

Thoughts and Explorations on the "Separation of Three Rights" System of Rural Homestead

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Abstract. When the separation of the management and ownership right was implemented, farmers were entitled to basic residential benefits and the stable development of rural society was maintained. With the rapid development of social urbanization, problems gradually arose concerning the use, management, and transfer of rural homesteads: a large number of idle homesteads, failure in large-scale planting as a result of scattered distribution, and the waste of homesteads, etc. In order to reuse the idle homesteads, increase farmers' income from property, and promote rural revitalization, the central government has proposed the "separation of three rights" system. Combined the policy background with rural development, the paper analyzed the significance of the policy on rural development, the potential risks and principles in implementation from the perspective of historical evolution, policy-making background and policy connotation.

Keywords: Rural homestead; separation of three rights; rural development; collective ownership

1. Introduction

Based on the identity of collective members, homestead refers to the land which is allocated to local farmers free of charge in order to build houses for them to live. The rural homestead system is one of the basic rural systems, and farmers rely on it to settle down. Therefore, the institutional arrangement of homestead is of vital importance to the development of rural areas and the welfare of farmers. At present, there are some problems in the management of rural homesteads: illegal occupation of land by farmers, multiple households in one homestead, scattered distribution of homesteads, excessive vacancy of rural residences, failure in homestead transfer, and private sale of homesteads, etc. As a result, rural land has not been efficiently used, and farmers also cannot return idle homesteads to collectives or put them on the market for property income. In this regard, the institutional arrangement of homesteads becomes a major obstacle to rural revitalization strategy. Under the context, the No. 1 document of the Central Committee of the Communist Party of China and the State Council on the implementation of rural revitalization strategy in 2018 stated: "The policy of farmers' idle homesteads and farm houses, and the 'separation of three rights (rights of ownership, right of qualification, and rights to use of homesteads)' policy should be explored and improved. The collective ownership of homesteads should be realized, and the qualification right on homesteads and the property rights of farmer should be guaranteed. Also, the right to use homesteads and farmers' houses in an appropriate manner should be allowed. It is forbidden either to buy or sell homesteads in violation of laws and regulations or to use rural homesteads in countryside to build villa complexes and private clubhouse" [1]. The "separation of three rights" strategy provides policy support to meet farmers' housing needs, promote the circulation of homesteads, and at the same time ensured that the homesteads remain collectively owned. At the level of social value, the "separation of three rights" of homesteads realizes the unification of economic value, socio-political value and individual value. For example, the mechanism broadens farmers' resources, increases the utilization rate, and improves urban and rural factors of market during development and interaction. Meanwhile, reform changes rural production and lifestyle, and rural governance is promoted towards modernization and urbanization. Farmers earn more incomes, and begin to invest and start up business as rational individuals. It is of great significance to improve the homestead system, promote the efficient use of rural land, drive rural economic growth, realize rural revitalization, and enhance the sense of achievement and happiness.

2. Introduction

2.1 1950 - 1961

In 1950, the Land Reform Law of the People's Republic of China was promulgated, which abolished the land ownership system of feudal exploitation, and distributed 700 million mu of land to farmers who had not owned any land. At that time, the law stipulated that land belonged to farmers and could be used free. This land system reform emancipated rural productivity to a great extent, raised farmers' initiatives, and provided support for the development of agriculture.

2.2 1962 - 1978

In 1962, the government newly promulgated the "Regulations on the Work of Rural People's Communes," which clarified the collective identity of farmers and stipulated that rural land was prohibited from being transferred. In 1963, "Homestead" was first proposed, and the People's Commune was disintegrated in 1985. The new land management system clarified the right of ownership and the right to the use of the homestead. The right of ownership belonged to the rural collective, and the right to the use of land belonged to the farmers [2].

2.3 1978 - 1988

According to the new regulations of the Land Administration Law, the transfer of rural homesteads was changed from "prohibited" to "restricted", and urban residents could also obtain the right to use homesteads through application.

2.4 1998 - 2018

After 1998, urbanization accelerated. To ensure the area of arable land and protect the interests of farmers, the central government stipulated that urban residents were prohibited from using homesteads, the system of maintaining homesteads remained unchanged.

2.5 2018 to present

In 2018, the No. 1 document of the Central Committee proposed the "separation of three rights" system for homesteads and the "rights for homestead qualifications" for the first time, which liberalized the circulation of the right to use homesteads to a certain extent.

3. Background of the "Separation of Three Rights" of Homestead

From the perspective of the homesteads development, prior to the proposal of the "separation of three rights", China's homestead system implemented "", that is, the ownership of homestead belongs to the collective, the right to use the homestead belongs to the farmers and cannot be transferred. However, as more and more farmers working in cities, it is more common for homesteads in the countryside to be idle. As a result, many villages become "hollow villages" - many residents used to live in the countryside have now moved to cities, and residents who stay in the countryside rebuild their houses next to the highway for the convenience, which leads to more serious problem in the village. However, under the "" homestead system, the right to use the homestead can only be owned by collectives. When most farmers move to cities, more rural houses become idle. But the farmers cannot transfer the use right in accordance with the law. Therefore, homesteads cannot be optimally allocated on the factor market, and if the farmers return back the homesteads, there is no benefit at all. In this way, farmers who move to cities usually choose to retain the right to use their homesteads, even if they seldom or never live there, leading to a great waste of land resources. More and more farmer move to big cities for a higher income, but the payment of rentals in cities is very high. For those farmers, rentals in the suburb is much lower, the demands for a suburban rural house are also increasing therefore. In addition, with the promotion of rural revitalization strategies, more and more companies recognize the economic value of rural natural scenery and tourism projects in rural areas.

If rural homesteads can be directly transferred to the enterprises, a large amount of costs of housing construction would be saved, and farmers would also be benefited from obtaining a considerable income. Driven by such high profits, the right to use rural homesteads has been privately circulated. However, the transfer act is not permitted by national policies, in which case neither the procedures nor profit from transfer are protected and recognized by law. If only either party lost, neither of them would be compensated through legal way. The existence of this private circulation and the increasing demand for the circulation of use right has urged the central government to ease the restriction of the rights to use the homesteads.

It is also the first time that the qualification right for homesteads has been introduced in the No. 1 Central Document. At present, academic circles still argue about the legal attributes of qualification right, but it is clear that the proposal of qualification right is conducive to solving some of the existing problems of rural land. For example, in rural areas, homesteads are scattered among arable land, and it is common for farmers to illegally occupy excess homesteads. The scattered distribution of rural homesteads among cultivated land will fragment the cultivated land, which is harmful to the intensive use and large-scale planting of cultivated land by the rural collectives. Meanwhile, the illegal occupation by rural households will create a difference between the actual homestead and cultivated land areas and the areas recorded by the rural collective, which cannot guarantee the basic supply of cultivated land, and it is also unfair. The proposal of homestead qualification right requires that rural residents need to obtain the right of qualification at first, and withdraw from the excess homesteads according to regulations, or make up a certain amount of expenses. For farmers who have left the countryside and obtained urban identity, they will not receive the certification of homestead right of qualification, and the homesteads owned by these people can be directly returned to the village collectives and redistributed. However, under the "" policy, the return of homesteads rely on the one's own will. In this regard, it suggests that the proposal of the "qualification right" of homesteads is a breakthrough in the entry and exit mechanism of homesteads and the efficient use of homesteads.

4. The implication of the "Separation of Three Rights" of Homestead

The implication of the "separation of three rights" of the homestead can be summarized as the design of three-dimensional rights on a rural homestead: "rights of ownership" are granted to collectives; "right of qualification" to collectives; and "rights to use" to social members. Farmers have the "property rights" of houses [3], so they can transfer the "rights to use" within a certain period of time and a certain range. The ownership of rural land by the rural collective remains unchanged, but the "separation of three rights" responds to the society's demand for the transfer of use right of rural homesteads, and further regulates the way homesteads are obtained: The use right and the property right can only be obtained after the acquisition of qualification right.

The "right of ownership" belongs to the rural collective, which means that the village collective has the right to manage, dispose of, distribute, and profit from the homestead [4], and can also plan, supervise, distribute and take back the homestead according to local conditions, and also enjoy part of the land revenue. It is clear that the collectives should also be the implementer of the "separation of three rights" mechanism.

As a member of the village collective, local farmer has the right of qualification, and also can obtain the qualification right for the homestead and the right to distribute homestead based on the their identity as well.

After the farmers are allocated to the homestead, they can only build houses on the homestead within a certain area, not for other purposes. In the context of the "separation of three rights" policy, the use right to part of the homestead can be transferred.

5. Significance of the "Separation of Three Rights" of Homestead for Rural Development

The "separation of three rights" of homesteads is of vital significance to rural development. This strategy further clarifies the different rights of rural homesteads, different land use, and re-plans the use of rural land. The lift of transfer restriction has also enabled farmers to obtain certain income.

The "separation of three rights" further explains that who own the different rights of rural land. The village collective still owns the land ownership, and the collective members have the right of qualification and right to use the homestead. The use of homestead and the rural house on homestead can be transferred to a certain extent, that is, some members of society can have the right to use it. The "separation of three rights" clarified the ownership of the homestead. The Coase Theorem shows that clarity of property rights is a prerequisite for transactions. Only when the ownership of different rights is regulated can it be confirmed who is eligible to use rural homesteads, which plays a vital role in the distribution, use, circulation, and ownership of homesteads and further regulates the management of homesteads.

The smooth circulation of the use right attracts social members or enterprises to invest in the countryside. For investors who enter the countryside need to settle down in first. Compared with rebuilding houses or living in the suburb cities, it is more cost efficient to rent a rural house or buy the use right. There are abundant country housing projects in rural tourism projects. In most of the projects, local characteristics are regarded as a selling point to attract tourists. Therefore, it is particularly important for them to preserve the appearance of the building with local style. While the new houses lose these characteristics, the existing rural houses can well meet these needs. Therefore, the circulation of the use right to the existing homesteads is obviously beneficial to attracting foreign investors in the rural areas. This is also one of the measures taken to address "capital and talents not going to the countryside", an obstacle in rural development.

The problem in rural development or rural revitalization is, in essence, that how to make farmers rich. Many farmers who have moved to cities accommodate there. For them, the homesteads or houses that are idle in the countryside are no longer useful. However, the right to use the houses cannot be transferred under legal protection, and farmers cannot obtain income from returning back to the collectives. Therefore, for farmers, they might as well leave the homestead alone rather than return it back for other uses. If farmers could receive compensation, not only farmers can increase farmers' income, the village collective can also take this opportunity to reclaim part of the homestead, re-plan the land use and try to let the villagers live together. If the village collective can reclaim the homesteads scattered among the cultivated land and put together into large tracts, large-scale planting is expected to be realized. Compared with farming small plots of land by each farmer, it would be more efficient to perform large-scale planting, which would also increase the income of farmers.

The proposal of the qualification right means that the right to use the homestead and the land area used by the collective members should be reconfirmed. For members who do not belong to the village collective or members who have moved out, their use right will be revoked. Farmers who used to occupy excess homesteads also need to make up the spread or return part of their homesteads in accordance with local regulations. For the village collective, this mechanism improves the regulation of land area occupied by each household, the fair distribution of homestead, and the reclamation of long idle homestead.

6. Risk in implementing the "Separation of Three Rights"

In the "separation of three rights", the "right of qualification" was proposed for the first time, but the connotation of qualification right was not further elaborated. Although the qualification right has certain attributes of identity right, it can be explained to a certain extent that the identity of a collective member is a prerequisite in obtaining homestead qualification. However, it is controversial that whether daughter-in-law, son-in-law of the villagers, and unborn babies have the status of collective

members or not, which may cause dissatisfaction of farmers and bring certain difficulties to the implementation of the separation of powers.

If the circulation of the use right is liberalized to a certain extent, more land resources are efficiently allocated through market mechanisms, which will definitely be beneficial for economic development. However, if the price of the rural homestead is lower than urban rentals or house prices, a large number of urban residents may enter the countryside around the city. If there are no restrictions, there may be a price hike or real estate speculation, etc.

The unclear lifespan of the homestead use right may hinder the transfer of the homestead to a certain extent. At present, the central government has not made clear regulations on the transfer lifespan, and only local regulation introduces relevant regulations. A too short transfer lifespan may inhibit the investment of enterprises in homesteads, and a too long time may do harm to future re-planning and development of rural areas.

7. Principles of Landing the "Three Rights Separation" of Homestead

The "separation of three rights" of homesteads has been piloted in 33 regions across the country. Different regions will implement different supporting measures according to their own rural history, geomorphic environment, and economic conditions. No matter where the "separation of three rights" is implemented, the following principles should be met:

First of all, the "red line" of cultivated land should be upheld when the locals reorganizing the area of homesteads. The guarantee of arable land is the backbone of agriculture and the basic condition for guaranteeing China's food supply. During planning and allocation of homesteads, sufficient arable land should always be reserved.

Locals should strictly control the area of homesteads, prohibit farmers from "occupying excessively and randomly" and ensure fair distribution of homesteads [5]. The rural collective should allocate the area of the homestead according to the population of each household, and the area of the homestead must be accurately measured. Scientific planning for the homestead area should be carried out.

The prerequisite for the transfer and the withdrawal of the use right is that farmers have a place to live. The essence of the homestead system is to ensure that farmers have places to live. If a farmer has multiple houses in urban and rural areas, he can transfer or return the surplus homesteads to the collective voluntarily. However, once the transfer of the right to use homesteads is liberalized, farmers who do not own other houses should not transfer their right for income. In some remote areas, farmers may not have sufficient knowledge to fully understand the "separation of three rights" of homesteads. It is also easy for farmers to blindly follow other people and circulate their homesteads, losing their last residence. Therefore, during homestead transfer, there must be a strict review mechanism to decide whether farmers can transfer their own homesteads or not. The village collective and other relevant parties need to cooperate to control the risk of the circulation, and they cannot let the homesteads only perform their property functions while lose their original intention to protect the welfare of farmers.

The circulation of the use right should be liberalized gradually, from a small scale to a large scope. The problems that may arise during the transfer are not yet known. Therefore, a large number of homesteads cannot be released into the market in a short period of time; otherwise it may easily cause market chaos or speculation in rural areas, crowding out low-income groups. The circulation of homesteads can be gradually opened to members of the same village, then to different village members, and finally allow urban residents enter the market. Before the transfer, the relevant parties need to strictly review the housing demands and economic conditions of both parties to prevent real estate speculative risks.

Finally, the implementation of the "separation of three rights" should uphold the core principle of ensuring the interests of farmers. When determining the right of qualification, for people who are new to the countryside, such as women or men who are married into the village, or the unborn children of

a household, people from different cultural backgrounds and regions have different ways of identification. When the opinions of the village collective members are not uniform, a one-size-fits-all approach shall not be adopted. Instead, the protection of farmers' interests should be always priority, then collective members vote together to determine the qualifications considering local customs. Centered on the interests of farmers, the qualification review of the transfer rights, the regulations of the transfer contract and provisions, the income distribution plan or the after-transfer supervision should fully guarantee the interests of the farmers. Use of rural homestead should be regarded as an important economic supplement, and multiple economic methods need to be explored to solve the historical difficulties of rural homestead. Focused on the asset capital value, the local need to improve the value-added income mechanism of rural homesteads under market mechanism and government empowerment, so as to realize the optimal allocation and effective utilization of rural homestead resources.

References

- [1] Wang Yangzhi, Huang Min, Du Wei. Reflections on deepening the reform of "separation of three rights" of rural homesteads [J]. Rural Economy, 2019(07):18-25.
- [2] Xuanyuan Shenmeng. Research on the reform of the separation of three rights of homestead under the rural revitalization strategy [J]. Marketing Circle, 2020(20): 124-125.
- [3] Li Guoxiang. Fully understand the "separation of three rights" and further the reform of the rural homestead system [J]. Chinese Party and Government Cadres Forum, 2020 (08): 63-66+1.
- [4] Xiang Ganyong. Thoughts on the pilot reform of the "separation of three rights" of rural homesteads - Taking Loudi City as an example [J]. Land Resources Guide, 2019, 16(01): 1-5.
- [5] Li Huai, Chen Xiangguang. The power realization and deepening path of the "separation of three rights" of homestead under the background of rural revitalization [J]. Journal of Northwest Sci-Tech University of Agriculture and Forestry (Social Science Edition), 2020, 20(06): 28- 34.
- [6] Lv Qingyun, Xu Junhua. Comprehensively understand the "separation of three rights" and further the path research of rural homestead system reform [J]. Shanxi Agricultural Economics, 2021(05): 31-32+64.