

Study on the Difficulties and Countermeasures of China's Rural Housing Land Circulation under the Vision of "Three Rights Separation"--Inspiration from the Practices of Yiwu

Wenxi Tan

Law School of China Jiliang University, HangZhou, Zhejiang, China

Keywords: separation of powers, right to use homestead, free use of homestead

Abstract: There are legal obstacles to the conflict of the scope of the right to use, the unreasonable way of obtaining, and the conflict of the content of the right to use. The existence of the "one household, one house" rule is difficult to achieve, the grassroots management is in the position, and the circulation market is disordered. There are also gaps in the supporting mechanisms for exiting and securing. Zhejiang Yiwu explored the realization of the reform of the homestead, and obtained a lot of achievements in the compensation and acquisition of the homestead, the innovation of the land-voucher system for the exit of the homestead, and the problems left over by the history of the homestead, and provided a solution to the problem of the transfer of the right to use the homestead. From the perspective of the "three-power separation" of the homestead, it is necessary to build a legal system for the transfer of the right to use the homestead, strengthen policy guidance, improve the supporting mechanism for exit and guarantee, and improve the connection between the "three powers separation" and related laws.

1. Analysis of the Dilemma of the Free Transfer of the Right to Use Homesteads in China

The "three-power split" policy of the homestead proposes a requirement for the appropriate release of the right to use. At present, the transfer of homesteads is limited, spontaneous and random. There are many legal obstacles and practical obstacles. The lack of supporting mechanisms has also triggered the current situation of blocked reforms. An in-depth analysis of the current dilemma of the free transfer of the right to use homesteads in China will help to clear the obstacles for the reform of the "three powers" of homesteads, especially to grasp the key links of the transfer of the right to use.

1.1. The Legal Dilemma of the Free Transfer of the Right to Use the House Site

China's law does not restrict or restrict the use of homesteads across collective economic organizations. Although the Land Administration Law, as amended in 1988, stipulates that non-agricultural hukou residents who need land use rights when building a house can obtain land use rights according to procedures, this is given to some governments due to the lack of follow-up regulations and supporting measures. Officials, village cadres, and real estate developers have

created opportunities to use real estate development rights to develop real estate, resulting in a large loss of rural land. In the process of revision, due to many factors, the Land Administration Law deleted this article.

As mentioned above, the “integration of premises” principle stipulated in China’s “Property Law” and the “allowing housing mortgage on the homestead” as stipulated by our laws have allowed the mortgage of farm houses on the homestead and the use of homesteads. The phenomenon of conflict between mortgages. Because of the lack of a value assessment system, how to properly assess the value of housing on a homestead has become a major problem; in some areas, farmers are required to provide proof of other residences when applying for a mortgage, which directly blocks farmers with only one housing. Outside the door; even if the peasant who can obtain a mortgage loan is unable to repay and needs to auction the house on his homestead, it is very difficult to realize the mortgage because the house can only be traded within the collective economic organization.

1.2. The Practical Dilemma of the Free Transfer of the Right to Use the House Site

The “one household, one house” system restricts “one household and one house” with “one household and one house”, mainly to prevent farmers from occupying more and occupying homesteads. However, this regulation does not seem to have much effect. In practice, the over-standard phenomenon of homestead area is still very common. There are two reasons for this: First, it is the reason for the legacy of history. A large number of allocated homesteads existed before the introduction of standard area management regulations in the provinces at the end of the last century. The area of these homesteads is usually above the standard line established by each province. The second is the management reasons. The rural society is an acquaintance society. In the rural interpersonal relationship, "acquaintances are good at doing things." Leading cadres are based on various factors, and are not strictly allocated by standards. Abuse of power has caused a large number of farmers.

1.3. The Supporting Mechanism for the Free Transfer of the Right to Use the House Site is Missing

China’s right to use homesteads is subject to a system of voluntary withdrawal and withdrawal. If the unused housing on the house site has not been restored for more than two years or the house has been demolished for more than two years without re-construction, the farmer’s right to use the house site is not confirmed; the right to use the house site is determined at the county level. After the people's government approves and cancels its land registration, the village collective has the right to recover the house site without compensation. The lack of incentive mechanism for the free exit mechanism can not arouse the enthusiasm of farmers to voluntarily withdraw from the homestead, not to mention the fact that most farmers still have mourning for rural life, especially the older generation of farmers born in the 40s and 60s of the last century, even if they Some of them have long stopped farming and settled with their children in cities, and they are not willing to give up their last traces of the countryside. Of course, the operability of forcing a withdrawal is more difficult.

2. The Practical Exploration of the Free Transfer of the Right to Use the Homestead - Zhejiang Yiwu Experience

At present, many rural areas have launched the pilot reform of the “three rights division” of rural housing sites. Yiwu City, as the first region in the country to propose the “three powers separation”

system of homesteads, has designed a “1+7+9” system according to local conditions. The system has achieved fruitful results in the reform of the homestead, especially in the practice of the transfer of the right to use the homestead. On the occasion of the 40th anniversary of the reform and opening up, a satisfactory transcript was handed over. Taking Yiwu as a sample, sum up experience, deepen grassroots practice, create successful cases, and provide scalable experience for the free transfer of homestead use rights.

2.1. Trying to Use the Right to Use the Homestead across the Collective Economic Organization

The Yiwu Municipal Government adheres to the guidelines for the “three-power separation” of the homestead and formulates a pilot policy. Under the premise of clarifying the nature of the ownership of the homestead and retaining the membership of the village, the opening of the right to use the homestead is mainly due to the following two items. Measures:

First, in the case of ensuring the owner's 15 square meters of self-occupied area after the transfer of the right to use, the right to use the homestead is allowed to flow across the collective economic organization within the administrative area of Yiwu. Second, giving the village collective a broader decision-making power, directly connecting itself with the market, so that the savings of collective construction land can enter the market. [At present, there are 31 villages with a total of 190 mu of construction land in Yiwu City, which has accelerated the pace of Yiwu rural revitalization.

2.2. Exploring the Paid Acquisition and Paid Selection of the Homestead

Yiwu vigorously explored the remarkable achievements of the paid home system, mainly reflected in two aspects. On the one hand, for residential land that does not belong to the “historical legacy”, the residential area exceeds the standard area, and the classified sub-region collects the royalty; on the other hand, if the external members of the collective economic organization obtain the right to use the homestead, they must pay certain infrastructure.

3. The Perfect Proposal to Promote the Free Transfer of the Right to Use the Homestead under the Vision of "Separation of Powers"

From the theoretical basis and practical effects, the implementation of the "three powers separation" of the homestead mobilizes the coordination and incentive role of property rights, and has the proper meaning of the development of the market economy, guiding the future direction of China's agricultural land system reform. On the occasion of the 40th anniversary of reform and opening up, the remarkable achievements of the homestead reform have also made us look forward to the future with pride. Considering the current dilemma of the transfer of housing sites in China and the successful experience in the practice of Yiwu reform, the author believes that in order to further release the vitality of the homestead and realize the free flow of the right to use, it is necessary to transfer the legal system from the construction of the right to use the homestead and strengthen Policy guidance and sound supporting mechanism guarantee jointly promoted the three aspects, and improved the "three powers separation" and related laws to provide guidance for the transfer of the right to use the homestead.

3.1. Constructing a Legal System for the Transfer of the Right to Use the House Site

Under the circumstances of their independent functions, the author believes that the scope of the main body of the right to use the homestead can be appropriately expanded and the way of

obtaining the right to use can be enriched. For example, permitting outsiders of a group of economic organizations within a certain range to obtain the right to use the house site by means of circulation, the term of the right to use the house site can be drawn from the distinction of residential, construction and commercial land in China, and 70, 50, 40 are formulated. The relevant content of the term of the land use right of the year, the classification determines the maximum period of use of the right to use the homestead after the transfer. Other specific standards, details, and processes should be adjusted depending on the region.

In addition, it is possible to amend the contents of Article 184 of the Property Law and make the following provisions: "If the farmer uses the house on the house site as the target mortgage, the right to use the house site shall be mortgaged together, and the mortgage registration shall be handled. The mortgage is established from the time of registration. For the direct mortgage of the right subject, refer to Article 195 of the Property Law. On this basis, the author proposes to add the following provisions: "When the mortgage cannot be realized, the mortgage right of the homestead can be used to implement the mortgage. However, the farmer's qualifications may not be transferred."

3.2. Policy Guidance to Strengthen the Free Flow of Homesteads

In the past, the original intention of the "one family, one house" system was to reduce the contradiction between people and land in a subdivided and evenly divided way, and to achieve the goal of "home ownership." But today, the "one family, one house" system seems to have gradually deviated from its purpose and become a stumbling block to farmers' improvement of their quality of life. Therefore, the author proposes to abolish the "one family, one house" rule to make a market economy based. The phenomenon of household housing is legalized. Specifically, allowing the homestead "one-family house" should be promoted in parallel with the above-mentioned homestead free acquisition and paid acquisition system, that is, allowing members of the collective economic organization to obtain the first homestead without compensation, but if they want to pass. The transfer method obtains the right to use the second homestead, and still pays the corresponding use fee to the collective economic organization as the external personnel.

3.3. Strengthening the Guarantee Mechanism for the Free Transfer of Homesteads

First of all, we must adhere to the principle of voluntary and paid according to law, and farmers should firmly grasp their core rights and interests. Secondly, the paid accommodation fee, the area exceeding the standard fee, and the income from the collective construction land entering the market as one of the sources of compensation, the reasonable compensation standard after the farmer withdraws from the house site is established and the compensation fee is timely and fully paid. Strictly punish the act of deducting or delaying compensation for various reasons. In addition, the compensation method should also be diversified. In addition to obtaining monetary subsidies, it can also provide preferential compensation for farmers to purchase urban houses, compensation for job placement, compensation for tax and fee, etc., or draw on the precedent of the "land coupon" system in Yiwu to ensure the income of farmers after they withdraw from the house site.

3.4. Improve the Connection between the "Three Powers Separation" and Related Laws

To promote the free, legal and effective circulation of the homestead, it is necessary to improve the connection between the "three powers separation" and related laws. The feasible solution is:

Firstly, combined with China's actual situation, in the context of the compilation of the Civil Code, this opportunity is used to determine the "three powers" when modifying the property rights,

and to position the right to use as the beneficial rights to collectively owned land. Secondly, the "three rights division" of the homestead is written into the "Land Management Law", paying particular attention to the connotation and nature of the right to use and its relationship with the other two rights and the subdivision of rights. Thirdly, the "Land Management Law" was amended at the central legislative level to resolve the chaos in the field of homestead legislation, especially in the field of homestead circulation. At the local level, the detailed provisions of the "three powers separation" of the homestead were delegated to local people's congresses.

4. Conclusion

The reform of the "three powers separation" system in China's housing base has basically completed the first two steps. The follow-up of the law, the coverage of the pilot and the improvement of the details deserve more attention. On this basis, the legal and practical dilemma in the process of homestead circulation is analyzed with the perspective of "three powers split". To raise the reform from the policy level to the legal level, we need to use the thinking and logic of the law, based on the practice of agricultural development, and rationally translate the policy language through legal norms. Only by dealing with the reality, the connection between policy and law, the free transfer of the right to use the house site can be followed by rules and laws, in order to maximize the value of the property of the house site, to achieve its support for urbanization and to farmers.

References

- [1]Hu Jian. *Legislative Transformation and System Reconstruction of Rural Homestead Use Right Mortgage*[J].*Journal of Nanjing Agricultural University*,2015,(03).
- [2]Song Zhihong. *The Dilemma and Outlet of the Transfer of the Right to Use the Homestead*[J]. *China Land Science*, 2016, (05).
- [3] Fang Tingting, Wu Cifang, Zhou Yihu. *The Legal System Structure of Rural Land "Three Powers Separation"* [J]. *Rural Economy*, 2017. (10).
- [4] Ye Hongling. "Home Improvement" Creates New Countryside—Exploration of the Reform of Dali and Yiwu Homestead System[J]. *China Land*, 2018, (05).
- [5]Zhu Congmou, Yuan Yufeng, Li Shengnan, Xia Hao. *Research on the Distribution of Value-added Revenue of Rural Homestead Based on the Right of Development and Function Loss—Taking Yiwu City's "Jiji Bond" as an Example*[J]. *China Land Science*, 2017, (07).
- [6]Yuan Jinxiu. *Research on Legal Issues of Rural Homestead Use Rights* [M]. Beijing: China Business Press, 2013.
- [7] Liu Shouying. *Facing China's Land Issues* [M]. Beijing: China Development Press, 2014.