

Study on Rural Property Right Legal System -From the Perspective of Homestead Use Right

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Abstract: Land is the most primitive, basic and traditional guarantee for farmers, but with the development of economy, under the influence of marketization and urbanization, it is also changing. In the process of transformation of rural land use right, efficient use of rural land use right homestead and optimization of resource allocation.

1. Basic theory of rural homestead

1.1 The definition and legal characteristics of the right to use rural homestead

The current law of our country has not made a direct and clear provision on the use right of rural homestead, but scholars have basically the same view from the academic principle. The use right of rural homestead is a unique form of usufructuary right in Our country. It refers to the right of land use that the members of rural collective economic organization enjoy in accordance with the law to independently build personal residence and accessory facilities on the land owned by peasant collective without time limit. The scope of use of rural homesteadland generally includes land for living houses, land for surrounding greening, and land for other living service facilities, such as livestock pens, toilets, garages, etc. In other words, members of rural collective economic organizations can only build individual houses, courtyards for one family to live in, and must be "one family and one house". Specific analysis is as follows:

(1) Special subject. The subject of the use right of rural homestead is a villager, a natural person, or a member of the collective economic organization, not a member of other economic organizations, nor an enterprise or public institution legal person. Villagers with its special status to belong to the collective organization according to the housing needs to apply for the right to use, to obtain the right to use the homestead.

(2) Rights are acquired free of charge. Free is a kind of welfare nature namely, the right to use residential land is the basic guarantee for farmers to survive, as long as it conforms to the conditions set by the state, it can be obtained, initial acquisition does not need to pay the use of costs, belong to free distribution.

(3) Unlimited use of rights. After obtaining the right to use a house site according to law, the owner may build houses and plant plants on the house site, as well as renovate, expand and transform the house. Is essentially a permanent long-term use.

(4) Restricted use right. First of all, the right to use rural homestead is a unique property right in China. Secondly, the use right of rural homestead is usufructuary right, which aims at the income of the use of things. There are still many restrictions on the circulation of homestead in our country. The user of the right of use cannot apply again after selling or renting.

1.2 The right to use rural homestead

At present, the development of the right to use rural homestead in China is relatively perfect, mainly reflected in the following aspects. The first is possession power, which mainly means that the user can directly control and manage the homestead, and can build houses and other appendages on the homestead. The 2nd is use right, try to use to house base namely, satisfy to its need, can be used at the life, also can be used at certain management, for instance: open hotel. Third earnings right, mainly some fruits, such as: before the house after the planting of fruits and vegetables and so on.

1.3 The legitimacy of prohibiting the circulation of rural homestead

The right to use homestead is a guarantee for the survival of farmers, and it is obtained free of charge. When the application of homestead for the survival of farmers does not need to be guaranteed, this situation can no longer be guaranteed. In this way, the increase of new population does not need to occupy new farmland to become homestead, which is also a protection of the rural collective farmland area, and the benefits and benefits are still enjoyed by the collective owner.

Second, do not allow the transfer is for farmers to survive the last safeguard, when farmers working in life can not get down and out, he could return to his hometown, at the very least, also can live in the homestead, not homeless, if because it allows a monopoly homestead, so this final barriers also was done not have. China is still a big agricultural country, and farmers are still the majority, which cannot be ignored.[1]

2. Analysis of problems existing in the system of rural homestead use right

2.1 The subject of acquisition is not clear

At present our country can find about rural homestead use right original main body regulation has "land management law" 62 clause 1 regulation: rural villager each this can obtain a homestead. There are two problems about this article, the first, here is "household" as the unit to define the right to use the main body, the basis of the "household" here comes from 1995 "Household registration Regulations of the People's Republic of China" article 5 provisions: with the director of the joint residence of the establishment of a household, with the director as the head of the household. An independent household living alone, with oneself as the head of the household. Here "door" the definition should be to satisfy registered permanent residence to register only, do not become a family to live together with parents commonly by rural custom, this and registered permanent residence byelao "the independent one that single lives, be householder with oneself" do not accord with, registered permanent residence "independent for door" it seems that the "door" limits wants money a few more than house base. Actually registered permanent residence in the "household", and the use of homestead in the "household" can not be equal. Second, there is no clear regulation on "rural villagers". For example, whether the villagers who have been working outside for a long time and have bought houses in other places are still "within the scope of rural villagers", if they are there, the homestead in the countryside must be left idle, resulting in a waste of resources.

2.2 Unreasonable acquisition procedures

Our country is active "land management law" 62 regulations about rural homestead obtain program: the first, after classics town people government examine and verify, have county-level people government approval finally, have collective organizer to offer. The owner of collective land ownership is a collective economic organization, and the right to decide should belong to the collective economic organization. Second, in practice, the specific operation right lies in the land management department, the township government or even the village committee, especially the latter two. Because China is a human society, the villagers' emotional factors are considered too much in the specific operation, and there is a lack of supervision, so the issuance of the right to use homestead is very non-standard. Third, the relevant part of the specific examination and approval of what laws are not clear provisions, in the examination and approval of the greater arbitrary.[2]

2.3 The registration system is not strict

The Land Management Law and the Property Law clearly stipulate that the acquisition of the right to use rural homestead should be registered according to law, but there are no provisions on the registration organ and contents. In reality, the use of homestead is basically not registered, which is the main reason for the confusion of the use of rural homestead. Registration means publicity, which can be supervised and managed to a certain extent.

2.4 The legislative effect of rural homestead is low and operability is poor

At present, there are only "Property Law", "Land Management Law" and "General Principles of Civil Law" on the legal aspects of rural homestead in China, and the number of provisions are few. In addition, there are some judicial interpretations, in addition to the rest of the state is some of the ministry of Land resources in rural areas to prohibit unauthorized occupation of farmland, area standards, certification and a series of issues issued when the notice, provisions; In practice, the main function is the documents issued by people's governments at all levels, the effectiveness is very low. There is no unified system and many conflicts exist in this situation. For example, from the perspective of the Property Law, farmers have the property right of individual houses, which is independent, complete and transferable in terms of its nature. But our rural homestead use right is non property right nature, cannot transfer. In this way, farmers can transfer their houses, but they can not transfer the homestead, and in Our country, the premises are inseparable. After the transfer of housing, the right to use homestead is also transferred to the assignee, which is an obvious contradiction.

2.5 The termination of the right to use homestead and idle driving

The elimination of the right to use rural homestead ends the original legal relationship between specific owners of the right to use rural homestead and makes it possible to start a new legal relationship of the right to use rural homestead, which undoubtedly improves the utilization rate of rural homestead. On the one hand, recover the idle land, "land management law" article 65 and the ministry of land and resources of the land ownership and use rights provisions of article 52 are regulated, but didn't get the implementation of strong, long, if the homestead construction building or house collapsed over 5-10 years unwanted, can take the initiative to withdraw. As for those who work outside for a long time, if they plan to return to the village, they can apply to the village committee or relevant departments once every two years, so as to better standardize the idle homestead.[3]

2.6 The supervision mechanism has not played its actual role

According to our country current countryside house base usually obtains relevant regulation, want to obtain usually to need to agree via the representative of place collective economic organization above all, examine and verify by township level people government next, even county level people government approval finally just can be obtained. What seems very perfect, embodies the powerful supervision of examination and approval of a people's government at the county level, but the reality is not entirely, but determined by the village cadres, village congress resolution, even without no show for the problem of rural land use supervision and the actual effect, it is also important reason for the abuse of the right to use house sites.

3. Suggestions on improving the use system of rural homestead

3.1 Clarifying the applicants for the right to use rural homestead

Based on the special function of the right to use homestead, it is to meet the needs of the basic life of the members of the peasant collective economic organization. Want strict limit to applying main body, the first, to "door" should do special explanation, do not marry and marry do not live separately with parents cannot be independent "door", cannot want alone house base. Such limits did not have the "household" range wide. Second, for rural villagers, first of all, they must be members of the collective economic organization. Secondly, if they buy commercial houses in other places, they can no longer keep rural homestead. Third, China is the development of urbanization, rural residents who buy houses in other places should be given subsidies, and then recover rural homestead.

3.2 Detailing the conditions and procedures for obtaining the right to the use of rural residential land

First of all, the right of decision-making is entirely in the collective economic organizations. After the villagers apply, they shall hold a collective congress to discuss and make a decision in accordance with the provisions of the law, and the right of use can only be obtained through unanimous vote. It shall also be reported to the people's government at the township level and the people's government at the county level for filing. Finally, the department in charge of land should regularly inspect the site, check whether there is no truth, and record the inspection situation, clear responsibility of the person in charge.

3.3 Compulsory registration of the right to use rural housing land

The Land Management Law does not have mandatory provisions on the acquisition and registration of rural homestead, which needs to be made clear through relevant documents. No matter the original acquisition of homestead, or the alteration, transfer or elimination of homestead, registration must be carried out, and the use cannot be obtained without registration. For the use of the time limit for registration, not to deal with the expiration of the hand shall be given a corresponding fine; On the other hand, it has no effect against the third party; In the end, no assistance will be given to future homestead affairs, including family members' reasonable re-application for homestead use right, alteration and transfer of homestead use right, until relevant registration procedures are handled.

3.4 Homestead recovery measures

The recovery of homestead is mainly due to the loss of land caused by natural disasters, which is no longer suitable for planting crops. Expropriation of land and loss of land use right; Or the user of the right of use dies and no longer has the membership of the economic collective organization; There are also for the collapse of the house after a long barren and uninhabited homestead to recover the right to use homestead. The reclaimed homestead should be distributed to other people who meet the requirements, so as not to cause long-term waste. For the members of the economic organization whose homestead use right has been recovered, if it meets the requirement to give the homestead use right again, they should consider giving it again. At the same time, for the loss and re-grant of the right to use homestead, whether the loss or the re-grant, especially the reason should be clearly recorded, so as to facilitate future search.

3.5 Measures for compensated use of rural homestead beyond the standard

In spite of China's family planning policy, the phenomenon of having more than one child is still very common in rural areas. In view of this situation, we also need to ensure that these people need the right to use the homestead, but we need to pay for the use of the homestead, and appropriately charge a certain fee, which will be used for the economic collective organization, so as to ensure that every villager has a house to live in.

4. Conclusion

China is a large agricultural country, the proportion of rural population is large, and the use of rural homestead is the most basic guarantee for the survival of farmers, directly related to the guarantee of farmers' life, related to the stability of the whole society, can not blindly deny completely. At present, there are many practical problems in the system of homestead use right in China, which needs to be considered in the long term. In order to improve the provisions of relevant laws and at the same time, the farmers who have lost the right to use the rural homestead should be allowed to transfer gradually, which is bound to greatly reduce the risk of unstable social factors.

References

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