant role played by rural collective land, incomplete functions of rural collective land and the inadequate material assistance of farmers. The solutions for ensuring the security of farmers' land rights are put forward, in the first place, perfecting the legislation of guaranteeing farmers' land rights. In the second place, scientifically installing the rural land rights, which covers the following aspects, such as, clearly defining that the collective ownership of rural land belongs to farmers in law; clearly defining the main body of rural land property and eliminating the shortage of property rights; demarcating the range of public interests and clearly stipulating the reasonable compensation of main body of land expropriation. In the third place, villagers' autonomy should be perfected. In the fourth place, standardizing the system of land expropriation, which includes the two aspects of normalizing the land transference procedure and the control of collecting land tax, and establishing fair compensation standard and normalizing land compensation procedure. In the fifth place, strengthening land transference and judiciary, and enforcing supervision; in the sixth place, accelerating the development of peasants' cooperative economic organizations and cultivating peasants' rights keeping organization. Through the discussion on the plights and solutions of farmers' land rights protection, the coordination of rural and urban development will be realized and a harmonious society will be built.

Key words Farmers' land rights, Land expropriation, Landowner, Land transference, China

Farmers' land rights refer to the collection of various kinds of rights, such as the land ownership, land use rights, land usufruct, land disposition rights and the like, taking the land as the economic object. Land is the most basic production factors of farmers. It is the fundamental element for farmers' existence and development. Besides, land is the most important property right of farmers. The key to protecting farmers' rights is establishing and protecting farmers' land property right. At present, farmers' land rights have not obtained their deserved respect and protection. Besides, enforcing farmers' land rights is the requirement of implementing scientific thought of development and constructing a harmonious society. Therefore, I analyzed the current plights of protecting farmers' land rights and studied the solutions for enforcing farmers' land rights, so as to provide legal insurance for protecting farmers' land rights.

1 The plights of farmers' land rights protection in China

1.1 The vain installation of rural collective land property rights Farmers' land property rights are a series of rights, covering the land possession right, land use right, land disposition right and the like, with the core of land ownership. In China, the *Constitution* formulates that the land is possessed by the nation and the collection. From the phase of the *Constitution*, rural collection is one of the main bodies of land property rights. But according to the *Land Management Law*, the rural land could be transferred, only by being expropriated by the na-

tion and become the state-owned land first, so the farmers' land rights stipulated by the *Constitution* are invalid. As a result of the unclear rural land property rights, sometimes farmers' land rights are deprived and distributed by the country or by the powerful persons or organizations. The local governments often invest the land interest obtained from farmers in cities. Although their behaviors have played a catalytic role in the process of urbanization and industrialization, they have not coordinate the proportion of input on the villagers and cities well. The unbalance investments in rural and urban area lead to the tougher development of some rural areas, which have inadequate capitals for starting their development. What's worse, governments in some areas collude with real estate developers to extract farmers' lands, and then let the developers enjoy the exclusive land development rights. Therefore, the relevant officers take the chance to rent their power to get profits, but both the nation and farmers have not got the deserved land development rights.

1.2 The vacant main body of farmers' collective lands Rural collective economic organizations in China are weak, and the main body of rural collective economic is vacant seriously. Although the law has stipulated that the land is possessed by rural collection, the definition of the composing factors and operational principles of it is not clear. The concept and scope of collection lack clear definition. In the *Constitution*, "collection" is indiscriminately referred to; in the *Agriculture Law* and the *Land Management Law*, "collection" is defined as the county-level or town-level agricultural collective economic organizations or agricultural collective economic organizations in the village; the *Rural Land Contract Law* defines that the farmers are collection; while in the *General Rules of the Civil Law* defines that 'collection' is the collective economic organizations

in the county-level and town-level. Farmers' collection is a political economics concept, and it does not belong to the subject of right in legislation, thus leading to the vacant of farmers' land property right. The subject of property is not clear as well, for the law has not defined which level of rural collection owns the rural lands on earth. In addition, the current law not only does not have clear property representatives and the scope and position of the implementation subject, but also does not solve the benefit-based relationships between farmers' collection and farmers. In reality, driven by interests, the rural collective organizations abuse their rights for disposing the land property and land use right, which gravely violate farmers' rights and interests.

1.3 The incompleteness of the functions of rural collective land rights Farmers' land rights system is the comprehensive system for installing and clarifying the rural land property right, usufruct right, land right of getting interest and land right of disposition and the like, and for normalizing rural land use relations. However, in reality, the function of rural collective land rights is single and the land use right nearly takes its place. In law, the farmers' collection has the property rights of rural lands, but in fact, the farmers' collection even does not have the disposition rights. The land owner does not have the right to purchase and sell or mortgage the land, and he does not have the right to change its functions. The nation strictly controls the land transference by administrative means. At present, according to the household contract responsibility system, which is carrying out prevalently in rural areas, peasant households have the contract and operation right of lands, but the system can not protect the land property rights of farmers' lands. The *Land Contract Law* only presents the segmenting of land property rights among the nation, the collection and peasant households, but it does not define the right boundary among them^[1]. "Contracted management" is a typical term of relationship between the creditor and the debtor, but the contractual right of land stipulated in the *Rural Land Contractual Law* confused the real right and creditor's rights. On the one hand, the *Rural Land Contractual Law* attempts to make the contractual right of land to show the obvious tendency of real right. On the other hand, the contractual right of land come up against the basic features of real right from the view of relationships between the specific legal norms and the actual legal relations, for example, the household contract stipulates that the land contractual rights can not be mortgaged, inherited and the contractual rights can be revoked and rearranged in case of unusual cases; the contractee owns the right of consenting the transference of land contractual right, the assignee of the land contractual right must be the "household who undertakes other agricultural operation", and so on. In addition, limited by this model, rural lands can not be transferred from the farmers with poor operation efficiency to farmers with good operation efficiency. The model has impeded the markets' optimal allocation of land resources, thus the intensive management of rural lands can not be executed smoothly.

1.4 The absent rights to material assistance of farmers The *Constitution* in China has stipulated the assistance rights of

the disadvantaged people. As the biggest group of the disadvantaged people, farmers' existence and development deserve the assistance of the country. Therefore, the government can not shirk the responsibility of protecting farmers' land rights. Farmers' land rights are the core rights of farmers' right system, so the government should help them to develop their rights. The realization of farmers' rural land assistance right equals the construction of the existence and development foundation for farmers, as well as laying solid foundation for the continuous, rapid and sustainable development throughout the country. However, in reality, farmers have not enjoyed the benefits of the public finance in terms of rural water facilities, rural infrastructure, fundamental engineering and so on. Based on the current pattern and background of household contractual responsibility system, collective economy in most part of the rural areas is extremely poor, and some even just has the form but has no function. Besides, the investment in the capital construction related to lands is extremely limited. The scattered individual poor farmers are hard to form the power for adding the value of lands. The rights of assisting the development of rural lands are scarcely enjoyed by farmers. Thus, there is no strong support for fulfilling the potential of rural lands.

2 Enforcing the path choice of protecting farmers' land rights

At present, protecting farmers' land rights and making farmers to be the real masters of lands are the most important tasks of the communist party and the Chinese government. In order to enforce farmers' land rights protection, China should conduct a series of system arrangement and regulation innovation of coordinating rural and urban development, and the government should construct the legal protection mechanism for farmers' land rights.

2.1 Perfecting the legislation for protecting farmers' land rights In order to truly protect farmers' land rights, the legislation is the prerequisite. The relevant departments should perfect the related laws and regulations of protecting farmers' land rights from the phase of legislation by the idea of equality and justice. Besides, the government should debar all the external rights infringement and lay a solid foundation for the construction of harmonious society^[2]. The changes of the real right of land contractual right require China to establish the basic formation of system by providing laws and regulations, so as to make up for the inadequate supply of laws and regulations caused by the changes of systems, as well as provide perfect basic principles, directions and protections for rural land property rights. In the first place, *China's Property Law*, newly enacted by China, still has certain limitation on rural land rights, so the further refining is needed. Through improving the construction of the civil law in China, the government should strictly define and protect households' land contractual rights. In the end, the government should take farmers' land rights as granted and further clarify the legal ground of land rights. In the second place, the relevant departments should enact *Land Property Law* to clearly define that the contractual land is the individual property of

farmers. In China, the property rights are not laid stress on, so in such a country without the habit of safeguarding the property rights, the expansion and accumulation of agricultural capitals could be ensured and the agriculture could get permanent motion for continuous development, only by establishing the legal ground for the land property rights. According to this, the land property law should be established, or it should be defined in the *Constitution* that the farmers' land use right and land contractual right of the collection-owned lands is a kind of property right. Within the terms of the contract, the lands are occupied, operated and used by farmers and their products are controlled by farmers. Moreover, within the determined terms, the lands can be used to be inherited, to be rented again, to be donated, to be auctioned, to be mortgaged and to be used to purchase the stock. The relevant department should ensure farmers' land property rights in terms of length, width, independence and determinacy, so as to ensure the really privatization of the contractual rights. In the third place, the registration regulations of land property rights should be established and perfected. For one thing, the relevant department should define the clear ownership of land property rights by the legal form; for another thing, the relevant department should define the functions of registration by the legal form. The registration system of land property rights in China should adopt the registration requirement, which is meaningful for rural land use rights from two aspects: the setting and transference of rural land use rights will be invalid without registration; the changed functions of agricultural land use will be invalid without registration. In the fourth place, the machinery of settling disputes of improving the land should be further improved in order to provide safeguard for farmers' land rights.

2.2 Farmers' land rights should be scientifically arranged

Scientific definition of farmers' land use rights is the prerequisite of protecting farmers' land rights. In the reconstruction of farmers' land use rights system, the relevant department not only needs to ensure the nation owns the lands, but also needs to guarantee the farmers' legal rights. It is the starting point of special land property rights endowed to farmers.

Firstly, the relevant department should clearly define that the rural collective lands are the joint possessions owned by farmers according to the law. After the evaluation and calculation of land, the final land property of farmers will be built. The law not only maintains the public ownership of rural land nature, but also helpful to the effective implementation of rural collective land rights, and farmers' land rights are effectively ensured. Under the model of joint possession of collective lands, villagers own the direct, clear, complete and independent land property rights, then the unreasonable interference and infringement of committee in the village and the nation caused by traditional model could be effectively resisted.

Secondly, the main body of rural land property rights should be defined. The relevant departments should abandon the blurred definition of the identity of rural land rights and define that the villagers' group is the property owner of farmers' collective lands. Meanwhile, the rational legal procedure of land

property rights should be set up in the villagers' group. The changes of land property of the villagers' group should get the consensus of two thirds of the villagers, who are over 18 years old in the villagers' group, for there are few people in the villagers' group, the malpractice of villages' representatives, and then the direct democracy can be achieved in the process of land transference. Besides, farmers' land rights, which closely related to the fundamental interests of farmers, could be realized.

Thirdly, the defect of property rights should be eliminated to ensure the completion of farmers' land rights and truly realize various kinds of rights such as the land ownership, land use rights, land profits and land disposition rights of farmers' collective lands stipulated by the *Constitution*, especially the rights of getting profits and depositing the land. "during the ownership arrangements, the exclusive rights of getting profits and the right of transferring the ownership are the most important economic resources"^[3]. Based on farmers' land property rights and the protection of farmers' full enjoyment of land rights, China can share the land rights by revenue and can eradicate the violation from all the other interest participants. The profits arising from the transference of farmers' collective lands should be fully taken as the profits of farmers and farmers' collective incomes, except the part turned into the nation according to the law. Therefore, the economic power of rural collective economy should be strengthened. Besides, the development of countryside and farmers will be pushed forward and solid material support will be provided.

Fourthly, the scope of the public interest should be defined. The legislation should define that the rural land expropriation should be limited to the aim of "public interests" only, and the "public interests" should adopt the styles of listing and generating. The "public interests" should cover the utilities, the construction of infrastructure, manufacturers who produce public goods and military bases and so on. As for the lands used for commerce, the farmers' collection should be the real master, and the rural collective lands enter the construction land use market directly without the interference of the government in the intermediary link.

Fifthly, the reasonable compensation principles used by the land expropriation to the former property owners should be clearly defined. In connection with the low compensation standard of land expropriation and the situation of harming farmers' interests, the principle of reciprocity should be established. The damage should take the restoration as standard and the compensation of land expropriation should be based on the land price of the market. Besides, the land price in the around area should be taken as reference, so as to avoid the enormous gap between land expropriation compensation and the land price in the market.

2.3 Perfecting the rural self-governance The economic rights of the subject can be realized by the relevant support of political rights and the safeguard. "Self-governance is the primary content of human rights, and it is the basis of other rights of the subject"^[4]. The villagers' autonomy has realized

farmers' autonomy to some degree, but in reality, the foreignization of villagers' autonomy is serious. The law does not have the definite regulations on how to execute the land property rights as well, so sometimes the committee in village becomes the executor of the collective land property rights, and the land expropriation and land transference and the like are determined by few members of the committee only. In reality, most of the farmers, the real owner of the collective land, can not enjoy the land property rights and some even do not know that the collective lands have been transferred. The absence of the democracy in the grass-roots level caused the inadequate protection of farmers' land rights. However, the "construction of villagers' autonomy is the political result arising from the reform of rural land property, the innovation and development for further protecting the land property rights and the political prerequisite for pushing the development of rural economy"^[3], therefore, it should start from perfecting the villagers' autonomy in the phase of rural politics, in order to protect the land property rights of farmers.

2.4 Normalizing the land expropriation system

2.4.1 The relevant departments should normalize the land transference procedure and control the farmland expropriation. "The procedure innovated the situation and atmosphere for the free communication according to the evidentiary material, through the way, various kinds of opinions and plans can be considered fully and then the optimal choice can be realized"^[5]. The *Land Contractual Law* stipulates that the term of land contract is 30 years, but the *Land Management Law* and other laws stipulate that the individual of land contract can exchange their land contractual rights. Besides, the transference of collective rights should be consented by more than two thirds of the members of committee or over two thirds of the villagers. The later is obvious inconsistent with the former one. Since the rural population is a variable, so the relevant departments can install the procedures to conduct micro-surveys every five years according to the situations of the newly added populations within the term of 30 years. The micro-survey should take the villagers' group as a unit, and the micro-survey is conducted through the villagers' group meeting under the generally stable situation. The pattern of voting rights is presented by the collective decision-making. To be specific, the decision can be determined by the consensus of over two thirds people. The villagers' groups with added people will be shared by the groups with small number of population, so as to achieve the equation of number. Hence, the stability of farmers' land contractual right can be kept, meanwhile, the inequality of land contractual rights caused by the changes of population can be solved to a large extent.

2.4.2 The fair compensation standard should be established and the land compensation procedures should be normalized. The land compensation should be based on the market price and be compensated fairly. The items and allowances for arranging the former land owners should guarantee the necessary expenditures on farmers' production, daily life, education and so on, as well as keep in pace with the economic development.

In addition, when the governments, from all levels, enact the compensation standard, the hearing should be held. Besides the real esteem developer and the villagers' committee, the representatives should include villagers, the representatives from the government and lawyers, and the hearing should fully hear the suggestions from the villagers' representatives. When discussing the land expropriation plan, the way of allocating the compensation fee should be publicized and the suggestions from villagers should be heard. When the collection is allocating the compensation fee, it should strictly abide by the fundamental law of villagers' autonomy. The allocation of compensation fee should be carried out through democratic procedures, and the democratic supervision should be fully enforced.

2.5 Strengthening the execution and judicatory of land transference and enforcing the supervision During the executing of land transference, the relevant departments should set up the specialized land for executing land transference; strengthen the management of land transference procedures and strictly perform the system of accountability. Meanwhile, the democratic supervision on land execution should be strengthened. To be specific, an independent land supervision system should be established as well as a land supervision team with high quality and high efficiency. In addition, the social supervision of land execution should be enforced. Villagers' appeal to higher authority for help should be fully paid attention to and the impeaching box should be set up. In summary, the functions of supervision of farmers' autonomy should be fully displayed in the cases of violating farmers' land rights. The judicatory assistances for protecting farmers' land rights should be improved and the judicatory censorship before land expropriation should be introduced, that is to say, letting the court to sensor the form elements and essential elements of land expropriation. The establishment of land arbitrage committee can be taken into consideration. The committee can provide convenience for the protection of farmers' land rights. In county level, the arbitrage committee for solving land disputes should be set up, while in towns, the intercession committee for solving land disputes should be built. Furthermore, the punishment on any violation of farmers' rights should be increased and the judicial supervision should be strengthened. In my opinion, "the illegal occupation and expropriation of farmers' lands" should be added to the criminal laws, and the relevant units and direct responsible subjects, who violate farmers' land rights will be punished by criminal law. In reality, the case of land expropriation often has much to do with governments, so many courts do not want to interfere in the disputes of land rights, which lead to farmers' difficulties in solving the land disputes. Therefore, enforcing the judicial supervision and strengthening the supervision functions of National People's Congress and the prosecutorial system are of great importance in smoothing the social supervision channels.

2.6 Accelerating farmers' cooperative economic organization and cultivating farmers' rights keeping organization The protection of farmers' land rights needs the combination of farmers' internal forces and the social external forces. Under

the existing political structure and right framework, the government dominates the society and the political space of farmers is limited in an extremely narrow scope. As a disadvantaged group, farmers are impossible to seek the equal rights with the well organized strong powerful groups in cities, and they do not have a big say in the governmental policies and system arrangement, let alone forming the functions of check and balance, so when their rights are violated, they have to accept it helplessly. Therefore, the improvement of the degree of organization is in absolute demand. Under the recent political environment, the direct protection of farmers' land rights from the government is limited. Besides, accelerating the cultivation of farmers' cooperative economic organization is not only the demand of socialist market economy, but also the objective demand of protecting farmers' land property rights^[6]. In addition, the government should spare no effort on speeding up the development of farmers' cooperatives according to the Farmers' Cooperatives Law.

The real threats to the violation of farmers' land rights mainly come from two aspects. Firstly, the threat comes from the excuse of the local government. The local government collaborates with the real esteem developers under the mask of "public interests", to expropriate farmers' lands and violate farmers' land rights. Secondly, the threat comes from the villagers' committee. Some villagers' committees ignore farmers' land rights. They cater to the needs of land expropriation of the local governments negatively or positively driven by the interests. What's worse, some villagers' committees intercept the low allowances of land compensation by abusing their rights. A saying goes like that "in order to eradicate the barriers for the realization of collective land rights by developing democratic politics, the strict limitation on public power should go ahead"^[7]. But the protection of farmers' land rights and the supervision on public power can not go without the support of organizations. A practical way of protecting farmers' land rights is to guarantee farmers' rights of association and allow farmers to organize their own associations. In the modern society, characterized by strong government and weak society, strengthening the power of the third party is a good way for smoothing the conflicts between the government and the society, then realizing the communication between the two, and it is the necessary choice for building harmonious and law-governed society. Farmers' associations are helpful for keeping the land rights of farmers, as well as for smoothing the conflicts between the government and the society. We can say that the associations have formed an effective cushion mechanism of check and balance. Meanwhile, farmers' association is an effective mechanism of check and balance for inhibiting the land expropriation

impulse of local governments and the willful violation of farmers' land rights.

3 Conclusions

In order to construct the harmonious society and coordinate urban and rural development, the government should highlight the effective solution of the three agricultural problems concerning agriculture, countryside and farmers. Protecting the development rights of farmers is the main aim of Chinese rural reform in the new era and the initial task for solving the problems concerning farmers. Lands are essential to farmers, and are the basis for the development of countryside and agriculture. The land rights are the most important property rights of farmers and the important content of farmers' development rights. Only by perfecting the system of protecting farmers' land rights and creating favorable environment for realizing farmers' development rights, the development of rural economy would be facilitated and the construction of socialist harmonious society would be laid a solid foundation. To truly realize the protection of farmers' land right, China needs to rearrange and innovate the system for coordinating urban and rural development. The protection of farmers' land rights is a systematic project and it is a time-consuming and tough task. However, the improvement of the legal protection mechanism of farmers' land rights will bring a new glimmer of hope for the solution of the issues concerning agriculture, countryside and farmers.

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