

Research on the compensation problem of recovering the right to use sea areas in advance due to public welfare

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Abstract: Marine resources are not only the lifeline of China's coastal areas, but also a powerful engine for economic growth. Since the implementation of the Law of the People's Republic of China on the Administration of Sea Area Use (hereinafter referred to as the "Sea Area Management Law") in 2002, the system of marine functional zoning and the system of remunerative use of sea area have been gradually implemented, and the original "three nesses" situation of the use of the sea area, which was "disordered, gratuitous, and inordinately", has been significantly improved." The "three nos" situation has been significantly improved[1].However, with the passage of time, the large-scale construction of ports and docks, the vigorous development of coastal tourism, etc., more and more coastal cities across the country have emerged “ Expropriation of sea areas ”phenomenon. This phenomenon not only involves the development and utilization of marine resources, but also involves the balance between public interests and personal interests. In this context, the situation of recovering the right to use sea areas in advance due to public welfare is increasing, and the related compensation issues have become more prominent. This paper studies the compensation methods and compensation standards for the early retrieve of the right to use sea areas due to public interests in a combination of theory and practice.

1. Introduction

1.1 The connotation of the right to use sea area

1.1.1 Concept of right to use sea area

Before studying the early retrieval of public interest sea area use right, we should first study and analyze the concept of sea area use right. The so-called right to use the sea area refers to the right of a civil subject to use a certain sea area within a certain period of time based on the certificate of the right to use the sea area issued by the competent department of ocean administration of the people's government at or above the county level. Units and individuals to use the sea area, must be in accordance with the relevant provisions of the law on the management of sea area use to obtain the right to use the sea area. The emergence of the right to use the sea area is accompanied by the increasing frequency of marine development activities. This right is for the purpose of developing, utilizing and benefiting from the use value of a given sea[2].

1.1.2 Characteristics of the right to use sea areas

A. State ownership

The right to use sea areas is a special right exercised on the basis of state ownership. Users do not own the ownership of sea areas, but obtain the right to use sea areas within a certain period of time.

B. Time limit

The right to use the sea area is limited, that is, the user can only use and operate the sea area within the specified time. If you do not continue to apply to the relevant departments after the end of the period, you will lose that power.

C. Limitation and exclusiveness

The right to use sea areas is usually for a specific sea area and a specific purpose of use. Other units or individuals need to obtain corresponding licenses or authorizations for the same or similar activities within the scope.

D. Legal protection

The acquisition, exercise and termination of the right to use sea areas are usually strictly regulated and protected by laws and regulations. Users need to fulfill relevant obligations according to law and enjoy corresponding rights.

1.2 The nature of early retrieve of the right to use sea areas

The analysis of the nature of the early retrieve of the right to use the sea area is mainly to analyze the nature of 'early retrieve'. Marx once pointed out that the land in economics includes the water covered on the surface of the earth. The water on the surface of the earth is the attachment of the land, as long as the water flow, etc., has an owner and is the attachment of the land. We also understand it as land [3]. Meanwhile, there are fewer studies on the nature of early recovery of maritime use rights, and there are similar expressions of "early recovery" on the land side. Although the objects of the two are different, the nature is more similar and can be used as a reference. There is also some academic debate on how to understand the nature of "early salvage". There are mainly two different views, "expropriation theory" and "non-expropriation theory". Eminent domain theory" that the fundamental purpose of early recovery of the sea is for national defense, military, public utilities and other needs of the public interest, the government has the right to law without compensation. The "non-expropriation theory" mainly includes the termination of contracts and the revocation of administrative licenses [4]. The author believes that the nature of early retrieve has similar characteristics to expropriation in law, and it can be regarded as a unique form of expropriation.

1.3 The identification standard of public interest

At present, Chinese scholars have made a lot of discussions on the definition of public interest from the theoretical level. Wang Shuqian put forward that the public interest should have social sharing, make the public benefit directly, based on the necessity of public interest, and the public interest is the four characteristics obtained by comparison[5]. This approach uses many uncertain concepts to define public interest and increases the difficulty of defining public interest. Jiang Ming'an proposed the "generalized enumeration criterion", which is to enumerate typical clauses involving public interest and set up a touting clause on this basis[6]. Yuan Tian believes that the object of benefit, the content of benefit and the effect of realization are the substantive elements of the definition of public interest[7]. However, there are also unclear problems in this definition standard. The above definition method puts forward how to define the public interest from the value

or legislation, and adopts an evasive attitude as to what standard should be used to judge the public interest.

2. The compensation object of recovering the right to use the sea area in advance

Article 30 of the Law on the Administration of the Use of Sea Areas stipulates that if the right to use sea areas is recovered before the expiration of the right to use sea areas according to law, the right to use sea areas should be compensated accordingly. Therefore, in the process of early retrieve of the right to use the sea area, the subject of compensation generally refers to the holder of the certificate of the right to use the sea area. However, in practice, there are often disputes over whether the lessee of the sea area can become the subject of compensation.

In the case of (2020) Lu 02 Xingchu No.367, the plaintiff Zhang inherited the rights of Miao under the 'Sea Area Aquaculture Contract' signed by Miao and a village committee based on the contract. After that, the defendant levied the sea area involved in the case and carried out construction, causing huge losses to the plaintiff. The plaintiff had asked the two defendants to disclose the relevant collection information, and the two defendants shuffle each other. The plaintiff believed that the two defendants' collection behavior was illegal. To this end, the plaintiff told the court, request: (1) In accordance with the law to confirm the two defendants to levy the sea area contracted by the plaintiff is illegal; (2) According to the law, the two defendants are jointly compensated for the plaintiff's economic loss of 3 million yuan; (3) Litigation costs borne by the two defendants. The court believes that due to the needs of public interests or national security, the people's government that originally approved the use of the sea can recover the right to use the sea area within the period of the right to use the sea area and give compensation, and the compensation object is the holder of the right to use the sea area. In this case, the right to use the sea area involved is a village committee of the third party. The plaintiff Zhang only uses the subject of the sea area involved in the case by subcontracting. The district government recovers the right to use the sea area before the expiration of the right to use the sea area, and the plaintiff is not a statutory compensation object[8].

3. The way of compensation for the early retrieve of the right to use the sea area

In China, the compensation for the right to use the sea area in advance due to public welfare is mainly a one-time cash compensation method. However, although this approach can provide immediate economic assistance to sea users, it ignores the concern for their future livelihoods, which may lead to a series of social problems in the long run. Therefore, enriching the means of compensation for the retrieve of the right to use the sea area for public welfare has become an important part of improving the compensation system for the collection of sea areas in China.

3.1 Replacement sea area

After the administrative organ recovers the right to use the sea area, it chooses the new sea area with similar conditions to the original sea area, and replaces the old sea area with the new sea area. The advantage of this alternative compensation method is that for the affected parties, such as individuals, enterprises, etc., who are originally operating in the recovered sea areas, through alternative sea areas or resources, they can continue their activities and solve livelihood problems. For the government, by replacing the right to use the sea area to a more suitable area for development and utilization, the utilization efficiency of sea resources can be improved and the development of the marine economy can be promoted. At the same time, a reasonable policy of replacing sea areas can balance the relationship between public interests and private interests,

reduce disputes and disputes caused by the retrieve of the right to use sea areas, and promote social harmony and stability. However, in practice, it is difficult to find a suitable alternative sea area equivalent to the recovered sea area. The distribution and utilization of sea area resources are different, and sometimes there may be no suitable alternative options. And the replacement of sea areas requires effective management and supervision by the government or relevant regulatory agencies to ensure that the use of alternative sea areas is in line with laws and regulations, and will not cause new environmental problems or social problems. Even if the replacement of alternative sea areas is carried out, it may lead to new disputes and contradictions. Especially when the alternative sea areas also have special ecological environment or other public interests, it may lead to new disputes, and the problem has not been fundamentally solved.

3.2 Cash instalment compensation

The one-time cash compensation method cannot effectively resist market risks such as inflation, and its value continues to depreciate over time. In order to solve this problem, some foreign countries have made it clear in law that they can pay by installment payment. For example, Japan's "land collection usage" has been clearly explained in the payment clause[4]. However, there are also some drawbacks in the installment compensation, which often takes several years. If there are major changes in government agencies or the responsible units for compensation, such as institutional reform, personnel adjustment or the transfer of key responsible persons, when the full compensation is not received, whether the affected sea area users can continue to receive due compensation as originally planned becomes an open question. They may face delays in compensation due to changes in the person responsible, or because the new leadership is unfamiliar with and does not understand the project, making the compensation process more complex and unpredictable. In this way, the protection of the rights and interests of sea area users is particularly fragile. They have great uncertainty about when they can obtain the amount of compensation they deserve, and worry that their legitimate rights and interests will be damaged. Therefore, when choosing the installment compensation mechanism, it is necessary to fully consider these potential adverse factors and take corresponding measures to ensure the stability and continuity of the compensation process.

3.3 Share-holding compensation

After the early resumption of the right to use the sea area, the mode of sea area utilization will change considerably, and many places will be developed commercially, such as wharves and tourist attractions. Consideration can be given to valuing the losses of the maritime domain use right holders as equity in the corresponding development projects, with the ratio and share of the input determined jointly by the competent authorities, the maritime domain use right holders and the developers of the new projects. The maritime area use right holders will enjoy relatively stable dividends year by year according to the proportion of equity. With regard to the transfer of equity, the sea area use right holders shall enjoy the right of free decision. They can transfer their equity at will, without any form of restriction. The administration and developers, as the ultimate owners of these shares, will guarantee to buy them back at any time in accordance with the initial subscription price. The dividend compensation method enables the maritime domain right holders to obtain a more stable income through their participation in the shares, which is conducive to social stability.

3.4 Strengthen policy resettlement

In the case that the right to use the sea area is recovered in advance, the right to use the sea area

that originally relied on the income of the sea area immediately faces life difficulties. Their sources of livelihood have been destroyed, and the economic security and psychological stability of sea area users have been seriously affected, and their ability to resist risks has been greatly weakened. In order to alleviate this consequence, the government should introduce corresponding compensation measures to ensure that these sea-lost residents can get the most basic living security. Specifically, compensation measures should include but not be limited to providing transitional living allowances, employment assistance and necessary vocational training opportunities to help them adapt to the new environment and find new ways to make a living. At the same time, the government can also create more relaxed policy conditions for these people who have lost the right to use sea areas through tax relief, financial subsidies, etc., such as easing loan restrictions, reducing tax burdens, and even providing entrepreneurial support to reduce their economic pressure and help them tide over the difficulties.

In the implementation of policy-based resettlement compensation measures, it is necessary to communicate and consult with many government departments, such as finance, civil affairs, taxation and other departments. They play an important role in resource allocation and policy formulation. Especially in the case of early recovery of the right to use the sea area, it is generally an emergency recovery due to public interest. The government not only needs to quickly introduce and implement relevant policies, but also needs to ensure that the policies can not only meet the urgent needs of the public interest, but also reasonably take into account the actual life and interests of the original sea area users. This kind of balance work is difficult, and puts forward higher standards and requirements for the government's administrative ability and decision-making wisdom.

4. Compensation standard for early retrieve of the right to use sea areas

There are three main types of compensation standards at home and abroad: one is complete compensation; the other is appropriate compensation; third, fair compensation. At present, the expropriation compensation in most countries and regions in the world is determined according to the market price or based on the market price, according to the principle of fairness.

China's "Sea Area Use Management Law" does not clearly stipulate the compensation standard for the retrieve of the right to use sea areas. However, some coastal provinces and cities have made innovative provisions on compensation standards[9]. Fully weigh interests, consider the degree and nature of marine development and utilization, and determine compensation standards based on the principles of fairness and reasonableness[10].

4.1 The provincial government regulations

The "Compensation Measures for the Use of Sea Areas in Fujian Province " promulgated by Fujian Province in 2008 is the first provincial-level sea area compensation document in China. The document limits the compensation items to sea area compensation, seedling and sea area attachment compensation. The sea area compensation fee is equal to the sea area compensation standard base multiplied by the sea area grade coefficient. The sea area compensation standard base and sea area grade coefficient are determined by the provincial people 's government according to factors such as sea area type and sea area use right value. In addition, the seedling compensation fee includes the cost of the seedling and the reasonable value of the unfinished product in the breeding. When dealing with seedling compensation and sea area attachment compensation, the people's government that originally approved the use of the sea shall negotiate with the original sea area user to determine or jointly entrust a qualified evaluation agency to evaluate and determine. This method can not only provide a professional third-party perspective, but also ensure the objective and fair

evaluation results.

4.2 Municipal government regulations

The "Measures for the Retrieve of the Right to Use the Shallow Beach Sea Area in Wenzhou " stipulates the compensation standard for the right to use the sea area. Specifically, in terms of compensation content, it includes two parts: fixed assets and aquaculture seafood. For fixed assets, the compensation standard will be determined according to the evaluation. If there is government investment in fixed assets, the government investment should be deducted. For the compensation of aquaculture seafood, the loss of the product should be compensated according to the actual benefits of the year; if it is impossible to accurately measure the actual benefits of the current year, it can be compensated by the method of average benefit income in the previous three years. If it is impossible to measure the actual benefits of the current year, it can be compensated according to the average value of the benefit income of the previous three years; or according to the local area, breeding species, breeding methods and other factors, evaluate and compensate.

The method of recovering the right to use the sea area of Wenzhou shallow beach has greatly enhanced the adaptability and flexibility of the compensation standard, which is helpful to solve the problem of recovering the right to use the sea area more fairly and reasonably in practice, so as to maximize the protection of the legitimate rights and interests of the right to use the sea area.

5. Conclusion

This paper makes an in-depth study and discussion on the compensation for the early recovery of the right to use the sea area due to public welfare, aiming at a comprehensive understanding of the connotation of the right to use the sea area, the nature of the early recovery, the identification criteria of the public interest and the compensation methods and standards. Through the combing and analysis of the concept of the right to use sea areas, we realize that the right to use sea areas, as a special right, has the characteristics of state ownership, time limit, limitation and exclusiveness, and legal protection. At the same time, the nature of the early recovery of the right to use the sea area is discussed in depth, and it is pointed out that it has similar characteristics to expropriation in law and should be regarded as a unique form of expropriation. In terms of compensation objects, it focuses on the determination of the subject of compensation after the right to use the sea area is recovered in advance. Through the case analysis, it is emphasized that the identity of the right to use the sea area should be the legal subject holding the certificate of the right to use the sea area, not just the individual or unit using the sea area by subcontracting. In view of the compensation methods for recovering the right to use sea areas, various schemes such as replacement of sea areas, cash installment compensation, equity compensation and policy resettlement are discussed, and the advantages and disadvantages of various methods are analyzed. In terms of compensation standards, we combine the relevant provisions of Fujian Province and Wenzhou City, and point out the innovative practices of these local governments in formulating compensation standards and the protection of the rights and interests of sea area users.

The rational utilization and protection of marine resources is related to the long-term development of the country. The compensation for the early recovery of the right to use sea areas involves many aspects. It requires the participation of the government, law, and all sectors of society to establish a sound system and mechanism to achieve a balance between public interests and personal rights and interests, and promote the sustainable use and management of sea resources. At the same time, it is also expected that the research in this paper can provide theoretical support and practical reference for the formulation and implementation of relevant policies, and contribute to the healthy development of China's marine industry.

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