

Study on the Legal Issues of the Withdrawal of Homesteads under the Background of "Three Rights Divided into Three Places"

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Abstract

The withdrawal system of homesteads under the background of "three rights separation" is of great significance as it is the key link to safeguard the rights and interests of homesteads of farmers and release the value of rural land. However, under the traditional right structure of the residential base, the residential base withdrawal system inevitably faces many challenges in practice, such as the legal system of residential base withdrawal needs to be perfected, and the compensation mechanism of interests lacks rationality, etc. In this paper, we will focus on these problems in practice. This paper will focus on these problems in practice, combined with the practice of rural residential base withdrawal in some areas of China, to optimize the rural residential base withdrawal system in China to put forward relevant recommendations, in order to better protect the property rights of farmers, and add new momentum for rural revitalization.

Keywords

Three Rights; Residential Base; Exit Mechanism.

1. Introduction

In the context of continuous socio-economic progress, people's quality of life has been significantly improved at the same time the gap between urban and rural areas is also worsening, rural land under the guidance of the original system of ownership is unclear, the transfer of chaotic, idle resources and other issues. In practice, the phenomenon of over-occupation and multi-family residence is widespread, and the role of unused residential land is far from being played, which in turn becomes a real problem and development opportunity in rural revitalization. Therefore, since the beginning of the implementation of the rural revitalization strategy, the party and the state have paid great attention to the reform of the residential base system. 2015, China opened three pilot projects for the reform of the rural land system; in 2017, the pilot areas for the reform of the residential base system were expanded from 15 to 33. In recent years, the No. 1 document of the central government clearly puts forward the reform of the residence base: we should focus on the reform of the "three rights of ownership, eligibility and use" of rural residence bases, and improve the level of management of residence bases.

The withdrawal of residential base is an important part of the reform of residential base system, but in practice, there are problems such as single withdrawal method and lack of rationality of compensation mechanism for farmers' interests. Therefore, this paper takes the homestead withdrawal system as a specific research object, and on the basis of the investigation of the reality of the reform, analyzes the problems faced by the system in depth, clarifies that China should carry out the homestead withdrawal work under the guidance of the idea of "three rights of separation", and explores the proposed homestead withdrawal path with compensation.

2. Exit Modes of the Withdrawal Mechanism of the Homestead Base under the "Separation of Three Rights"

2.1. Monetary Compensation

Jinjiang County in Fujian Province, Jinzhai County in Anhui Province and Liuyang City in Hunan Province have implemented the monetary compensation model, and the conditions and standards of the model have been stipulated through local documents.

The compensation scope of this model mainly includes the compensation for homesteads and houses on the ground, as well as the compensation for qualification rights. In Jinzhai County, Anhui Province, for example, the compensation for the withdrawal of homesteads consists of compensation for the demolition of houses on the ground, compensation for the legal area of the homestead and compensation for the excess area. If the farmers within this collective organization purchase a commercial house after withdrawing from the homestead and inform that they will not apply for a new homestead from the village collective economic organization, they can enjoy the corresponding welfare benefits in addition to the compensation. Therefore, the so-called qualification right compensation, i.e., the compensation received by farmers who independently give up the qualification to apply for a new homestead base. The right to qualify for a homestead is a prerequisite for farmers to obtain the right to use a homestead.

As far as the compensation price of this model is concerned, it mainly covers three ways of determining it: unified regulations, negotiation and evaluation. In Pingluo County, Ningxia, for the sake of ensuring the fairness and reasonableness of the compensation standard, the residential base storage price is divided into three grades for different zones, and the same grade of zone adopts the unified regulations to determine the compensation price for the withdrawal of the residential base. Wujin District, Changzhou City, Jiangsu Province, adopts the method of negotiation, based on the implementation of the guaranteed repurchase price by the collective economic organization and the residence base right to use the price of independent negotiation. In GaoLing District, Xi'an Province, the collective economic organization commissions a qualified appraisal institution to carry out appraisal work in accordance with the housing demolition and relocation compensation standards implemented in its area, and thus determines the buyback price.

2.2. Housing Replacement

The housing exchange is whereby the owner of a homestead use right exchanges the homestead he or she owns for a house in the town. The model is modeled on the construction of new urban and rural community clusters implemented in Yiwu, Zhejiang Province. Through this model, as of 2018, Yiwu has transacted 280,660 square meters⁰.

Yiwu City, Zhejiang Province, there are two independent choice of programs, respectively, by the proportion of replacement and replacement by the head of household, the former that is the right to use the residential base in the legal area of the residential base under the premise of the replacement ratio of 1:5 and per capita 105 square meters of the area of the apartment house for replacement. The latter is based on the standard of 175 square meters per capita to determine the replacement area^[2].

2.3. Indicator Replacement

Residential land indicator exchange means that farmers or collective economic organizations reclaim residential land as arable land, thereby obtaining construction land indicators that can be used for trading. Among them, it can be divided into the indicator exchange with the collective economic organization as the main body and the indicator exchange with the farmer as the main body. In the collective economic organization-based model, the collective economic organization is the party that reclaims the residential land and transfers the construction land

index, which is adopted in Meitan County, Guizhou Province, Jinjiang City, Fujian Province, etc.^[3]. In the farmer-oriented model, farmers undertake the reclamation of residential land, and at the same time act as the transferor of construction land indicators.

3. The Reality of the Dilemma of the Withdrawal Mechanism of the Residence Base under the "Three Rights of Separation".

3.1. The Legal System for the Withdrawal of Homesteads Needs to Be Improved

In 2019, China's newly revised Land Administration Law confirmed the system of paid withdrawal of residential land, while recognizing its progress, it should be noted that Article 62 of the law is unable to specifically guide the practice of voluntary paid withdrawal of residential land throughout the country, and fails to form an institutionalized system, which is only of principle significance at present. On this basis, Article 363 of the Civil Code for the acquisition and transfer of the right to use the residential base and other related content to authorize the land management and other related laws and regulations to be detailed provisions, so it can be seen that the specific management of the residential base norms are currently missing, indirectly leading to the introduction of normative documents around the legal effect of the greatly reduced, and urgently need to be improved.

There is also another obstacle that cannot be ignored, namely, the inadequacy of the registration system for homestead property rights. In the work of withdrawal of residential land, property right registration plays an important role in determining the belonging of residential land and the specific amount of compensation, which is of great significance. But from the current practice, the rural residential property right registration work still exists large shortcomings, work efficiency is not high. On the one hand, residential property rights registration management lack of rigor. Part of the original certificate of the farmers did not carry out the work of the state before the recovery or cancellation of the right to confirm the residence base, which led to the "three rights to separate" background of the residence base right to use the documents issued after a residence base may have more than one land certificate^[4], for the implementation of the specific work to bring about difficulties. On the other hand, with the continuous rise of urban housing prices in the past few years, for quite a long time urban residents to buy rural housing events are common^[5], the existence of a large amount of gray transactions lead to some of the residential land ownership relationship is confusing, and greatly increase the difficulty of the work of confirming the right to register.

3.2. Lack of Rationalization of Compensation Mechanisms for Peasant Benefits

In the homestead withdrawal system, farmers attach great importance to the withdrawal compensation standard, and different compensation standards directly affect the enthusiasm of farmers to participate in the withdrawal of homesteads. However, in the current "Land Management Law" for the value of homestead measurement standards, compensation scope and compensation funds and other important rules are not clarified, there is a gap in the legislation, which leads to different areas in practice, such as the lack of compensation funds, compensation scope and other problems.

In the absence of clear legislative guidelines, most regions have adopted the government guideline price as the standard for compensation for the withdrawal of homesteads, which has led to inconsistencies in the compensation standards between regions as market mechanisms have not been introduced to regulate the compensation. Some scholars believe that the compensation standards for exiting homestead bases in concrete practice can generally be divided into four types, namely, the government zoning compensation standard, the assessment price standard, the land acquisition compensation fee standard, and the benchmark land value standard for collective construction land^[6]. According to the actual implementation

of different regions, it is found that in the less economically developed regions of China, the compensation standards are generally low, and some economic compensation cannot even meet the basic housing needs of farmers, so the farmers' participation in the work of the relevant homestead is not very active.

3.3. Lack of Relief Mechanisms for Farmers

The exercise of farmers' right to autonomy in the system of withdrawal of homesteads is carried out throughout the entire process, such as the independent application by farmers at the time of withdrawal, the consultation process in the withdrawal process, and so on. As a matter of fact, the rights of farmers to participate in consultation, supervision, application for rights and remedies, and so on, need to be fully guaranteed. However, in practice, local governments and village committees have violated the villagers' right to self-government, and due to the natural passive status of the farmers and the lack of relief mechanisms, they are unable to protect their rights and interests, which in turn negatively affects the farmers' motivation to participate in the withdrawal of homesteads.

4. Optimization Proposals for the Withdrawal Mechanism of the Residence Base under the "Separation of Three Rights"

4.1. Improvement of the Legal System for the Withdrawal of Residential Land

In order to make the system of compensated withdrawal of homesteads closer to practice, the current provisions of the Land Administration Law should be started, and the supervision of rural homesteads should be continuously strengthened, clearly defining the identification criteria of idle homesteads, the scope of compensated withdrawal of homesteads, the compensation for withdrawal, and the legal responsibility for withdrawal, and other key rules. In this way, the arbitrariness of administrative discretion in practice can be curbed to the maximum extent possible, the rights and interests of farmers' residence bases can be better maintained, and the legal effect of the system of compensated withdrawal of residence bases can be further strengthened.

In addition, the ownership of clear, smooth flow of rural residential property rights system is the important foundation of the residential base withdrawal system, the only way to let the farmers know what kind of residential base rights, and the independent disposal of the rights, in order to protect the farmers' right to know, and thus really let the residential base withdrawal system revitalization. Therefore, the improvement of residential property rights system is imperative.

The continuous improvement of the work of confirming rights is of great significance in helping the work of withdrawing from homesteads to proceed smoothly. On the one hand, the land management department should take the old for the new and other methods to unify the proof of right, so as to avoid the problems of confusion and ambiguity of ownership arising from multiple certificates of title. On the other hand, it is necessary to improve the review of the ownership of residential land. For private circulation, not belonging to the rural household but in the rural property, not registered. In addition, in the process of reviewing the illegal use of residential land should be recorded and reported, so as to provide a solid foundation for the smooth progress of residential land reform.

4.2. Constructing a Reasonable Compensation Mechanism for the Benefits of Withdrawing from Rural Residential Bases

Compensation for the withdrawal of homesteads cannot be broadly limited to compensation for housing or land. The standards for compensation in kind for rural housing or subsidized compensation for urban home purchases can be set on the basis of the area of the homestead,

while factors such as the location of the homestead and the expected return need to be taken into account, and the Government can consider introducing independent third-party appraisal agencies, combined with market mechanisms, in order to build a reasonable homestead price assessment structure. In addition, the compensation for the demolition of houses and ancillary facilities on the homestead should also be based on differences in material and structure to determine the corresponding price.

In addition to the construction of reasonable compensation standards, improving the distribution mechanism of value-added benefits is also an important path to enhance the motivation of farmers to withdraw from homesteads with compensation. Land is a scarce asset with the ability to generate value-added benefits^[7]. Collective economic organizations and farmers as the owner and user of the residence base, respectively, are suitable subjects for the distribution of value-added benefits. It should be noted that, according to the principle of reciprocity of benefit and risk, since the risk borne by the farmers who withdraw from the homestead is relatively large, after the basic compensation is clarified, it is necessary to further increase the proportion of homestead value-added benefit distribution to fill the loss of development rights of the farmers who withdraw from the homestead. In the case of natural villages without collective economic organizations, part of the value-added income owned by the farmers' collective should be managed by a local special fund, so as to avoid misappropriation of funds.

4.3. Strengthening Mechanisms for Farmers' Relief

Strengthening of relief mechanisms for farmers needs to start with the strengthening of legal oversight and constraints on withdrawal procedures.

First, relevant mechanisms for supervision by the National People's Congress and society should be established. The local people's congress can formulate the withdrawal norms and regulations, to ensure that the operation of government power within the scope of the provisions of the local laws and regulations, if there is corruption, it should be quickly to the personnel involved in the violation of the responsibility. It is also necessary to continue to develop ways to express the interests of the masses, so as to ensure that an efficient social supervision mechanism plays a role in the withdrawal system of residential land.

Secondly, the right of farmers to participate in the withdrawal process should be ensured. Since the withdrawal of residential land is closely related to farmers, the withdrawal policy of each place should also reflect the real needs of farmers, and increase the corresponding expression and suggestion provisions for farmers in the process of policy formulation and agreement signing, so as to realize the main position of farmers.

Thirdly, it is necessary to improve the means of redress for farmers whose rights and interests have been jeopardized in the process of withdrawing from their homes. When farmers' rights and interests are damaged in the withdrawal program, they have the right to file a lawsuit to protect their personal rights and interests. In fact, in practice, we often face the dilemma of collective resolution infringing on the rights and interests of farmers' homesteads, and for this kind of problem, firstly, we need to determine the subjective qualification of farmers' litigation, and deeply explore the establishment of the judicial remedial mechanism and adjudicating rules of the infringement of the collective resolution^[8]. In addition, due to the complexity of land disputes in China, combined with the characteristics of rural acquaintance society, mediation is also an important method of resolving related disputes, which can try to build a collective internal dispute mediation mechanism.

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