

Empirical Investigation and Discussion of the Dispute of the Use Right of Homestead

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Abstract

Under the background of the separation of the three rights of homestead, it is necessary to construct the system of how to transfer the use right of homestead. Through the sorting out and analysis of 92 relevant judgment documents since 2021, it is found that there are practical problems such as the single release form of the use right of homestead, the blocked circulation of the use right of homestead, and the difficulty of guaranteeing farmers' rights and interests. Based on this, through the in-depth study of the dispute focus of the selected cases, the following suggestions are put forward: promote the diversification of the use right of homestead, break through the dilemma of the use right transfer of homestead in the double levels of legislation and justice, and effectively protect the farmers' living rights and income rights. In order to provide effective reference for the use of homestead in practice.

Keywords

Homestead Use Right; Judicial Case; Farmers' Rights And Interests.

1. Case statistics and analysis of disputes of homestead use right

1.1. Data source and sample selection

This study with "land use" as keywords, on January 1, 2021 to January 1, 2024 for the time range, through the retrieval in judicial documents, through one by one, get 92 valid written documents, and as a research object, trying to reveal the dilemma in "land use circulation".

Through reading and analysis of sample cases, there are 37 judgment documents in the first and second instance in 2021, including 32 disputes over the right to use the homestead and the transfer of rural housing, 28 copies of the transfer contract invalid; 2 copies, 1 copies of disputes over the use of the homestead and the mortgage of rural housing, 1 invalid copies of the mortgage contract; 1 dispute over the right to use the homestead and the ownership of rural housing, 0 copies invalid; 2 disputes of cooperative construction on the homestead, 2 copies invalid; 30 members of the rural collective economic organization are the plaintiff.

In 2022, there were 30 judgment documents in the first and second instance, including 28 disputes over the right to use the homestead and the transfer of rural housing, 26 copies of which transfer contracts were deemed invalid; 1 dispute over the right to the use of the homestead and the mortgage of rural housing, 0 copies of which were deemed invalid; 1 dispute over the homestead, 1 copy of which was deemed invalid; 24 copies of the members were the plaintiff.

In 2023, there were 25 copies of judgment documents in the first and second instance, including 21 disputes over the right to use of homestead and the transfer of rural housing, 21 transfer contracts deemed invalid; 2 disputes over the right to use of homestead and mortgage, 2 mortgage contracts deemed invalid; 2 disputes over cooperative construction on the homestead, 2 invalid; 19 members of the plaintiff.

1.2. Analysis based on sample cases

1.2.1. Case type analysis

Among the sample cases, there were 81 cases of the homestead use right and rural housing transfer, accounting for about 88.05% of the total sample cases; 1 case of the homestead use right and the investment of rural housing, accounting for about 1.09% of the total sample cases; the homestead use right and rural housing mortgage cases were 5, accounting for about 5.43% of the total sample cases; 5 cases of cooperative construction on the homestead, accounting for about 5.43% of the total sample cases. The cases are widely focused on the disputes over the right to use homestead and the transfer of rural housing. Relatively speaking, there are few disputes over "the right to use homestead and mortgage of rural housing", "homestead use right and rural housing equity" and "cooperative construction". In a certain sense, it shows that in the process of releasing the right to use rural homestead, the farmers widely adopt the transfer of the principle of the right to use rural homestead or based on the integration of the premises, and the right to use the homestead is transferred together with the rural housing.

1.2.2. Analysis of the referee results

Since the sample cases mainly focus on the transfer disputes of the right to use the homestead, other types of disputes are not enough to reflect the problems, so the judgment results of the transfer disputes of the right to use the homestead and the sale of rural housing are analyzed. From the judgment basis and judgment results, the court decided that 6 cases of the transfer contract and the rural housing sales contract were valid, only accounting for about 7.4% of the total number of transfer samples. The reasons for identifying valid judgments can be summarized as follows:

First, the contract dispute occurs in the pilot area of the reform of the homestead system, because the transfer contract of the right to use the homestead or the housing sales contract complies with the relevant local policies.

Second, the buyer has been in possession of the house for many years, which has produced a stable possession relationship.

The court ruled that 75 contracts, including the transfer of homestead use rights and rural housing sales contracts, were invalid, accounting for about 92.6 percent of the total sample. The reasons for determining the invalid judgment can be summarized as follows:

First, the transfer of the right to use the homestead to non-members of the rural collective economic organizations or urban residents does not conform to the mandatory provisions of relevant laws and regulations.

Second, the transfer of the right to use the homestead will damage the social public interests and the legitimate interests of the collective economic organization and its members.

1.2.3. Analysis of the subjects of litigation and the causes of disputes

From the perspective of the subject of litigation, the judgment documents of the plaintiff and the appellant are members of rural collective economic organizations, accounting for 79% of the total sample, and 19 judgment documents of the plaintiff and the appellant are members of other rural collective economic organizations and urban residents, accounting for 21% of the total sample. Members of the rural collective economic organizations as the plaintiffs and the appellant usually request the court to confirm the invalidity of the contract, while other members of the rural collective economic organizations and urban residents as the plaintiffs and the appellant usually request the court to confirm the validity of the contract.

After careful review of the contents of the sample cases, it is not difficult to find that the causes of disputes in the case of the transfer of the right to use homestead can be attributed to two main reasons: First, the increase in land value after the transfer of the right to use homestead or farmers' discovery that the original value of the land is much higher than the transfer value,

resulting in the loss of farmers' economic interests due to the failure to fully explore its economic value; Second, there is a large number of idle house land when farmers enter the city. After transferring the idle house land, if farmers return to the rural collective, they will lose the basic survival guarantee. Therefore, farmers often want to choose litigation to get back the idle house land.

2. The dilemma in the process of homestead use right circulation

2.1. Homestead use right transfer form is single

According to the sample cases, the vast majority of disputes over the right to the use of homestead revolve around the transfer of the right to the use of homestead, and there are few cases about the right to the use of homestead investment, mortgage and other aspects. It is not difficult to conclude that in the practice process of liberalizing the use right of homestead, the form of circulation is too simple, which is only reflected as a way of transfer, but it inevitably contradicts the spirit of the policy. The unitization of the right to use residential land will inevitably limit the mobility of residential land resources and farmers' income increase channels, and also restrict farmers' flexible use of land, which is difficult to meet the special needs of different regions and different farmers, and thus affect the efficient allocation of agricultural land resources and the sustainable development of rural economy. The reasons for this phenomenon may be as follows: first, the management and supervision mechanism of relevant departments is not perfect, which leads to obstacles in the promotion and implementation of the diversification of active methods in practice; Second, farmers' own understanding is insufficient[1], Farmers are affected by information asymmetry, unfair distribution of benefits and other issues when choosing the way of letting loose, so they are more inclined to choose relatively simple and direct transfer methods, and lack sufficient understanding and trust in ways such as investment, cooperation and co-construction.

2.2. The right of the homestead to use the circulation is blocked

2.2.1. Law and policy cohesion are not coordinated

The relevant policy points out that "implementing the collective ownership of homestead, protecting the qualification rights of homestead farmers and the property rights of farmers' houses, and moderately activating the use rights of homestead and farmers' houses", its direct goal is to revitalize idle homestead and idle residences, which requires moderately activating the use rights of homestead and promoting the limited access to the market.

However, under the current legal background, as a valuable and transferable usufruct, the right to the use of homestead land is restricted, which leads to its circulation being blocked. Article 362 of the Civil Code stipulates: "The owner of the right to use the land owned by the collective shall have the right to occupy and use the land according to law, and shall have the right to use the land to build the house and its ancillary facilities according to law." Article 63 of the Land Administration Law stipulates that "the right to use land collectively owned by farmers may not be assigned, transferred or leased for non-agricultural construction." From this perspective, the content of the right to the use of homestead is that the collective member farmers occupy and use the collective land to build houses and ancillary facilities, and the right to the use of homestead can only be transferred among the members of the collective economic organization, and the right to the use of homestead can not be transferred to people outside the collective economic organization. From the perspective of the right to use the house land, the current law only endows the right to occupy and use the house land, but does not endows the right to profit. The content of the right to use the homestead is actually determined by the nature of the homestead[2]. The purpose of the ownership of rural land by farmers collective is to satisfy the survival needs of collective members with the nature of land resources and provide basic social

security for collective members. Therefore, the ownership of the house land belongs to the collective, and the collective members apply for the right to use the house land from the collective, and build the farm house by exercising the right to use the house land. Because of this, the right to use the house land is satisfied by the possession and use of the house land, and is limited to the use value of the land bearing buildings.

2.2.2. Similar cases exist with different decisions creating a practice risk

Based on the sample cases, the members of the rural collective economic organization usually act as the plaintiff to request the invalid contract confirmation, while the non-collective economic organization members who transfer the right to use the homestead usually act as the defendants to request the confirmation of the validity of the contract. The cause of action proposed by the plaintiff is usually based on articles 143 and 153 of the Civil Code, which state that the contract is invalid because the contract violates the mandatory provisions of laws and administrative regulations. The defendant usually for the contract, is based on both sides true meaning, voluntary and equal contract, in the contract, the plaintiff for the invalid clause is knowing that the law, at the same time, on the basis of the central policy, the country has started the land circulation pilot reform, should allow the land rights and the scope of rural housing transfer, so should be that the contract is effective. However, since there is no perfect legal expression in the policy of releasing the use right of homestead, based on this, The pilot areas of the homestead system reform are very different from the non-pilot areas, There are different judgments in such cases, In the pilot area, Judges usually adjudicate valid contracts based on local pilot policies; In the non-pilot areas, Judges often think that the key to judging such cases is whether the assignee is a member of the rural collective economic organization, If not, Usually, the contract is invalid because of violating the mandatory provisions of law and administrative regulations, This kind of practice is not conducive to the need of farmers to release the right to use the homestead, Hindering the release of the right to use the homestead, It is not conducive to the realization of the policy "to increase farmers' property income needs"; Second, to promote the illegal transfer of the right to use the homestead of the phenomenon of breeding, Some farmers in the normal transfer of the right to use the homestead behavior is blocked, The purpose of transferring the homestead is often achieved through the implicit transfer of the homestead and the actual transfer of the indefinite lease contract. Obviously, these practices have brought new shocks and challenges to the rural social order.

2.3. It is difficult to protect farmers' rights and interests

The long-term goal of the transfer of homestead use rights is to help rural revitalization and give farmers more full property rights and interests. But based on the sample case, the plaintiff and the appellant for the rural collective economic organization members of the written judgment of 73,79% of the total samples, combined with the above two cases the dispute cause analysis, the status quo is in the process, the farmers living rights and economic rights protection does not reach the designated position.

2.3.1. The protection of farmers' living rights is insufficient

Homestead system has the nature of social welfare, and its original intention is to guarantee the basic living conditions and living conditions of farmers. In practice, farmers usually choose to release the right to use the homestead because of the idling of the need to enter the city. As the living guarantee for farmers to survive, rural homestead provides the last retreat for farmers who encounter setbacks to work in cities and start their own businesses in cities.

Due to the problem of short-sighted interests of farmers, with the further prominence of the property attribute of the homestead, some farmers do not fully consider the long-term interests and rashly release the right to use the homestead to the outside world. In this case, once the farmers encounter setbacks on the road of "entering the city", they can only hope that the original released house land. Therefore, the recovery of the house land is difficult to recover,

and as the result, the farmers will become the "unemployed" farmers. Secondly, the transfer of the right to use the house land is based on the voluntary consent of the contract, thus damaging the social relations.

2.3.2. The protection of farmers' benefit rights is insufficient

One of the main purposes of the use right of homestead is to use the idle homestead to generate economic income for farmers, so as to promote the development of rural economy. However, in the process of releasing the right to use the homestead, the right to take out of its actual value. There are three main reasons, as follows: First, The transfer of the right to use the homestead, as the main form of release, There are many limitations and uncertainties in practice, Failure to give full play to the property value of the land[3]; second, The location of the homestead, the area size and other factors will affect its value, However, due to the lack of scientific evaluation and pricing mechanism in the process of homestead use right release, Causes the transfer price of the homestead use right is always low, This not only affects the interests of the farmers, It also affects the effective use of land resources; third, Farmers in a weak position in the process of release, Due to the limited experience and information asymmetry, Farmers lack an accurate understanding of market conditions and land values, The transaction price of the right to use the homestead is inconsistent with the actual price, Often always trade at prices significantly below their actual value, at the same time, Farmers for their lack of legal awareness, Easy to be infringed in the transaction process, Causing damage to the interests.

3. Discussion on preventing and resolving the dispute of homestead use right

3.1. Promote the diversification of the transfer mode of homestead use right

It is not difficult to foresee that the diversification of the circulation mode of the right to use homestead will be the direction of activation in the future. At present, according to the pilot areas and the spirit of relevant policies, the circulation form of the right to use homestead can be explored in four directions: sale, mortgage, ownership of property rights, and cooperative development.

As the main way to release the right to use the homestead, under the current legal framework, the transferee is limited to the members of the collective economic organization. Under the background of the separation of the three rights of homestead, the pilot areas constantly explore the sale of the right to use the homestead without harming the interests of farmers. For example, in Yiwu, Zhejiang province, farmers are allowed to transfer the right to use the homestead across collective economic organizations, but it is still limited to the identity of farmers, and the maximum service life after the sale is 70 years.

activating the mortgage power of the right to use the homestead can further release the intrinsic value of rural land, make the original "sleeping assets" of rural families become liquid and proliferative capital, and inject financial vitality into rural revitalization[4]. As a kind of security real right without transfer possession, the homestead is still occupied by farmers during the mortgage period. In fact, the circulation of the right to use the homestead only occurs in the realization link of mortgage[5]. For example, in the pilot area of Deqing, Zhejiang province, rural housing mortgage loans are allowed in relevant laws and policies, and relevant financial institutions are encouraged to carry out rural comprehensive property rights mortgage loans, with the total amount of rural housing mortgage loans exceeding 350 million yuan.

The use rights of rural residential land for investment can be divided into two categories. The first is the investment method that guarantees a minimum return, which falls under the debt-like investment of rural residential land use rights. Since the guaranteed return is akin to rent, it is not included in the activation forms of rural residential land use rights. The second is the

equity-based investment method, which is a property right investment of rural residential land use rights and can be included in its activation forms. Currently, there are primarily two models of property right investment in rural residential land use rights in the pilot areas. The first model involves direct investment by farmers, where farmers contribute their idle residential properties and vacant land to a company or a cooperative formed by the village collective. The second model involves collective investment by the village. For instance, in Neijiang City, Sichuan Province, farmers transfer their land use rights to the village collective, which then introduces social capital for joint ventures, creating rural leisure projects that integrate guesthouses, dining, and tourism.

Urban-rural cooperative development refers to the practice where rural collective economic organization members provide residential land, while urban residents or social capital provide funds to jointly construct housing[6]. As an important method for revitalizing idle rural assets, its legal nature remains debated in academia. Some scholars argue that its legal nature is rental, while others view it as a sale of land use rights[7]. In practice, such as in the reform in Luzhou County, Sichuan, rural collective members provide the land, and social entities provide the funds for development. Upon completion, the social entity holds ownership of the house and the corresponding land use rights, which are commercial for 40 years and residential for 70 years. After the term expires, the rights automatically revert to the rural collective members

3.2. Appropriate relax restrictions on the transfer of the right to use homestead

Whether the restrictions on the transfer of the right to use homestead land should be relaxed has become a central issue in disputes over the right to use homestead land. Some scholars believe that the right to use homestead land can be transferred along with the sale of rural houses, but the independent sale of the right to use homestead land should be prohibited[8]. This not only aligns with the principle of "house and land integration" but also leaves room for further liberalization of transfers in the future. Other scholars argue that the right to use homestead land should be endowed with the right to benefit, in addition to the rights of possession and use, and that the core of this benefit right lies in the right of disposal[9]. They contend that the direction of reform in the homestead land system should be to enhance the benefit rights as well as the transfer, mortgage, and disposal rights associated with the right to use homestead land. This paper argues that limiting the transfer of the right to use homestead land to members of the same rural collective economic organization hinders the effective utilization of rural land resources to some extent. It is also detrimental to improving the economic well-being of farmers, promoting rural economic development, and achieving rural revitalization. Especially in today's context of rapid urbanization, where many farmers are moving to cities for work or entrepreneurship, idle homestead resources need to be effectively utilized. The goal of the homestead land system is transcendent in nature, as it has evolved from the original goal of "residential security" to a dual objective of "residential security" and "property value." Therefore, it is necessary to appropriately relax the restrictions on the transfer of the right to use homestead land.

The focus of relaxing the restriction on the right to use homestead is not only "relaxed", but also "appropriate". "relaxed" is not difficult to understand, that is, the original right to use the homestead can only be transferred within the scope of the rural collective economic organization to make a breakthrough, allowing more subjects to participate in the transaction process of the right to use the homestead. However, the "relaxation" must not be disorderly, unlimited relaxation, we need to make certain restrictions on it, that is, to play an "appropriate" role. Taking the reform of Yiwu in the pilot area as an example, the paper expands the scope of the right to use the land of the homestead in a planned and phased way; for example, Dali extends the transfer scope of the right to use the homestead to the rural villagers within the

jurisdiction of Sichuan Province and Liuyang in Hunan province to the scope of the right to use the homestead. It can be seen that when the pilot area releases the use right of homestead, it can guarantee the rights and interests of farmers' homestead, and realize the original intention of "households have to house" in the homestead system; second, it is conducive to the economical and intensive use, and better realize the effective use of the use right of homestead

3.3. Ensuring the residential and benefit rights of farmers.

3.3.1. Ensuring farmers' residential rights

For farmers, regardless of the approach taken to activate rural residential land use rights, their basic residential and living rights must be protected. After participating in the activation of land use rights, farmers should continue to have adequate security in terms of housing, retirement, and medical care. This protection is essential to alleviate their concerns and encourage their active participation.

In the context of activating land use rights, the principle of integrating land and property means that once the land use rights and rural housing are transferred across collectives, according to the Land Administration Law, "rural villagers who sell their housing will not be approved for new land use rights." This regulation could lead to a lack of basic survival security for farmers. Therefore, it is necessary to leverage the qualification rights of the three-rights separation to ensure farmers' residential rights. Qualification rights can be defined as the rights to use land equivalent to the area of the rural housing transferred across collectives, with no fixed term limits and without the need to pay usage fees to the collective. Farmers can claim their right of first refusal or priority to ensure their housing security.

In addition, there are still many gaps in the current rural social security system, and it is necessary to further improve the rural social security system, such as providing transitional affordable housing for farmers who temporarily lose their housing security. It is worth mentioning that rural collective economic organizations and relevant organs should be responsible for the social security of farmers, and most of the rural collective economic organizations are still in the stage of development, economic strength is insufficient. Therefore, in the process of providing social security to farmers, the relevant organs should bear the main responsibility, and the collective should provide supplementary social security to farmers[10].

3.3.2. Ensuring farmers' income rights

Firstly, the scope of rural residential land use rights should be appropriately expanded. According to supply and demand theory, when the scope is too narrow, the market demand is significantly less than the supply, making it difficult to fully realize the land's value. By expanding the scope, market demand will increase correspondingly, and the transaction price of land use rights will better align with their actual value. Secondly, a scientific evaluation and pricing mechanism for rural residential land use rights needs to be established. This involves training a group of professionals specializing in land use rights evaluation. During the evaluation, factors such as the location, size, and surrounding resources of the land should be carefully considered to determine a fair and reasonable price, ensuring that the evaluation results are equitable and just. Thirdly, creating a transaction market for rural residential land use rights can enhance transparency and standardization, facilitating land use rights circulation. An electronic trading platform utilizing internet and information technology can be established to offer online transactions and information services. This would help prevent farmers from suffering losses due to information asymmetry, reduce transaction costs, and increase convenience, thereby attracting more eligible participants and promoting the activation of land use rights. Additionally, strengthening legal education and training for farmers is essential to raise their legal awareness and rights protection consciousness. This will enhance their bargaining power and risk prevention capabilities during the activation process, reducing contract disputes and rights infringements due to insufficient legal awareness.

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