

Research on the legal problem of "Separation of three powers" of agricultural land

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Abstract: For China with a large rural population, the issue of rural land is an important topic from the beginning to the end. It is closely related to China's economic development and social stability. Therefore, it is necessary to rationally regulate agricultural land to balance the interests of different subjects. However, under the Family-contract Responsibility system, the income level of small-scale planting gradually declines, and the dual system of rural land is no longer suitable for the needs of China's current social development. Therefore, the implementation of the policy of "Separation of three powers" of the rural land is an important step in the reform process of land system in China. In civil code compiled for the opportunity to establish and improve the system of land law, clearly defining the right of rural farmland and homestead. With the implementation of the "separation of three powers", make the rural land system structure to better serve the reality needs. In addition, it not only can protect farmers' basic rights and interests, increase their income, and also can provide impetus for the revitalization of the countryside.

1. Introduction

Land is undoubtedly the most basic material for the survival and development of human beings, especially for China with a large population. Therefore, the degree of protection of collective land ownership, farmland contract right, management right, homestead use right, qualification right and other rights in the land system will greatly affect its economic development and social stability. However, under the current Family-contract Responsibility system, the income level of small-scale planting has been declining year by year, and the enthusiasm of young adults in most rural areas for agricultural production has been reduced. Most of the young adults adopt ways such as working in cities to meet their own living needs, so the situation of abandoned farmland and vacant homestead in rural areas has emerged. In order to optimize and promote the use of land resources, China has carried out timely reform of the land system, and put forward the path of rural land development with Chinese characteristics, namely the "Separation of three rights" policy, giving farmland the status of entering the market, and better realizing the property function of rural farmland and house land.

Under the background of "Separation of three rights" of agricultural land, China has successfully realized the separation of contract right and management right of rural farmland and the separation of homestead qualification right and use right. Thus, the rural farmland management right and the homestead use right can be transferred freely as property, so that farmers can benefit more from the land. Under this policy, for land contractors, land rental can be collected without land wasteland; For the land operator, can break the traditional small-scale management to the agricultural modernization of the restrictions. For peasant-worker who work in cities, they can effectively use their idle homestead. For the entrepreneurs who develop new industries in rural areas, they get convenient

business space. Based on the research on the legal issue of "Separation of three rights" of agricultural land, this paper has the following two meanings:

Theoretical meaning. Based on the study of the "Separation of three rights" of agricultural land, this paper analyzes its forming factors and development trend, and clarifies the right attributes of the three rights and their relationship with each other, so as to provide reference for enriching and improving the existing right system of rural land and solving the problems existing in the right system of agricultural land.

Practical significance. Through the study of "Separation of three rights" of agricultural land, this paper makes preparations for the policy of "three rights separation" of rural land to obtain the strong support of law, so as to better promote the transfer of some power of rural agricultural land in China and the realization of farmers' identity interests.

2. Sketch out the "Separation of three rights"

2.1 Basic connotation

The policy of "Separation of three rights" of agricultural land is mainly applied to rural farmland and house land. Both of them are under the same system structure to improve the circulation of agricultural land as a market element, and to improve the property income of farmers derived from land while solving the problem of optimizing the resource allocation of idle rural land. The ownership of both is also owned by rural collectives. The constitution makes a clear distinction between collective ownership, state ownership and individual ownership, so that rural collectives become a definite group organization. The right of farmland contract and the right of homestead qualification are the rights enjoyed and not transferred according to the status of the rural collective members. The farmland management right and homestead use right enjoyed by others are obtained by forming civil legal relationship with members of rural collective organizations who enjoy contracting right and qualification right according to the provisions of civil law and other relevant laws and regulations.

The farmland and homestead under the "Separation of three rights" have the above commonness and have their own characteristics. Firstly, the connotation and setting purpose of the three rights are compared. The three rights of cultivated land include ownership, contracting right and management right. The original land contracting right is divided into contracting right and management right, so as to protect the rural collective-owned land from losing the ownership of cultivated land when the management right is transferred. The three rights of homestead include ownership, qualification right and right of use. The original right of homestead use is divided into qualification right and right of use, so as to achieve the benefit of transferring the right of homestead use without losing the guarantee of the right of residence of rural collective members. Second, Secondly, the transfer value is compared. The transfer value of different farmland management rights has a slight difference, while the transfer value of different homestead use rights has a huge difference. The reason lies in their different utility values. Therefore, the application of the system of "Separation of three powers" should plan the two types of land respectively, so as to make measures according to the conditions of "land".

3. The positioning of dispute rights under the "Separation of three rights" of rural land

3.1 The right attribute of land management right

In 1988, the amendment to the constitution stipulated that the right to the use of land could be transferred according to law, and the concept of "Separation of three powers" of rural farmland began to sprout. However, since the concept of "land management right" was put forward, there have been various controversies such as "creditor's right theory", "property right theory" and "dual theory". The theory of creditor's right thinks that the nature of creditor's right is suitable to the market demand, which is beneficial to the transfer of management right, and the theory of property right violates the

principle of one property one right. The theory of "real right" advocates that the nature of "usufructuary right" can effectively save the cost of institutional change while constructing a scientific framework of rights. Due to the advantages and disadvantages of the foregoing views, it is impossible to make a simple judgment. Therefore, the theory of "dualism" with an eclectic attitude has appeared. The advocate of this theory selectively combines the two theories to make it have both advantages and disadvantages at the same time. However, the compromise of "dualism" is not conducive to the construction of the legal system and its practical application, because there are great differences in the design ideas of the creditor's right and the real right. If the land management right is given an ambiguous quality according to this, it will inevitably cause great obstacles to the subsequent research and development of the land management right.

The author thinks that the property right attribute of the land contract management right is not sufficient, but it should still be attributed to the "usufructuary right" in the field of property law. Secondly, there is no conflict between the rights of land management and the principle of "real right". The ownership of land is still owned by collectives. In addition, in terms of the registration of the establishment and alteration of the land contract management right, China adopts the registration elements and registration antagonism consistent with the registration of real right.

3.2 The right attribute of homestead qualification right

The three rights under the mode of "Separation of three powers" of homestead are as mentioned above, and the property law and the land management law clearly define the nature of collective ownership and the right to use homestead, so there is a debate on the qualitative nature of qualification right. In the first central document of 2018, it is proposed to explore the legal nature of the qualification right in the "separation of three rights" of homestead. At present, the main viewpoints of the academic community are also the "creditor's right theory" and "property right theory", whose reasons are similar to the qualitative reasons of the aforementioned management right.

The author thinks that the right of "homestead qualification" should be characterized as a comprehensive right, similar to the right of inheritance and equity. The reasons are as follows, firstly, the homestead qualification right has the characteristics of identity, those who enjoy the qualification right must be members of the rural collective. Secondly, except for the first time, the right of qualification should be obtained in accordance with the "measures for the administration of rural homestead" and other relevant laws and regulations, it can be acquired by means of internal sale, inheritance and donation of collective members. Therefore the homestead qualification right should not belong to the real right or the obligatory right system.

4. Existing problems and improvement of the "Separation of three rights" of agricultural land

4.1 The land management right

There are problems in the restrictive norms of the retransfer of farmland management rights. China's current application of the "rural land contract management rights transfer management measures", the transferee must be approved by the contractor when the transfer. The author thinks that the right holder should have the right to dispose of the cultivated land as usufructuary right. It also means that after the establishment of land management right, the management right holder can dispose of the cultivated land independently without the prior consent of the contractor without violating laws and regulations, so as to maximize their own interests and give better play to the circulation of the cultivated land management right to meet the market needs. Therefore, the above restrictions on the retransfer of farmland management rights will inevitably hinder the promotion and implementation of the policy of "separation of three rights" and should be amended or abolished accordingly.

4.2 The homestead qualification

The concept of homestead qualification right came into being late, and because of its own characteristics, it is very easy to be ignored. At present, China's support for the system is still in the policy aspect, and the right type of homestead qualification right is still not determined, which makes the "separation of three rights" of homestead lack of legal basis. In addition, the homestead qualification right, as an identity right, is inseparable from the membership right of rural collective organizations. The author thinks that the right of membership should be perfected and the right of homestead qualification should be stipulated on this basis.

5. Conclusions

At present, the policy of "separation of three rights" for agricultural land in China has a wide range of application, and has achieved good economic and social benefits in practice. However, in terms of the specific situation at the present stage, it is necessary to summarize the experience in the implementation of the policy, change the policy into law, and use the law to provide more powerful support for "separation of three rights". We should improve the laws which are inconsistent or unclear with the policy of "separation of three rights", in order to guide the vast masses of farmers to explore the potential wealth of rural land and increase their property income. It can help us fully prepared to win the "tough battle against poverty," achieve rural rejuvenation, and complete the building of a moderately prosperous society in all respects.

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