

Discussion on the realistic risks and legal norms of rural land circulation

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Abstract: Rural land transfer is an important contributor to the rural revitalization strategy, but at the same time, there are many real risks. From the perspective of stakeholder regulation of agricultural land transfer, the risks of agricultural land transfer not only involve contractual breaches and recovery by the transferring and transferring parties, policy changes and other risks, but also include the governance risks of the government and the risks of food security and ecological damage to the whole society. In this regard, government departments need to improve relevant laws and regulations, clarify and standardize rural land titles, formulate and promote standard form contracts for rural land transfer, improve rural land transfer procedures, regulate the order of agricultural land transfer in accordance with the law and build a diversified dispute resolution mechanism for agricultural land transfer, so as to actively and steadily promote rural land transfer.

1. Introduction

The transfer of rural land is an economic activity in which farmers legally transfer the right to use the collectively owned agricultural land they have contracted to operate to other entities, which is of great significance to the structural optimization of rural production factors and the promotion of agricultural industry development and rural revitalization. The report of the 19th National Congress clearly proposes to "deepen the reform of the rural land system and improve the system of dividing the 'three rights' of contracted land".^[1] However, as the reform of China's rural land system has lagged behind, the current laws and regulations on the transfer of contractual land management rights in rural areas are not yet sound, which has led to a series of risks and a lack of perfect institutional protection for the transfer of agricultural land.^[2] If these problems are not solved in a timely and effective manner, it will not only hinder the smooth and orderly progress of agricultural land transfer, but also affect the vitality of rural economic development. Therefore, it is necessary to explore the real risks of rural land transfer and their causes, and give a way to regulate them from the legal level, so as to provide assistance for the steady promotion of rural land transfer and the active implementation of the rural revitalization strategy.

2. Risk types of rural land transfer

The risk of rural land transfer refers to the uncertainty of achieving the reasonably expected

objectives of rural land transfer due to the influence of various potential factors. Unlike the risks of other economic activities, the specificity of rural land properties leads to the systematic and complex characteristics of its transfer risks. As the transfer of rural land involves different stakeholders, the corresponding risks also differ.^[3]

2.1 Realistic risks of the transferring party.

Traditional farmers generally do not have abundant knowledge of laws and regulations concerning the transfer of agricultural land and awareness of rights protection, and their understanding of the concepts of land transfer contracts and standardised transaction procedures is quite lacking, which leads them to easily fall into various types of contractual risks in the process of transfer transactions, thus making it difficult for their own legitimate economic rights and interests to be protected. These contractual risks are mainly manifested in the following three areas.^[4]

2.1.1 Risk of contract signing

In the practice of agricultural land transfer, farmers often agree with the transferee to transfer matters on their own, or even transfer their land management rights only through verbal commitments. As farmers generally lack the necessary business knowledge, it is difficult to agree in detail on the terms of the contract for the transfer of agricultural land, which may easily lead to damage to their rights and interests.^[5]

2.1.2 Risk of breach of contract

The risk of contractual breach of contract faced by farmers usually includes two aspects: Firstly, the transferee of agricultural land management rights has not allowed the agreement to change the land use without permission, which may eventually damage the rights and interests of farmers.^[6] Second, due to natural weather, market fluctuations, internal management and other factors, the transferee operator of agricultural land may unilaterally break the contract due to poor operation and poor profitability, and adopt default or run away to not pay the land transfer fee, making the interests of farmers damaged.

2.2 Realistic risks for the transferee.

Due to the complexity of the rural situation, rural land is even more important issues related to the basic survival and security of farmers and the stable and orderly development of rural areas, the transferring party of agricultural land not only faces the risk of default, but also the risk of policy.^[7]

2.2.1 Risk of breach of contract and recovery

The transferee of agricultural land usually has the advantage of market information and strong bargaining power, but it also needs to bear the risk of contract default. On the one hand, farmers who transfer their land may choose to default due to factors such as unemployment and differences in land transfer prices, while the increasing trend towards short-term agricultural land transfers forces the transferee to face the risk of loss of investment. On the other hand, from the perspective of the transferring party, rural land transfer patterns are usually in the form of "one to many", i.e. the transferring party of a large-scale operation signs a land transfer contract with many small individual farmers.^[8] When a large number of farmers default on their contracts, it is costly for the transferring party to recover.

2.3 Risks of other stakeholders

Due to the special nature of rural land, the transfer of agricultural land not only involves the transferring and transferring parties, but also relates to the interests of village collectives, the government and the public. On the one hand, for the government, there is the risk of increased social governance costs. The transfer of rural land promotes the flow of factors and productivity changes in rural areas and drives the transformation of rural economic and social development.[9]However, the contradiction between individual farmers' market perception and weak awareness of their rights and their strong motivation for economic interests, as well as the friction between traditional acquaintance social forms in rural areas and modern commercial civilisation, may increase social credit problems. If the transferring or transferring parties frequently default on payments or contracts, or if farmers' rights and claims cannot be protected, this may lead to a credit crisis in rural society, which in turn will increase the government's social governance costs. On the other hand, the public is exposed to risks such as food security and damage to the ecological environment. Driven by the intrinsic need to maximise economic interests, the transferee of farmland tends to reduce the cultivation of lower-yielding food crops and switch to higher-value added cash crops. According to data, the rate of non-food cultivation after farmland transfer is as high as 45%, and as the scale of farmland transfer expands, the risk of national food security may increase in the long run.

3. Analysis of the causes of rural land transfer risks

There are many factors involved in the formation of the real risk of rural land transfer, but from an institutional and legal perspective, it is closely related to the imperfection of the rural land system and the administrative system.

Firstly, there are certain flaws in the current rural land rights relationship. National law stipulates that the ownership of rural land belongs to the collective, but the absence of a collective interest body can easily lead to the allocation of contractual rights to agricultural land and the transfer of management rights to a few captives. Although the Property Law stipulates the property rights of farmers to rural land contracting and management rights, it also falls under the category of claims, which leads to the contracting and management rights of farmers often being easily eroded.

Secondly, there is a natural information asymmetry in the agricultural land transfer market. The information asymmetry between different stakeholders tends to amplify the contractual risks of agricultural land transfer, as the transferring party and the transferring party have different information advantages regarding the basic conditions of the agricultural land and future returns. Furthermore, there are irregularities in the procedures for the transfer of agricultural land. In the process of rural land transfer in China, the transferring party and the transferring party only verbally reach a commitment, or the transferring party signs a contract privately with the village committee, without legal procedures such as review, registration and notarisation. This not only creates hidden dangers for the performance of the transfer contract, but also makes it easy to create adverse effects such as rent-seeking and infringement of farmers' rights and interests.[10]

Finally, the imperfection of the relevant administrative system is also an important factor in the risk of agricultural land transfer. At present, China's agricultural land transfer is at an exploratory stage, and the government has not yet established a management policy system that runs through the whole process of the transfer transaction. The lack of effective communication mechanisms between farmers and grassroots management organisations, the lack of effective supervision by the government over land transfer parties and grassroots management organisations, and the imperfect measures to resolve disputes over transfer transactions are all factors that lead to real risks in all aspects of the transfer of agricultural land.

4. Legal regulation of rural land transfer risks

4.1 Clarifying and standardising rural land titles

In the context of the national implementation of the reform of the "three rights of rural land", relevant government departments should rationalise the land rights of farmers, speed up the work of confirming and certifying rural land rights, guarantee the rights of farmers to occupy, use, dispose of and gain from the land they have contracted in accordance with the law, and strictly regulate the power boundaries of grassroots management organisations. At the same time, it will continue to promote reforms such as the transfer of agricultural land use rights and mortgages, and speed up the legislative work on agricultural land transfer to provide legal guidance and regulation for the practice of agricultural land transfer in various localities. On this basis, strengthen the promotion of relevant laws in rural areas and actively guide all parties to regulate the transfer transaction in accordance with the law.

4.2 Develop and promote standard form contract text clauses for the transfer of agricultural land

A comprehensive and detailed contract text is the fundamental basis for managing the risks of rural land transfer in accordance with the law. Government departments should, in accordance with the Contract Law, the Land Management Law and other laws and regulations, formulate standard form contracts with comprehensive and detailed clauses on agricultural land transfer transactions, so as to effectively protect the rights and interests of the transferring and transferring parties. In accordance with the principles of fairness and reasonableness and reciprocity of responsibilities and rights, the standard form contract for the transfer of agricultural land should include the basic information of the relevant subjects such as the land contractor, the transferor and the transferee, information on the subject land and its scope of use, the amount of the transfer payment and the mode of payment, the time of payment, the conditions for the contract to take effect, the liability for breach of contract and other specific information.

4.3 Establishing sound procedures for the transfer of rural land

An open and transparent land transfer procedure will effectively reduce the potential risks of agricultural land transfer and effectively protect the rights and interests of both parties to the transaction. The establishment and implementation of a system of rural land transfer hearings will help to achieve transparency in land transfer procedures and reduce various kinds of transaction disputes. Considering the structure of rural society, rural land hearings can be convened by village collective organisations to convene both parties to land transfer transactions and apply for supervision by relevant natural resources management departments to ensure their legitimacy and authority. Within this framework, the village committee should communicate and announce in a timely manner information on the participants of the hearing, the time and place of its convening, and specific matters, and keep records of the meeting information on file. An open and fair hearing system can properly deal with the conflicting interests of both sides of the transaction in the process of agricultural land transfer transactions and form a legally valid basis document, thus safeguarding the interests of all parties.

4.4 Regulate the order of rural land transfer in accordance with the law

Government departments should strictly control the use of agricultural land transfer in accordance

with the law to effectively safeguard national food security. According to the Agricultural Law, the Regulations on the Protection of Basic Farmland and other laws, the system of responsibility for the protection of basic farmland should be strictly implemented, and illegal and unlawful acts of changing the use of rural land against the national policy should be resolutely investigated and dealt with, and the responsibility of relevant subjects should be pursued. In response to malicious arbitrage, fraud, breach of contract, rent-seeking and other illegal and unlawful acts that occur in the process of agricultural land transfer, corresponding regulations and measures should be introduced to restrict and combat them in accordance with the law, so as to safeguard the safety of the land market and the interests of farmers. In addition, natural resources management departments should, in conjunction with grassroots village collectives, establish a record-keeping system for agricultural land transfer contracts to strengthen the legal constraints of the contracts.

5. Conclusion

With the expansion of the rural land transfer market, disputes over the transfer of agricultural land will also increase, and the establishment of a sound dispute resolution mechanism will be an important guarantee to promote the transfer of agricultural land in a sound manner. Considering the high cost of legal proceedings in rural areas, the difficulties in obtaining evidence and the lack of legal knowledge of farmers, the dispute resolution mechanism for agricultural land transfer should be based on alternative dispute resolution methods such as conciliation, mediation and arbitration. At the same time, the dispute resolution mechanism for agricultural land transfer should fully respect rural customs and practices, and meet the value orientation of different subjects of land transfer under the premise of fairness and justice, so as to better resolve various disputes. In addition, government departments should open up the channels for communication between the interests of the subjects of agricultural land transfer, improve the system of letters and visits from farmers and the supervision mechanism for grassroots organisations in accordance with the law, promote the establishment of a mechanism for regular talks between farmers, village collectives and other parties, regulate and deal with the illegal and irregular behaviour of cadres of village collective organisations in the process of agricultural land transfer, and improve the credibility of rural land transfer.

References

- [1] Chen Yong, Zhao Shan. *The conditions and procedures for the management of rural land management rights have been clearly defined* [N]. *Chengdu Daily*, 2023-03-03(002).
- [2] Chen Yanyuan, Li Zengtian. *The impact path of rural land transfer on grain yield and its policy implications* [J]. *Hunan Agricultural Science*, 2023(02):99-104.
- [3] Fan Yongqiang, Li Jie. *Legal risks and prevention of the transfer of rural land contract management rights* [J]. *Agricultural Economics*, 2023(02):109-110.
- [4] Li Li. *Current problems of rural land transfer and countermeasures* [J]. *New Agriculture*, 2023(03):93-95.
- [5] Zhang Jao, Zhan Ying, Dou Yuqian, Liu Xiaoge. *Current status, hot spots and trends of research on rural land rights in China--a bibliometric analysis based on CNKI papers* [J/OL]. *Natural Resources Information*: 1-8. [2023-03-16].
- [6] Zhang Guanghui, Zhang Jian. *The impact of rural land transfer on farm household income: intrinsic mechanisms and empirical tests* [J]. *The Economist*, 2023(02):120-128.
- [7] Song Chunting, Li Qiang, Zhang Xiaomeng. *A literature review of recent studies on rural land transfer* [J]. *Business Economics*, 2023(03):124-127.
- [8] Wang Jianping. *Investigation and reflection on the transfer of rural land management rights in Baodi District, Tianjin* [J]. *Shanxi Agricultural Economics*, 2023(02):96-98.
- [9] Liu Xinyu, Li Min. *The impact of rural elderly people's migration on rural land transfer: the case of Qiqihar City* [J]. *Anhui Agricultural Science*, 2023, 51(02):243-246.
- [10] Zhao Yulian. *Difficulties and countermeasures of rural land transfer* [J]. *Shanxi Agricultural Economics*, 2023(01):74-76.