Study on Rural Land Law Violation Evolution in the New Round of Rural Land System Reform in China

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Abstract. Under the background that the state has vigorously explored and promoted the new round of rural land system reform, the project has studied the rural land violation issues in rural land system reform, concluded its forms from the development and change perspective, analyzed its causes, and provided operable solutions.

Research Background

Since 2013 when the 4th Plenary Session of 18th CPC Central Committee embarked on the new journey of rural land system reform, the state has promulgated institutional norms represented by “three separated rights”, i.e. rural land ownership, contracting rights and management rights, and promoted rural land system reform steadily based on the pilot projects. In the meantime, the need for land dramatically amassed during socioeconomic development is looking for releasing room in the rural land system building window period, and all stakeholders play the game in rural land circulation, expropriation, use, etc. To improve the rural land vitality and curb rural land law violations is like two sides of a coin, and it is the Gordian Knot in the rural land system reform of China.

General Information about Relevant Research at Home and Abroad

Foreign scholars have paid quite much attention to the increasingly severe land resources issues of China since 1990. Brown (1995) thinks that the separation of powers of Chinese central and local governments will cause the local government’s short-sighted behaviors in arable land protection and land use. Ho and Lin (2002) find out after doing research that the key factors for agricultural land’s non-agricultural production and development are the rapidly growing urban population, urbanization construction promoted by the government and rapid socioeconomic development. Based on empirical study, Tan and Qu (2007) prove that the mixed governance structure of Chinese government results in excessive land non-agriculturization. After investigating routine collective actions of peasants, Walker (2008) holds the opinion that local government corruption and land grabbing are important incentives of peasants’ mass disturbance. Cai, etc. (2013) conduct empirical study on Chinese urban land markets, and think that improving the marketization level of land sale can cut down corruption, land rent and land law violations.

General Information about Domestic Study

enforcement supervision, internal illegal use of collective land, “village official” involvement in the land corruptions, rural land law violation co-administration mechanism establishing, predicament in implementing “separation of three powers” policies concerning rural land, etc.

Evolution of Rural Land Law Violation in the New Round of Rural Land System Reform and Analysis of Causes

Change of Law-breaking Subjects

The need for the land has been growing alongside with socioeconomic development since 1990s, and rural land law violations in China are on the rise. On one hand, the government still holds the leading role in land resources allocation, and illegal land occupation of enterprises (Key projects and investment promotion projects) acquiesced, connived and even predominated by local governments are the Gordian knot in land law enforcement; on the other hand, peasants are vulnerable groups, and they are powerless when the legal basis is absent in villager’s homestead law violation (Excessive occupation, etc.) and village collective construction land use law violation (Building houses with limited property rights). After the new round of rural land system reform is started, the market replaces the government and gradually plays a leading role in rural land resources allocation, the rural land law violations have corresponding changes, and law violations directly dominated by enterprises, village collectives and rural households are on the rise.

Illegal Content Change

There are mainly four fields that may produce new rural land law violations in the new round of rural land system reform: firstly in the system of narrowing down the land expropriation range, simplifying the land expropriation procedures and avoiding land expropriation as much as possible, some local governments eager for quick success in GDP may “expropriate land in disguised forms”; secondly when the collective operational construction land has the same conditions, rights and prices with the state-owned land on markets, village collectives, village officials, land use enterprises and other organizations are possible to infringe lawful individual land interests of peasants and rural households in the name of collective interests; thirdly in the system of guaranteeing sufficient rural household homesteads, establishing the homestead compensated use and exit mechanism, delegating the homestead exam & approval rights, and completing the homestead administration system, rural households and village collectives are possible to abuse the homestead rights and interests; fourthly in the system of vigorously supporting facility agricultural development, and guaranteeing production facility land, auxiliary facility land and supporting facility land, rural households and land use enterprises are possible to change the land purpose without permission.

Change in Law Violation Distribution

China has a large territory and distinctive regional difference. The quantities of various rural land law violation cases in developed, moderately developed and underdeveloped areas are completely inconsistent in different stages of the new round of land system reform, and this inconsistency in change is related to the different influence of the rural land system reform on areas in different development stages. In developed areas, the socioeconomic development triggers a large demand for land, but the land stock resources in the urban planning range is very limited, so there is a relatively big proportion of land law violations in rural areas. In underdeveloped areas, due to relatively backward socioeconomic development, the land supply and demand contradictions are not as severe as those in the developed areas, so the proportion of land law violations in rural areas is relatively small. The rural land law violations in moderately developed areas are between the two.
Countermeasures and Recommendations for Rural Land Violation Governance

Foundations for Rural Land Law Violation Governance

To govern rural land law violations, the foundation is to organize the relation between law-breaking costs and incomes on the legal system level. In the past, rural land law-breaking cost was pretty low, the income was quite high, and the law-breaking cost was basically borne by the land use enterprises (organizations). The new round of rural land system reform improves the autonomous rights of village collectives and rural households greatly, and the law-breaking responsibilities are also raised correspondingly. In the new round of rural land system reform, it is necessary to raise the costs of stakeholders in rural land law violations on the legal level, and reasonably set the law-breaking costs of village collectives and rural households. The punishment standards for land law violations should be improved prominently in the newly amended “Land Administration Law” and “Land Management Law Enforcement Regulations”. Village collectives as the rural land owner and the rural households as the rural land users should assume larger law-breaking responsibilities.

 Preconditions of Rural Land Law Violation Governance

To govern rural land law violations, the precondition is to rebuild the peasants’ trust on local governments. In the past some local governments competed with people for benefits in rural land administration, and they fell into the vicious circle of “land finance”, “operating land” and “selling land for debt repayment”, so they gave rise to questions and complaints of peasants in rural land expropriation, change and use. In order to prevent rural land law violations effectively in the new institutional environment nourished in the rural land system reform, local governments must get full trust and support from village collectives and rural households. Local governments must conform to the reform, return to their original positions in rural land administration, surrender part of the interests to people, and rebuild their authority.

The Core of Rural Land Law Violation Governance

The core to govern rural land law violations is to strengthen land law enforcement system and mechanism establishing in the comprehensive administrative law enforcement system reform. In the rural land law violation governance mode in line with national situations of China, the government still holds the core co-governing position. Therefore, on the occasion of comprehensive administrative law enforcement system reform, it is the top priority in rural land law violation governance to resolve the long standing incomplete legal system, strong administrative intervention under semi-vertical administration, the absence of compulsory administrative enforcement power, etc., build the land law enforcement system and mechanism in alignment with the most rigorous land administration systems, and reinforce the procedures like prevention, discovering, investigation and punishment in rural land law violations.

Summary

The rural land has dual attributes in China, and its nature is very special. As for the country and the whole people, rural land (Especially arable land) is public goods, and plays a role in protecting the public land ownership attribute and safeguarding national food security; as for village collectives and rural households, rural land is the club goods which sustain the family economic incomes and village collective development. Therefore, the best way to prevent rural land law violations is to lay equal stress on the dual attributes as public goods and club goods, and have systematic governance with the system and interest as the link.
References


