

Study on the Problems and Countermeasures of “Limited Property Rights Houses”

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Abstract

In parts of the “historic village renovation”, “urban village renovation”, “combining the countries and matching nature villages”, “new rural construction”, “improving the living conditions of villagers”, by the way of “land - renting instead of expropriating”, the development of “limited property rights houses” in China has existed for a long time, and it has shown a trend of difficult to contain. The article analyzes the status of “limited property rights houses”, reveals its drawbacks, explores the reasons for its existence and finally proposes countermeasures.

Keywords: Limited property rights houses, Problems, Countermeasures

1. Introduction

“Limited property rights houses” is not a legal concept, and it is only a conventional item in the social practice, that means collective farmers bypassing the government and agreeing with developers directly to construct the houses which build on the collective land without the government expropriation and then sale to people outside of the collective in low price (Ma, G, 2007, pp. 41).

The study of “limited property rights houses” has an important theoretical and practical value. Since the 1990s, China began to promote the process of urbanization and the commercialization of housing evolution rapidly. In various places, the “historic village renovation”, “urban village renovation”, and “combining the counties and matching nature villages” were carried out extensively, while in a number of suburban areas, there are a large number of “limited property rights houses” development by the way of “land - renting instead of expropriating”. The emergence and development of the “limited property rights houses” presents a new challenge for the existing legal system in China, especially for the rural property rights system, rural land requisition system, land use management system and farmland protection system. Now, all departments focus on “blocking” it (Xie, Z., & Ma, Z., 2010, pp.11-13). Facing on the problems of the rigid requirements of the housing, the high price of the urban housing and the inadequate housing security system, many people choose to buy these houses with the chance of the “law is not responsible for the masses”. However, if the large number of the houses is forced to remove, it is not only a great waste of social resources, but also obviously not conducive to building a harmonious socialist society in China.

Many domestic scholars have done different research and analysis about it and currently there are four major academic research ideas. At first, it studies the legalization from a legal point of view. Su (2011) analyzed the

necessity of the legalization from the concept, characteristics and related legal issues of “limited property rights houses”. Song and Di (2010) proposed the improvement of the dual land systems that allow the trades of collective land use rights and improve the relevant security system so that solve the social problems which bring from the “limited property rights houses” fundamentally. Secondly, it studies its definitions, causes and countermeasures. Cheng (2009) provided the use of administrative and economic means from the content and type, and gradually established a unified land market and tax system. Secondly, it studies from the institutional economics. Ning (2010) found the farmers and government as a “participant” in the institutional change promoted the houses’ production and development in the path of “induced institutional” and “mandatory regime change”. Fourthly, it studies from the main stakeholders involved based on the game theory. Liu (2009) suggested that need to think about the land transfer system, land management and affordable housing together to solve the houses problem on the view of game theory. Ren (2009) considered that the legalization of the houses can better reflect the social equity from the perspective of the interests.

Existing researches on the awareness and solutions of “limited property rights houses” provide a reference, but it is not comprehensive enough for the status, the drawbacks and countermeasures, and the studies of the causes are too general, and the studies of the countermeasures are too theoretical. In this paper, based on existing research results, it analyzes the influence of the houses’ existence for farmers, local government, builders and buyers and the causes of the produce from land system, land market and real estate market and then proposes countermeasures.

2. The status and drawbacks of “limited property rights houses”

2.1 The status of “limited property rights houses”

According to statistics from 2009 China Urban Development Summit Forum and Urban Blue Book, as of the first half of 2007, there are 33 billion square meters rural housing construction area in the whole country, of which are 6.6 billion square meters “limited property rights houses” construction area that are account for 20%, equivalent to total amount of investment for nearly a decade of China Real Estate development (Qiao, Y., & Wu, J., 2010, pp.140-143). Based on the data from some media of case studies and the Land and Natural Resources Ministry of typical survey, there have built a large number of “limited property rights houses” in Beijing, Tianjin, Chengdu, Xi’an, Wuhan, Nanjing, Jinan, Zhengzhou, the Pearl River Delta and other places. Investigate more than 400 sale of real estate in Beijing, the analysis showed that the “limited property rights houses” is accounted for the total of twenty percent or so (Li, X., 2009, pp.125-126). In Tianjin, according to relevant statistics, the sales of “limited property rights houses” in suburban areas have accounted for 20% of the market (Xie, Z., & Ma, Z., 2010, pp.11-13). In Nanjing, before and after 2007, there are nearly 200 “limited property rights houses” projects in the market which tens of thousands of people have lived in some village developed and in Shenzhen, more than 40% close to 50% residential sales are of “limited property rights houses” (Cheng, H., 2009, pp.62-67). While, in Chongqing, “limited property rights houses” spread from the main city and each city center of the county, and in the economic backwardness of the poverty-stricken county Cheng Kou, according to the survey of investigation and remediation in February 2009, since 2003 there are illegal constructed “limited property rights houses” 82 in the county planning area, covering 15 000 square meters (Li, X., 2009, pp.125-126).

From the location, “limited property rights houses” distribute in the suburban areas surrounding the highway, outer suburbs areas and expansion of urban fringe areas and the center of urban. From prices, the ordinary housing prices of “limited property rights houses” is 40% to 60% lower than the real estate prices which have the same position, and the main purchasers are urban low-income groups. In Beijing, the prices of “limited property rights houses” are between 2 500 yuan to 4 000 yuan per square meter, even as low as 1 000 yuan per square meter, which is account for 25% to 30% real estate prices in Fourth Ring (Cheng, H., 2009, pp.62-67). In Zhejiang Hangzhou Gongshu area and Jianggan area, the average prices of “limited property rights houses” is concentrated in 3 000—4 000 yuan and there is not exceed the maximum of 5 000 yuan per square meter, however, in the same area, the real estate prices are basically to 10 000 yuan per square meters (Xue, Z., & Ma, Z., 2010, pp.11-13). From the building patterns, there are two: First, it is constructed in the collective construction land, including village homestead, the stock of homestead, land in collective enterprises and land saved through land consolidation; second, it is constructed in the land of collective enterprises and farmland.

2.2 The drawbacks of “limited property rights houses”

2.2.1 Damage to both supply and demand rights

“Limited “property rights houses” has not the right in land use and house property ownership, and causes the losses of interest on the both sides of supply and demand, in order to make the both sides need to take risks such

as power risk, protect risk, quality risk, policy risk and value risk (Zheng, N., 2009, pp. 43-46).

(1) Damage to the interests of farmers of land supply side: A large number of land revenue which generated from the development process of the illegal and disorder construction of “limited property rights houses” are intercepted by the village officials and developers, so that large number of farmers become unpaid suppliers in the land market transactions who lost the right in land use forever, named landless farmers. In the short run, farmers obtain the purchasing money for house, by the look of long-term, a lot of farmland conversion by the “limited property rights houses” would lead to the farmers lost the most basic livelihood, and most importantly, they would lost the opportunities of access to land value-added revenue. Meanwhile, after the peasants to become landless farmers, employment rights and social security rights are not implemented, seriously affecting the quality of farmer’s life.

(2) Damage to the interests of house purchaser of land demand side: The house property ownership of “limited property rights houses” is awarded by the township level of government or committee in the village which is self-made and unauthorized release and it does not have the force of law. Under the law, even if the real estate owns the five licenses, the house property ownership should be awarded by county government, so that the township level of government has not entitled to issue the house property ownership certificates. So “limited property rights houses” has no property rights, and do not have housing for all, transfer, disposition, income and other rights, and people cannot transact the procedures for transfer of property rights, and the purchase contract is not valid, if there are problems, buyers will not receive any legal protection.

When home buyers transact the housing mortgage loans and inheritance, they would meet difficulties; when people buy “limited property rights houses” which illegal occupant the cultivated land or violate the local land use planning and urban construction planning, the buyers must undertake the risk that the house may be removed or confiscated by law enforcement authorities; when confronted with the construction requirements imposed, buyers would not receive any compensation. Buyers who buy the “limited property rights houses” would face many problems such as the quality assurance, after-sales maintenance, property management, and public safety and health issues.

2.2.2 Disrupt the order of the real estate market

A lot of “Limited property rights houses” existed in the market are without via government collection methods, use of non-payment of land transfer payments and tax (fee), not for urban planning, housing construction, real estate sales procedures, and without having to obtain land use permits, commercial real estate ownership certificate. From development to construction to sales, they destroy the overall planning of urban construction, evade a large number of tax, including the land value increment tax, deed tax, business tax, urban maintenance and construction tax, additional education tax, stamp duty and other taxes, and cause the loss of government land revenue and unfair competition in the real estate. Unauthorized development and sale of “limited property rights houses”, breaking the unity of the real estate market, made country could not timely supervise this part of land and housing which has entered the market in fact. If it is regulatory uncontrolled for the prices and scales, it would affected countries’ macro-management for the land market and the real estate market, and disrupt the normal order of the real estate market.

2.2.3 Threat the land security

With “Limited property rights houses” unauthorized using of farmland for development and construction, new construction land will inevitably lead to a total amount of loss of control, cultivated land reduce and the land use structure and spatial layout ensured by land use planning lack of effective implementation, and cause the loss of control for land resources management by state. At the same time, the change of the nature of collective land in land use lead to the rural non-construction land and even arable land gradual reduction. It threatens to China’s cultivated land, thereby affecting the national food security and macroeconomic control. In 2007, Land and Natural Resources discovered 32 000 cases of illegal land, involved millions of hectares of land, which a large number of agricultural lands was developed into “limited property rights houses” to rent and sell. If the “limited property rights houses” is not controlled, there will be more occupied land to real estate development. If there cannot hold the red line of 18 million mu cultivated land, domestic food will not be self-sufficient and in food issues China are the kinds of risk.

3. The reason for the existence of the “limited property rights houses”

The harm of “limited property rights houses” to society is many, analysis of its causes mainly in the following aspects:

3.1 *Incomplete system of rural land*

3.1.1 Inadequate system of land ownership in rural areas

Although the law provides that “the collective farmers” is the subject of collective land ownership, but the township (town), village, village groups share ownership of land, which make the property rights of rural collective land ambiguous. Instead, village groups and village committees that set “operation and management” powers of the administrative organization, on behalf of “farmers will” exercise their rights, so that farmers are losing the right to participate to express their own will. The real subject beneficiaries and rights exercised of ownership had a severe separation, resulted collective land ownership in clearance status. Unclear property rights of rural land and virtual home ownership lead to a serious process of “offside” and “absence” phenomenon in the exercise of collective land ownership, thus lack of effective monitoring and land management, so that left the gap system for “limited property rights houses” (Lui, H., 2010, pp.70-73).

3.1.2 Uncoordinated system of rural land management

Because of China adopting homestead free transfer system, the phenomenon of homestead area exceeded widespread, such as villagers demand for a new homestead, area without approval, obtain housing sites by fraud, cheat approval of housing sites by concealed the existed house and make a false report about family population and change the household register. With the transfer of rural labor to urban areas accelerated, farmers live, work and manage in cities growing, the phenomenon that a “hollow village” rural appears, and it causes a large number of idle housing sites and homestead. Meanwhile, under the existing Residential Land policy restrictions, part of the farmers has to idle the homestead after he purchase in the city because homestead cannot be a public legitimate transfer; part of the farmers return the funds from the city to construct new house because of the capital support blocked in city.

Because there is no suitable restriction in law about “set up township enterprises, villagers construct residential and township (town) construct the public facilities and utilities” and also no operational specifications, and on clear scope of property rights about “Use the land for the construction of residential and ancillary facilities (Yang, H., 2009, pp.195-196)”, the rural construction land uses very extensive.

The phenomenon of management of confusion of homestead and extensive use of construction land provides the existence conditions for “limited property rights houses” and left space for some damage to the collective interests.

3.1.3 Unreasonable system of rural land expropriation

As the law of “national public interest” standard is not clear, the phenomenon that is implementation land acquisition for real estate development in the name of the public interest undermines the interests of farmers. The idle of land ownership in rural areas makes the ownership itself being appropriated possession whose possession of land conferred, income, and disposal, resulting in a large number of land value increment to be seized during the process of land acquisition. In the current real estate development process, only 20% to 30% of the income distribution from the part of the land value-added left in the town, among, compensation of farmers only 5% to 10%, then Local government takes the land value of 20% to 30%, and developers will take the bulk of the land value-added revenue, accounting for 40% to 50% (Ji, Zh., & Xu, B., 2009, pp.13-15). The expropriation for the original occupation of the right holders makes the peasants have strong will to wrest land, while the construction of “limited property rights houses” become the major means to share the land value increment for rural collective, and by the village cadres and various officials and businessmen used, it led to the plundering of more powerful forces.

3.2 *Dual market in urban and rural land*

China implemented urban-rural household registration management system, population into urban and rural people, so that land is divided into urban and rural land. The land systems of urban-rural dual structure lead to the dual nature of urban-rural division in China’s land property rights obviously. It made “the same land with different right”, that is to say, rural land belongs to the rural collective and urban land belongs to the state, and the urban-rural land ownership and use rights cannot transfer freely, unless get the approval from land administration department. Based on the dual land tenure system, it forms a dual land management system, which the state-owned land and rural collective land manage in different, reflected in the law is that without any restrictions in state ownership of land but to impose a variety restrictions in rural collective land ownership. At the same time, land prices binary makes the separate urban and rural land price system that means “the same land with different prices”. With the development of economy, urban-rural dual land market longer meet the market demand of the rural collective land transfer. The collective economic interests of farmers should not be protected so that encouraged farmers to spontaneous construction of “limited property rights houses” for profit.

3.3 Rural land gray market

The legal means of rural collective land into non agricultural land is that the government transfers to the use of units after legal requisition the title, however, under the existing legal system, when transfer of land after the collective owners of agricultural land and land requirements are directly negotiated, there will form a gray market of rural land. When in the face of the amount of land transfer, some land demand afford to buy the legitimate land after the land transfer of government expropriation, and at the risk of a huge policy risks, directly with the owner of agricultural land in the collective bargaining for low prices of gray land. The “limited property rights houses” has emerged when land demand side get the gray land for housing development and construction.

3.4 Insufficient supply of the real estate market

Since China adopted the reform of housing commercialization, commercial real estate market does not consider the classification requirements of the buyers, neglect the construction of the housing security system so that in the market, there is showing a single supply status. In the form of densely, population continues to grow, urban economic growth, increased urbanization, rising income levels of urban residents and small family size and life evolution, the rigid demand for real estate sharp increase. By the addition of strict control of the real estate from the urban planning, land supply plan, building red line, and the planning target, and the Chinese government supply the land monopoly, it caused the inadequate supply of urban land and housing supply, so that house prices rise and macro-control in real estate market and structural of urban housing were imbalance. China's urban housing security system is lagging behind, forcing some low-income families turned to look for housing in urban fringe areas. So the “limited property rights houses” not only increases the supply of the real estate market, but also wins the consumer market with the low price.

4. The countermeasures of “limited property rights houses”

4.1 Increase land supply

4.1.1 Allow trading of agricultural land directly into the market

The existing urban-rural dual structure model of land do not allow the use rights of the rural collective land for construction direct access to free flow of the primary land market, forced the supply of land shortage. Should be given in the law of collective ownership and state ownership on an equal footing, to give farmers and urban residents the same property rights, and gradually establish and improve the market system of land transfer mode, and allow trading of agricultural land directly into the market. Use the market allocation way to evaluate the value of all land, format of diversified forms of land resources and let the supply of land no longer present a single government monopoly supply situation. With this real estate market supply will increase by land supply, and this will reduce a variety cost and also make the real estate prices down. The gray market of rural land can automatically eliminate, and the phenomenon of construction of “limited property rights houses” will disappear naturally.

4.1.2 Reform the mode of land supply

Start from the system, change the financial situation which rely solely on transfer payments and real estate tax as the main income, reform the mode of land supply and change the practice of land use fees of one-time charge for 40 years and 70 years and curb the status of the high cost of buying and trading process and holding the low-cost. Change the rules of the highest bidder's bid, establish a comprehensive index scoring system, dilute the government role of the operators in the land supply market and strengthen its role of regulatory the market. Clear land supply conditions in the bidding, auction and hanging, for ordinary commercial housing projects, in the pre-conditions of the bidding, auction and hanging, explicitly set the dwelling area of control standards, floor area ratio, building height, completion time and marketing time and so on. And specify in the contract, as the legal basis for supervision and inspection in the process of development and construction, to ensure the land into the market timely from government supply and to format of effective supply. At the same time fostering and regulating the secondary market for land, accordance with the “total control, strict management incremental and revitalize the stock” principle, in the context of legitimate source of land, clear ownership, and in the planning and unified supply plan, the stock of land use rights can still be in the visible land market and adopt to be transferred by law in private such as bidding, auction and hanging, and building secondary land market with supply diversification and rich in the form of market transactions. Allow free land transfer from the secondary market, make full use of the role of market mechanism, continue to configuration land resources to efficient users, and avoid to waste of resources due to land transfer poorly.

4.1.3 Linked to increase or decrease in land remediation

Through the solid progress of the linked to increase or decrease of urban and rural construction land, use the

operation mode of government-led, market-led and village collective autonomous urban construction land coordination and interaction (Zhu, L., & Jia, Q., 2009, pp.384-385), the rural land for construction would obtain effective integration. Change the scattered layout and the structure of “scattered, large, chaotic and poor”, optimize the layout of the land use structure and give full play to the role of agglomeration benefits and scale benefits. Also help to change the extensive use of rural land for construction and promote land resources efficient intensive and scientific and rational use. Reasonable merge the rural scattered settlements and promote the rural construction land consolidation and reclamation so that can to protect farmland resources, to achieve balance of arable land.

4.2 Classification of existing “limited property rights houses”

Should be strictly prohibited in the new real estate developers continue to construct the “limited property rights houses” on rural collective construction land, ordered to suspend work under construction, and pay close attention into city unified planning, and confirm or to stop after reasonable approval process. For the breach of planning, difficult to remedy problems in the design and construction and existence of security risks, must be resolutely removed to maintain stable, orderly and healthy development of the real estate market. Classify the existing “limited property rights houses”, completely removed the “limited property rights houses” which illegal occupation of arable land; grant property rights recognized for the existing qualified “limited property rights houses”; bring the “limited property rights houses” which unsold and in accordance with the conditions in the housing social security system; sell the luxurious “limited property rights houses” at public auctions.

4.3 Establishment of multi-housing security system

China's housing security system should be a multi-level system (Yi, X., 2009, pp.100-107): The first level is less than 10% of the low-income families, elderly, sick, etc, and they live in the low-cost housing or public housing provided by the government, by this way to ensure the most vulnerable people in the residence. The second level is 70% of low-income people, through the market to solve the housing by all the help of government (such as monetary subsidies, preferential interest rates, preferential tax and other). The third level is 20% of high income earners, whose houses completely determined by the market, not incorporated into the housing security system. At the same time, in-kind subsidies in the residential security system can be divided into three levels: low-rent housing mainly provides for the families below the minimum living; rental affordable housing provides for low-income families; limited-price house provide for households or units relocated due to building demolition and no housing.

5. Conclusion

The development of the “limited property rights houses” is illegal, but this phenomenal reflects the distortion of the interest structure between the Chinese farmland conversion and land development. It should be comprehensive improvement from the land system, land market and real estate market and give full consideration to farmers, local government, builders and buyers interests. The reason of over-exploitation for the houses does not lie in itself, but in the defects of the farmland conversation and land development control. The harm is not only the over-supply property but also the rapid loss of non-renewable agricultural land resources. China's long-established urban-rural dual land structure clearly cannot meet the current economic situation develops, and the management should have a sound system in rural property rights system, rural land management system, rural land requisition system and land use management system. Under the current law, real estate development on the collective land needs transfer the land into state-owned land through the collection process, but according to the relevant provisions of the “Property Law”, only in the public interest, the collective land can be collected in accordance with authority and procedures prescribed by law. However, the commercial real estate development clearly can not belong to the public interest so that not in accordance with the conditions imposed. To solve this problem, it needs to change the existing land structure of urban-rural pattern and improve the relevant system as soon as the land system and housing security system: allowed the rural collective construction land access to land private market, changed the mode of land supply, linked to increase or decrease in land remediation, established the secondary land market, and allowed to transfer land freely. Through the establishment of multi-housing security system, promoting the houses' rational price return can relieve the pressure on existing urban housing. These countermeasures can lay a solid foundation for Chinese society to achieve a successful transformation.

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