



Probe into the Reform of Land System Viewing from “Limited Property House”

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Abstract

“Limited property house” has already appeared for a long period. In history, it derives from China’s early land policy. Today, it needs to be regulated in time. The core of “limited property house” is the definition, limitation, and transfer of residential lands in China’s rural land policy. The essence of “limited property house” is whether Chinese farmers have the ownership, right of disposition, and right of profitability of the residential lands. The emergence of “limited property house” is also a chance for China starting a new land system reform. How to reform, regulate, and manage China’s present land system and how to embody the “farmer, countryside, and agriculture” policy and the people’s livelihood policy by land system deserve to be studied and deepened further.

Keywords: Limited property house, Land system, Normalization and reform

1. The appearance of “limited property house” and its evolvement

The “limited property house” that has already aroused a wide attention in China is “county property house” in nature. These property houses have been built on rural collective lands and rural residential lands. According to present laws and regulations on land management, these houses and buildings basically have two functions: the houses built on rural collective lands are possessed by rural collective organizations and can be used in business; the houses built on residential lands serve as residences for villagers and can be inherited by family members. But according to present policy, residential lands do not allow to be transferred. The self-governed collective organization can take residential lands back and redistribute them to other villagers.

As for the evolvement of residential lands’ property right, the residential lands and all other lands in countryside belong to farmers’ private assets after the land reform. The *Constitution of the peoples Republic of China* issued in 1954 confirms this right and offers relevant protection. Afterwards, the agricultural socialist reform radically changes the land property system that emphasizes farmers’ private assets. However, the collectivity reform of property right does not define the land property clearly. As for the expression, because it concerns hundreds of millions of farmers’ interests, it has not been confirmed by law at present. The concept of “residential land” was not mentioned before 1962.

Because the “Great Leap Forward” from 1959 to 1961 has seriously hurt farmers’ right (includes property right) and threatened the safety of whole rural system and even the country, the senior management level starts to adjust the land policy. In 1962, the Tenth Plenary Session of the Eighth Central Committee of the CPC passed the *Modified Draft of Rural People Community Work* (namely “60 rules for people community”). It is the first policy that clarifies the rural economic relationship since the appearance of people community. In history, this policy founded a basis for further changes of rural land property right.

According to statistic data, till 2006, the registered population in Chinese countryside is about 940 million and the constant residents are about 740 million. The gap between registered population and constant residents is caused by farmers entering urban areas. In addition, many citizens choose to leave their registered cities and live and work in other cities. All domestic migrants in China are about 200-300 million and quite a lot migrants live in farmers’ houses beside towns, namely the connecting zone between countryside and city, which contributes to the appearance of a great house-rent market. It is possible that more than one hundred million migrants rent farmers’ houses beside cities.

In fact, for farmers, to rent houses to migrants is a common phenomenon in economic life. It is normal in a society with fast-developing market economy and fast-floating population. Formally, there is no strict line between “rent” and “sale”. If I rent your house for one month, it means I “buy” the right of living in the house for one month. As a commodity transaction activity, it is one of numerous market transaction activities. In essence, they are similar.

The problem is: in common house-renting activities, house transaction happens spontaneously, which forms the emergence of initial “limited property house”. In a legal aspect, whether confirm, protect, and regulate farmers’ right of renting and selling houses built on residential lands is always a pendent problem. The use right of state-owned lands can be transferred, what takes references from experiences of Hongkong, namely the land leasehold system. Hongkong’s land system is from England. The government empowers the market with the right of transferring lands, namely the so-called “absolute property right”. According to present system, only the government can release the use right of state-owned lands in market. Since this system originates from the planned economy, some management system and operation mode, not mention the lands, as a commodity whose property right is still not clear, are still under the influences of planned economy.

Similarly, another problem is the establishment of the scope of state-owned lands. The *Constitution* issued in 1982 regulates: “all urban lands are owned by the state.” However, the “absolute property right” only covers the state-owned lands, because the law confirms merely the transfer of state-owned lands’ use right in market and relevant rent, bidding, transaction, getting property right certificate or mortgaging to financial institutions. Accordingly, the use right of farmers’ collective lands is not allowed to be transferred in market. Only when it has been confiscated, can it be confirmed or protected by the law, and possess a transfer right that is effective in one year ----- in nature, it is a logical deduction instead of a legal definition.

China’s present land system is: farmers’ lands are agricultural lands; only when be confiscated, can farmers’ lands turn into non-agricultural lands; only the use right of lands can be rented in market. However, this system has a great defect, namely 900 million farmers’ “rural construction lands”. Relevant materials show that till late 2005, there are 164000 sq. km. construction lands in Chinese countryside, equal to the area of Henan province and 4.6 times of urban construction lands in China.

In the use right aspect, the rural construction lands are for farmers. In other words, although the use right has been given, it does not develop into the profitability right and transfer right of users ----- farmers. But the development of property right can overcome anything. Experiences are everywhere: as long as farmers can get more profits from their resources, “self-owned” use right will turn into transfer right by any possible means, which will bring about more profits for farmers. In a sense, realize the profitability right by means of transfer right.

Another important economic reason for the appearance of “limited property right” is the fast-increasing house price in cities recently. Under the pressure of rising price of real estate, farmers’ lands and property rights become prominent gradually and demand for formal legal expression ----- from this point of view, the key for “limited property house” may lie in who realize their profits and rights by this, instead of whose needs will be satisfied finally.

2. The nature of “limited property right”

The “limited property right” means the limited property right of residential lands. According to present system, residential lands are owned by the collective. Farmers can get or use the residential lands by obtaining approvals. And they can use the residential lands forever. The only use of residential lands is to build farmers’ houses. Farmers have the eternal ownership. They can rent or sell their houses. However, residential lands are not allowed to be rented or traded. In history, there is only houses transaction but no lands transaction in Chinese countryside. They can charge for houses but not residential lands.

The “limited property right” house concerns the rural residential lands issue on the surface. But in nature, it is about the character of lands. According to present land management laws and regulations, residential lands are forbidden to be transferred between villagers in one village. As for the transfer between citizens and farmers, it is a forbidden zone regulated by laws, regulations, and policies. Beside the land management regulations, in 2000 the State council of China informs that forbid urban residents to purchase houses built on rural collective land, because more and more urban residents choose to buy rural residential lands.

In 2004, the Ministry of Land and Resource of PRC makes it clearer that urban residents should not get rural residential lands by means of long-term rent. However, due to the rising price of lands, the low cost of rural collective lands invalidates these regulations finally. More and more urban residents choose to build houses on rural residential lands or directly buy houses built on rural collective lands. Till 2007, in Beijing, Guangzhou, and Shanghai, the “limited property right” houses or “county property right” houses are expanding from countryside toward cities.

According to present laws and system, farmers can hold or use the lands but can not dispose or gain profits from them. Therefore, the lands are not the assets of farmers completely. The lands are just “commodities” with special use values. They do not mean assets or ownerships. After 1962, farmers have no right of disposing the lands freely, which directly

causes such a result that, the transaction of “limited property right” houses or “county property right” houses is out of the protection of laws. So, the essence of the “limited property right” house issue is whether farmers have the ownership, disposition right, and profitability right of their residential lands, which is the core of the dispute.

A view agrees: India and North Africa follow western economists’ suggestions on land privatization. As a result, it leads to a high centralization of lands under the condition that farmers are lack of social securities. According to this view, since Chinese farmers are also lack of perfect social securities, once lands transfer is allowable, farmers will have no choice but sell their lands as they catch severe diseases or meet unsolvable problems. How farmers losing lands live will become a serious issue in front of the government. The large-sized slums lacking of public drinks and basic sanitations beside big cities in India and North Africa are directly derived from the radical land privatization transfer policy in a sense. Chinese government worries this issue to a great degree. It is a dilemma whether endow rural lands with profitability right (Le Li, 2007).

3. Problems in present real estate and economic development due to “limited property right” house

In a sense, the supply and circulation of “limited property right” houses are in accordance with the government objective of stabilizing house prices in recent years. From this point of view, “limited property right” houses are supposed to offer a chance for controlling house prices, namely relieving the condition of more controls and higher prices by means of spontaneous property evolvement powers. Or, the government issues a series of macro policies to adjust and control house prices on one hand. On the other hand, by controlling and regulating “limited property right” houses, the government can restrain the disordered real estate development and land management.

Experiences show that the definition of property right determines the “market” and the market effect. Land resources are necessary primary resources for human society, which needs a set of clear property right system to regulate the uses, profits and transfer. So does the “limited property right” houses that have unclear definitions and rich connotations, and appear accompanied with the development of urban economic and real estate and land system.

The “limited property right” house brings forward a primary issue for present economic policy and market development. Its appearance and growth serve as challenges for present land system. Or, the folk market brings about changes for present land system. It can also be regarded as a great chance ----- in a sense, present land system and policy have already failed to adapt to the fast socialist economic development. From present policy and management on “limited property right” houses, today’s land system and policy, especially on the “limited property right” issue, needs to be reformed and regulated further. Since the reform and opening policy, the household contracts of rural lands have founded the farmers’ long-term right of rural lands. The state-owned urban lands have entered the market by leaseholds. For original rural lands ----- including agricultural lands and rural construction lands, the only way to become non-agricultural lands is to be confiscated by the state. The problem is most urban lands are used for commercial and business purposes. The traditional way of confiscating lands by the government “for the sake of public interests” is not right for agricultural lands (surely include farmers’ residential lands and agricultural construction lands). The government is the only subject who can sell lands in a competitive market. In a sense, the government puts itself in a position where the government and common people compete for interests. As a result, the government will be incapable of fulfilling their functions of serving the public.

The sticking point in the system reflected by the “limited property right” houses is that the government is the representative of land owners, the manager of land transaction and circulation, and also the only owner of land “leasehold”, namely the final land operator, what simplifies the distribution of land resources at certain degree. As a result, it may lead to inevitable and unendurable wastes and mistakes of resource distribution ----- that is an economic inefficiency issue. Because China’s socialist economic system is in construction, the government requires more experiences and perfect system in order to be a qualified owner of lands, facing the unprecedented rising price of houses and the distribution of land rents. Therefore, it is a right time to reform the land transfer system left by the industrialization time. As for some inevitable tasks in front of China’s reform of system, we should manage them as soon as possible. The viable first step is to confirm the legal right of rural lands entering urban first-class lands market, changing the administrative monopoly of lands transfer.

For the “limited property right” house, Chinese economist Qiren Zhou says, “it is a historical great chance. (Qiren Zhou, 2004 & 2007)” However, in order to grasp this chance, we should face the facts and possess sufficient wisdom and courage. The key is that the government gets tremendous interests as the only owner of lands. In addition, some wrong opinions on land transfer right disable people from understanding this chance. The overwhelming household of lands formerly started from “limited property right” in fact. After 46 years from the first household of lands happened in Yongjia, Zhejiang province in the second half year of 1956 to the *Farmland Contract Law* issued in 2002, the definition of non-agricultural lands’ transfer right is more complicated than farmland contract. But we still believe that the great changes of system deserve more patience.

4. Explorations on the reform of present land system from the regulation of “limited property right”

According to the analysis above, the “limited property right” phenomenon and a series of relevant land regulations and land policy reform issues indicate that China’s present land system is far from realizing the harmony, common interests, people’s livelihood, and scientific management. Especially, the government should adjust its role as a service-oriented, commonality-oriented, and livelihood-oriented institution. At the level of regulating the “limited property right”, we can adjust and reform present land system and policy from following aspects:

(1) How to manage “limited property right” houses? Should it be legalized right away or later? It is an unavoidable problem for deepening the reform of land system and land policy. Houses are available for transactions but lands are not. And houses are built on lands. Due to the rising price of houses, the “limited property right” issue comes into being. How to settle this issue, legalize or control, is one of cores of present “farmer, countryside, and agriculture” policy and also the key of present land reform.

(2) Whether will the government continue to be the only “owner of lands” or not? Why do farmers and village collectives participate in lands transfer directly? Why is the government the only “owner of lands”? Whether do farmers have the right of sharing profits from lands renting brought about by urbanization? All these questions concern one fundamental idea that farmers live on lands and obtain financial incomes from lands, what are the core of present livelihood problem and also the nature of the “farmer, countryside, and agriculture” policy. Any policy and regulation affects and adjusts different parties’ interest relationships. What are farmers’ fundamental interests? The ownership of lands and the profitability of lands. Today, it could not thoroughly solve all farmers’ problems only by “planting”. Undoubtedly, to share interests with the public is the great highlight of government’s livelihood policy.

(3) How should present land transfer system, especially for rural lands, be reformed? It is a key problem for the reform of land system and policy. “Common people can not afford the houses in cities, but the houses in countryside are not allowed to be traded.” This dilemma is caused by different land transfer systems in cities and countryside. Because the land transfer system is too strict and tight, the price of urban houses is so high that common people could not afford them. Therefore, present land system and transfer policy needs to be reformed thoroughly in order to catch up with the times.

(4) Whether can “limited property right” houses be transacted among objects in a controlled scope? It concerns the feasibility of residential lands’ land quota transactions. If lands can be transferred, even only for transfer of quota, it will hurt farmers’ interests. If we control the transfer of residential lands in order to protect farmers’ “planting, growing, raising, and resting”, it will not change present conditions at all. Today, the appearance of “limited property right” houses brings forward a new chance: people create a new land transfer and value realization way, what completely illustrates the feasibility of “limited property right” house.

(5) Can we grasp this chance? The debut of “limited property right” and the vitality of land quota transaction show that the chance for China’s land system reform is coming. But whether we can grasp this chance is another issue. Here are barriers. The first is people’s in-rooted fears for land transfer. The second is the tremendous interests involved in land transfer. How to dispose and distribute the interests turns into the focus of different parties’ games. We should not have this chance missed.

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