

Study on Market-Based Land Requisition and House Dismantlement

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Keywords:

SUMMARY

The so-called market-based land requisition and house dismantlement denote that land resources as well as land requisition and house dismantlement shall be fully allocated and regulated with the market demand and supply as well as the price mechanism by applying the operation mechanism and rules of market economy to land requisition and house dismantlement. Being market-based means governments will no longer be considered as the principal part of economic activities, each body in economic activities maintains an equal relationship with each other, and the activities of the market economy stick to consultation on the basis of equality and mutual benefit. Under the conditions of the socialist market economy, it is an inevitable trend for land requisition and house dismantlement to be market-based, which is not only required by the protection and rational utilization of land resources, but also acts as one aspect of protecting the interests of peasants as well as solving the problems of “agriculture, countryside and peasants”. From the nationwide side, although land requisition and house dismantlement are being marketized gradually, there still exist some problems.

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1. EXISTING LAWS AND REGULATIONS ON LAND REQUISITION AND HOUSE DISMANTLEMENT

Article 10, Clause 3 of CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA revised in 2004 provides that the state may, in the public interest, requisition land for its use and make compensation in accordance with the law. The Law of Land Administration of the People's Republic of China Article 46, Clause 1 provides that for requisition of land by the State the local people's governments at and above the county level shall make an announcement and organize the implementation after the approval according to the legal procedures. Article 47 provides that in requisitioning land, compensation should be made according to the original purposes of the land requisitioned. Compensation fees for land requisitioned include land compensation fees, resettlement fees and compensation for attachments to or green crops on the land. The land compensation fees shall be 6-10 times the average output value of the three years preceding the requisition of the cultivated land. The resettlement fee shall be calculated according to the number of agricultural population to be resettled. The number of agricultural population to be resettled shall be calculated by dividing the amount of cultivated land requisitioned by the per capital land occupied of the unit whose land is requisitioned. The resettlement fees for each agricultural person to be resettled shall be 4-6 times the average annual output value of the three years preceding the requisition of the cultivated land. But the maximum resettlement fee per hectare of land requisitioned shall not exceed 15 times of the average annual output value of the three years prior to the requisition. The standards for land compensation and resettlement fees for land requisitioned shall be determined by various provinces, autonomous regions and municipalities in reference to the land compensation fees and resettlement fees for cultivated land requisitioned.

According to above-mentioned legal provisions, land requisition and house dismantlement, predominated by governments, are parts of governments' administrative functions. The local people's governments at and above the county level do not only conduct land requisition and house dismantlement, but also work out various compensation standards. Take <Measures and Compensation Standards for Land Requisition Implementation in Shenzhen> as an example. This document offers definite provisions on land compensation fees, resettlement fees and compensation for most attachments to or various green crops on the land requisitioned. Hence, it is believed that the market-based land requisition and house dismantlement are restricted in

a way. However, the arrangement and implementation by governments do not mean the governments are devoted to each detail. Of the specific implementation of land requisition and house dismantlement, much can be completed by relying on the market and through various professional organizations. In fact, land requisition and house dismantlement are on the way to be market-based.

2. PROGRESSIVE MARKETIZATION OF PARTIES INVOLVED IN LAND REQUISITION AND HOUSE DISMANTLEMENT

Parties involved in land requisition and house dismantlement have gradually shifted from the original requisitioning parties (land Administration authority), dismantling parties (construction units of projects) and requisitioned parties (collective economic organizations and individual villagers) to the organs of land requisition administration (land Administration authority), dismantling parties (construction units of projects or other social organizations entrusted by land Administration authority) as well as requisitioned and dismantled parties (collective economic organizations and individual villagers). Along with the progressive marketization of the property of land use, the coerciveness of land requisition and house dismantlement has gradually weakened. An equal relationship is being formed progressively between dismantling parties and dismantled parties. Besides, an equal consultative mechanism is emerging during the negotiation about land requisition and house dismantlement. Therefore, dismantling parties need to take into comprehensive consideration the dismantlement costs and the construction costs of projects so as to choose a location scheme with relatively low cost, while dismantled parties also can bargain with dismantling parties to strive for a most favorable compensation scheme. On the other hand, the compulsory dismantlement, as a unilateral act, is adopted less frequently.

3. PROGRESSIVE MARKETIZATION OF EVALUATION IN LAND REQUISITION AND REMOVAL

First of all, various real estate appraisal institutes have no longer served as affiliates of governments. After reorganization to cut off their ties with governments, the real estate appraisal institutes have turned into social agencies with characteristics of enterprises and with appraisers as their core. In terms of their property, they have shifted from the consultative organizations of governments to institutes providing price verification services. Moreover, the appraisal results are not only responsible to government departments, but also to each party involved, and the society.

Secondly, real estate appraisal institutes do not serve a certain government organization only, but face the whole market to provide services for each party involved in land requisition and

house dismantlement. Hence, each party involved in a land requisition and house dismantlement has the right to commit qualified real estate appraisal institutes to conduct appraisal for the houses proposed to be dismantled. Meanwhile, when the dismantled party disputes against the appraisal report issued by a real estate appraisal institute entrusted by the dismantling party, he has the right to entrust other real estate appraisal institutes to conduct reappraisal. Although laws and regulations concerning land administration have still not provided definite provisions on such acts, these acts has been recognized in practice with reference to relevant provisions in < Regulation on the Dismantlement of Urban Houses>.

Thirdly, real estate appraisal institutes must improve their technical level, qualification level and reputation so as to undertake appraisal businesses of land requisition and house dismantlement from the market. At present, the on going appraisal business in the land requisition and house dismantlement for Shen-Hui Road Reconstruction Project and Land Preparation Project of Universiade City in Shenzhen has adopted a method similar to bidding and tendering to select appraisal institutes, which is fairer and more reasonable.

4. PROGRESSIVE MARKETIZATION OF COMPENSATION METHODS AND PRICE FOR LAND REQUISITION AND HOUSE DISMANTLEMENT

According to the provisions of *The Law of Land Administration of the People's Republic of China*, in requisitioning land, compensation should be made according to the original purposes of the land requisitioned. Compensation fees for land requisitioned include land compensation fees, resettlement fees and compensation for attachments to or green crops on the land. From the nationwide side, the compensation for land requisition and house dismantlement is carried out basically in accordance with the above-mentioned provisions. However, some coastal regions with developed economy have gradually reform the compensation methods, and improve the compensation standard to be market-based. Take Shenzhen as an example. Such changes are reflected as follows: □A resettlement method to move residents back to their original places is more frequently adopted. Even if it is a so-called illegal building, resettlement of different standards to move the resident back to his original place is granted only by distinguishing whether the resident has one or several buildings; □The standard for identification of the original usage of land is loosened, and the fact of an unauthorized conversion to land for collective-owned construction use is basically authorized. Meanwhile, the illegal construction areas exceeding the standard are legalized by paying overdue land price (10 – 25% of the standard land price) and penalties (RMB 10 – 30 per square meter in Longgang and Bao'an, while RMB 30 – 130 per square meter in the special economic zone), and the compensation standard during land requisition and house dismantlement is the surplus remaining after the market price is deducted by the unpaid land price and penalties; The resettlement price of peasants' private residences is appraised in strict accordance with the

normal house construction costs, thus making the compensation standard RMB 300 – 400 per square meter higher than the actual costs of peasants; Both temporary resettlement fees and business losses are calculated according to the market rent standards, and a relatively reasonable compensation is granted for those which have been changed for commercial purposes without any authorization. All these changes are close to the reality of urban house dismantlement as they are more reasonable, closer to the actual benefits and expected benefits of those whose houses are dismantled, and easier to be accepted by them.

5. SEVERAL EXISTING PROBLEMS

(1). Serious lag in building a legal system for land requisition and house dismantlement

The Law of Land Administration of the People's Republic of China was introduced and put in force in 1986. Although it has been modified for several times, there still exist some faults in land requisition and house dismantlement. Thus, the Law has greatly fall behind the demands of development of the socialist market economy, resulting in ineffective protection of cultivated land as well as disorderly land administration. The problems mainly show as follows:

Article 47 of The Law of Land Administration of the People's Republic of China provides that in requisitioning land, compensation should be made according to the original purposes of the land requisitioned. But in fact, in order to develop rural economy, a large amount of land for farm use has turned into land for collective-owned construction use, a kind of land unapproved with planning but actually existing. Hence, the original usage of requisitioned land often becomes a focus disputed by both parties of land requisition and house dismantlement. We believe that the reality of economic development, the actual usage of land as well as the feedback of land leasing benefits should be taken into consideration to avoid sedulously driving down compensation standards.

Although the standard of compensation for land requisition has been improved for several times, it can still not reflect the real benefits and expected benefits of land, which essentially deprives the interests of peasants, and compensates the expenditure of governments. The Land and Resources Department of Guangdong Province once issued <Notice on Trial Implementation of Circulation of the Use Right of Rural Collective-Owned Construction Land> in July, 2003, making an attempt to authorize “Nanhai Mode” and protecting peasants’ long-term benefits from land. However, this “Notice” contradicted the existing laws and regulations concerning land administration. As is more important, it also conflicted with the interests of local government. Thus, it was not well implemented. We believe that the actual difficulties of the employment of the peasants losing their land should be taken into account under the conditions of market economy. In addition, the reform of compensation methods as

well as compensation items, and the improvement of compensation standard should enable the living standard of the peasants losing their land not to decline, but somewhat go up. As land requisition itself is a kind of unilateral act, it is only right and proper for the party laying compulsion to offer the party under compulsion a reasonable compensation.

A large amount of the land requisitioned is launched into the development of commercial real estate. The land is often obtained by governments under their unified requisition, and then released after primary development. However, the Law of Land Administration does not provide corresponding regulations on such kind of land requisition, leading to different rules and standards in different regions with disorderly management. Therefore, it is necessary for the Law to be revised to fully specify these issues.

The system for submitting the purpose change of agricultural land for approval as well as the system for submitting the quota of land requisition for approval plays a limited role. If these methods of administrative management can not be carried out actually, other methods should be taken into consideration at the same time, for example, setting an upper limit to annual land requisition, compulsorily making the area of requisitioned land public, additionally collecting land compensation fees, and controlling the distribution of land benefits etc.

The detailed rules for the implementation of the Law of Land Administration only give general provisions with full administrative meanings on the specific procedures of land requisition and house dismantlement, and the rights and obligations between the parties involved in land requisition and house dismantlement and other parties related. What's more, there is even no article concerning judicial remedy, which is unable to meet the demand of actual implementation. Thus, many problems have to be solved with reference to < Regulation on the Dismantlement of Urban Houses >. Once compulsory dismantlement is adopted in practice, the dismantling party will inevitably lose the lawsuit for the problem of procedures if judicial organs strictly enforce the law.

In a word, great important should be attached to the problems mentioned above. Only by perfecting the laws and regulations, strictly conforming to the procedures of land requisition, reforming the compensation methods for land requisition and improving compensation standard can the degree of intensive land utilization be truly improved, cultivated land be well protected and sustainable development be achieved.

(2). There is a big fall between the cost on land requisition and the benefits of land release, and local governments are unwilling to change the current situation.

According to the statistics from relevant persons of the Supreme People's Court, the price at which governments release land is 25 times higher than the cost on land requisition when

calculated by the average level of the whole country, that is, suppose the cost on land requisition is RMB 10,000 per Mu, then the releasing price will be RMB 260,000 per Mu. Hence, the benefits of land release have accounted for one third of local governments' revenue. Under such circumstances, it has been a best choice for local governments to drive up the price of land release and try to drive down the cost on land requisition at the same time. Therefore, only by adopting economic (raising the cost on land requisition and controlling the distribution of land benefits etc) and administrative (strictly conforming to various systems of examination and approval, and establishing economic indices concerning people's livelihood) methods at the same time (more stress should be laid upon economic methods), can local governments' impulse to requisition land on a large scale and drive up the price of land release as well as the occurrence of their illegal acts concerning land be controlled.

(3). How to understand the reasonableness of resettlement compensation standard in land requisition and house dismantlement

According to the provisions of relevant articles in the Law of Land Administration, whether the resettlement compensation standard in land requisition and house dismantlement is measured as reasonable is determined by whether it can guarantee the original living standard of the dismantled party will not fall. However, when the resettlement compensation standard in land requisition and house dismantlement is carefully analyzed, there are still some unreasonable points. Compensation by the original usage of land is not so reasonable. Take Shenzhen as an example. Along with the progress of urbanization, water pollution has made surface water unusable for irrigation, and the labor force cost has greatly risen, making agricultural production enjoy no comparative advantage over others. Meanwhile, the enterprises that process raw materials on clients' demands, assemble parts for clients and process according to clients' samples, or engage in compensation trade have set their foot in Shenzhen on a large scale, incurring the appearance of a large amount of collective-owned workshops. In this way, the agricultural land has actually turned into land for construction use, and the living standard of peasants has been greatly improved. Under such circumstances, compensation by the original usage of land seems to be extremely unreasonable. The compensation standard is relatively low and is not adjusted along with the market change. Take Shenzhen as an example. During the period from 2001 to 2006, the price of vegetable has risen by nearly 100%, while the compensation for green crops on the land has not changed. Only the construction cost of houses basically accords with the market change as it is appraised by appraisal institutes. □ Before land requisition, peasants are able to obtain long-term benefits by their ownership of the land. However, after land requisition, they can only receive a lump-sum payment for the land benefits of several years. And these compensations will be quickly consumed within several years. On the other hand, there is a small possibility for the peasants losing their land to melt into cities and be reemployed. Even

if they are employed, most jobs they are engaged in are at the low level of the society. In this process, the factor of their psychological unbalance should also be considered. Hence, in order to truly guarantee that the original living standard of the dismantled party will not fall, all these factors should be taken into consideration. Land and producer goods (mainly workshops) should be left to collective economic organizations to continue developing their production and producer goods (mainly rental houses) should be left to peasants to maintain their existing living standard. As for these measures, Shenzhen have given a good answer, and peasants of Shenzhen are satisfied with the government. Although a large amount of land has been requisitioned in these years, no serious incident has occurred.

It is an inevitable trend for land requisition and house dismantlement to be market-based when the socialist market economy is built. We suggest that the laws and regulations concerning land administration should be properly adjusted so as to protect land resources, keep a sustainable development, relieve social contradictions and contribute to building a harmonious society.

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