

Measures for Improvement of the Land Acquisition and Compensation System in Urban-Rural Integrated Construction Land Market

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Abstract

The report on the 3rd Plenary Session of the 18th Central Committee of CPC elaborated on the establishment of urban-rural integrated construction land market and pointed out the direction for the future land reform. During the process of building the urban-rural integrated construction land market, land acquisition and compensation is the core issue. In the current land acquisition and compensation system, problems like too low standard for land compensation, unreasonable distribution mechanism of the acquisition benefits and a lack of transparency in the acquisition procedure exist. This paper aims to solve these problems through reestablishing the compensation principle for land acquisition, establishing the scientific and reasonable compensation mode for land acquisition, raising the compensation standard and perfecting the land acquisition and compensation procedure.

Key words: Land acquisition; Land compensation; Due procedure; Compensation fee for land acquisition

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INTRODUCTION

At present, urbanization has become an irresistible social development trend. Urbanization and industrialization

calls for the non-agriculturalization of large amount of farmland, and land acquisition often appears accompanying the conversion of agricultural land into construction land. The degree of legalization and standardization of our country's administrative acquisition is relatively low, which is the important cause of the conflict in the acquisition. In recent years, there have been more and more social disputes resulting from the land acquisition which even has caused mass disturbances. How to guarantee farmers' rights and interest during the process of acquisition has become a problem that needs to be solved immediately. Acquisition and compensation are "as close as the lips and teeth", and where there is acquisition, there is compensation. Compensation standard is the core problem in the land acquisition and compensation. Whether the compensation standard is reasonably designed directly concerns whether farmers could receive just compensation, and it is also related to whether the social fairness and justice could be realized. If the compensation standard is unscientific and it fails to give fair and reasonable compensation to those whose land is levied, the acquisition will be depriving those people of their property.

1. THE CURRENT RELEVANT PROVISIONS ON LAND ACQUISITION AND COMPENSATION

Article 47 in the *Land Management Law* stipulates that as for land acquisition, the sum of land compensation fees and resettlement subsidy shall not exceed 30 times the average output value in the three years before the land is expropriated. Afterwards, *Decisions by the State Council on Deepening the Reform and Intensifying the Land Management* stipulate that

If the sum of the land compensation fees and resettlement subsidy reaches the legal upper limit and it is still not enough to

maintain the land-expropriated farmers' original living standard, the local government could use the income from the paid use of state-owned land to grant subsidy.

Guidelines on the Perfection of the Compensation and Resettlement system for Land Expropriation issued by the Ministry of Land and Resources expressly stipulates that if the sum total of the land compensation fees and resettlement subsidy is calculated according to the standard of 30 times, and it is still not enough to make the land-expropriated farmers maintain their original living standard, the local people's government shall make overall arrangements and allocate a certain proportion of the earnings from the paid use of the state-owned land to grant subsidy. As for the occupation of basic farmland that has won the approval according to the law, the compensation for land acquisition shall be carried out according to the highest compensation standard issued by the local people's government. The standards vary with places. Taking Hebei province for example, stipulations in that province on the compensation standard for land acquisition are that the compensation fees for the expropriation of cultivated land shall be six to ten times the average output value in the three years before the land is expropriated. The compensation fees for the expropriation of other farmland other than the cultivated land and the construction land shall be five to eight times the cultivated land's average output value in the previous three years in the village or town where the land is expropriated. The compensation fees for the expropriation of unoccupied land shall be three to five times the cultivated land's average output value in the previous three years in the village or town where the land is expropriated. The resettlement subsidy for the expropriation of cultivated land shall be four to six times the average annual output value in the three years before the land is expropriated. The resettlement subsidy for expropriation of other farmland other than the cultivated land and the construction land shall be four to six times the average annual output value of the cultivated land in the previous three years in the village or town where the land is expropriated. As for the expropriation of unused land, the resettlement subsidy shall not be given. If the land compensation fees and resettlement subsidy are paid according to the Article 38 and Article 39 in this regulation and it still cannot make farmers that need to resettle keep their original living standard, the resettlement subsidy could be increased with the approval of the provincial people's government. However, the sum total of the land compensation fees and resettlement subsidy shall not exceed the following limit: a) For the expropriation of cultivated land, it shall not exceed thirty times the average annual output value of the cultivated land in the three years before the expropriation; b) For the expropriation of other farmland other than the cultivated land and the construction land, it shall not exceed 25 times the average output value of the cultivated land in the previous three years in the village or town where the

land is expropriated. As for projects related to energy, transportation, water conservancy, mine and military installations that need to utilize lands beyond the urban construction land scale, the minimum protective price of the compensation for land acquisition shall be carried out, and the land compensation fees shall not be less than ten times the average annual output value in the previous three years, and resettlement subsidy shall not be less than six times the average annual output value of the previous three years. With the development of the economy and farmers' income increase, the above-mentioned standard could be adjusted in due time. In order to protect the land-expropriated farmers' legitimate rights and interest and prevent the price of the same land plot from being raised or lowered artificially, in accordance with the principle of same land same price, Hebei province regards the integrated expropriated land section price as the standard. During the expropriation of collective-owned land according to the law, land compensation fees are reasonably determined and allocated. The *Notification* puts forward that 20% of the land compensation fees belong to the collective economic organization and 80% of them belong to the land user of the expropriated land or peasant household who contract the land on the household basis; if the expropriated land has no land user and the collective economic organization has not let contract or carried out other ways of contracting the land, all the land compensation fees shall belong to the collective economic organization and they shall be allocated or utilized by the village collective economic organization according to the law. The land compensation fees shall be granted timely and in the full amount. Any unit or individual shall not retain and embezzle them. If there are attachments or young crops on the expropriated land, extra compensation for the substance on the land and young crops shall be made to their owners. The standard of compensation for substance on the land shall be set by each municipal government in the region and the compensation fees for the young crops shall be calculated according to the output value of crop in season when the land is expropriated.

2. PROBLEMS EXISTING IN THE CURRENT LAND ACQUISITION AND COMPENSATION

2.1 The Standard of Compensation for Land Acquisition Is Too Low

Seeing from the stipulations on the land compensation in the land law, the concept entertained in our country's land acquisition compensation system is to make sure that farmers' original living standard does not decline. This concept is wrong. Collective land in rural areas belongs to real right and property and have certain value. Farmers' right to contracted management of the land is a

kind of real right for usufruct, namely, in the case of land expropriation, the land, due to the change of its use, could appreciate in value by dozens of times and even hundreds of times, therefore, farmers, as the owner of real right for usufruct should receive reasonable compensation. However, the current compensation for land acquisition is based on the original use of the land, namely the agricultural income, farmers have not enjoyed the benefits from the appreciated value. The existing compensation standard has seriously deviated from the law of value; the real price of the land and its potential value have not been taken into consideration, and it fails to reflect the market price. The land-losing farmers are converted into citizens, while the cost of living in cities and towns is much higher than that in rural areas. The concept of maintaining farmers' original living standard is to regard farmers as farmers permanently, which infringes upon their rights to equality as city residents.

2.2 The Distribution Mechanism of the Acquisition Benefits Is Unreasonable

The ownership of collective land belongs to farmer collective, and the land use right belongs to land contract operator. The *Property Law* expressly stipulates that land use right is part of the property right, and after the obligee obtains the "land use right", he or she also owns four items of powers and functions of the "land use right" just like possessing the ownership: occupation, utilization, benefits and disposition. Article 132 in the *Property Law* explicitly stipulates that when the collective land is expropriated, the person possessing the contracted land management right has the right to receive compensation, but stipulations in Article 42 in the *Property Law* and provisions in Article 47 in the *Land Management Law* do not manifest the compensation to the person possessing the right to the contracted land management. In the land compensation fees, there is no distinction made between the compensation for land use right and that for land ownership. All the compensation fees are distributed by the collective economy and the person with the contracted land management right has no right to receive compensation from the expropriating party.

The allocation of compensation fund is a problem peculiar to China. In our country, compensation for land acquisition involves three parties: government, rural collective and individual peasant household. The village committee often regards the management and distribution of the compensation funds for land acquisition as its autonomous affairs and keeps firm control. The land property right is not clear, which results in the repeated violation of the principle that "land compensation should firstly be used in the land-appropriated farmers". During the process of distribution, village committee is the leader and decider of the allocation and use of the land acquisition benefits, and it is also the manager of the land compensation income.

On the issue of compensation for land expropriation, with the deduction of land-transferring fees, land management fee, cultivated land occupation tax and the social security funds of the land-expropriated farmers, the money finally allocated to farmers is very few. The huge earnings from the increased value after the conversion of the land belong to the government and are distributed by the government. According to the relevant survey data, in the distribution of earnings from the value-added land due to the conversion of the land, the local government approximately get 60%-70%, and the village-level collective organization obtain 25%-30%. Farmers only receive less than 10% of them. Thus it can be seen that farmers basically cannot obtain the benefits from the appreciation of land value, while government and developers gain most of the land appreciation income.

2.3 The Procedure of Land Acquisition Is Not Open Enough, and There Has Been a Lack of Transparency

Reasonable expropriation procedure is a combination of reason and experience, and it has high administrative efficiency, which could maximize the support effect of the procedure arrangement". Establishing reasonable and legitimate land expropriation procedure could not only urge the land expropriation organs to conduct administration according to law, but also provide opportunities for citizens to participate. Besides, it could ease citizens' antagonism to the government and enhance the acceptability of the result. Our country has been making efforts to improve the land expropriation procedure all the time. In 2004, the State Council issued the NO. 28 document, which states that before the land expropriation program is approved of, the land-expropriated farmers should be informed of the expropriation purpose, location, compensation standard and resettlement measures, and the investigation results of the current situation of the land expropriated should also be confirmed by the peasant household collective and farmers. Article 43 in the *Property Law* in 2007 stipulates:" expropriation of the collective-owned land shall not violate the limit of authority and procedure as prescribed by law". However, the procedure of land expropriation in our country is still not perfect and careful, and the following problems exist: first of all, during the land expropriation, the guarantee of people's right to know whose land is expropriated is not enough. Farmers are in a passive and unequal status. Although systems like the "two announcements" have been established, farmers receive much less information about the land planning, land value, land use and transfer earnings than the administrative organs, and the information is obviously asymmetric. Farmers could not participate in the planning of the area of the land expropriated in advance and they have no chance to express their opinions and suggestions on different expropriation programs. Secondly, there has been

a lack of follow-up procedure for the land expropriation, such as the allocation of the compensation for the land expropriation and the supervision. Circumstances where lots of land have been expropriated but left unused and farmers have not received the compensation fees still exist.

2.4 There Exist Obvious Gaps and Omissions in Public Interest Clauses

In our country's existing laws, the definition of public interest is relatively ambiguous and has uncertainty. There have been no specific definitions of the public welfare and commercial construction land in law. Large amount of commercial construction land also adopts the way that public welfare land expropriation does, which leads to that the scope of the land expropriation is too broad and it lacks effective restrictions. What is more, public interest and commercial interest could not be completely separated, thus it provides a certain space for the government to seek rent. As a result, in real life, cases in the name of public interest which is in fact for profit often occur.

3. LEGAL COUNTERMEASURES TO CRACK THE PROBLEMS IN LAND ACQUISITION AND COMPENSATION

3.1 Establishing the Compensation Principle for Land Acquisition

Land acquisition expropriation principle is the basis of the compensation scope and compensation standard for land expropriation. In our country's relevant laws, the omission of the compensation principle for land expropriation directly influences the reasonable formulation of the land compensation standard. In today's society, most of the western developed market economy countries have determined the compensation principle for land acquisition in their constitutional texts. Since different countries have different economic development status, economic systems and ideas of the rule of law, they often establish their land expropriation standards suited to their countries according to their national conditions. "The principle of complete compensation", the principle of fair compensation", "the principle of just compensation", "the principle of proper compensation", "the principle of reasonable compensation" and the principle of appropriate compensation" reflect various countries' basic stances and attitudes towards land expropriation and they also determine the degrees of protection of citizens' rights and interest in those countries during the land expropriation.

Our country should establish the principle of reasonableness and equality as the basic principle of the compensation for land acquisition. When expropriating farmers' land, reasonable compensation should be made

to farmers according to the principle of the same land, the same price. Referring to the market price, make complete compensation to the obligee as far as possible.

The current land compensation standard is associated with the land's ultimate use to a certain degree. When the expropriated land is used for infrastructural project, the compensation standard is relatively low, but when it is for commercial use, the compensation standard is relatively high. Such stipulations go against the principle of equality, because as far as the rural collective organization and farmers are concerned, the land value they possess do not vary with natures of the construction projects. The compensation for land expropriation should follow the principle of "the same land, the same price". In the real land expropriation, major projects with tight budgets that use land in rural areas and transferring relatively low-price land in the industrial park, compensation is often made according to the relatively low standard, thus the compensation is often too little, while for the higher income from land sale, such as the land development for commercial and residential buildings in suburb, the compensation standard is higher. The lands in the same region should not have different compensation standards due to the different uses.

3.2 Establishing Reasonable Compensation Modes for Land Expropriation and Raising the Compensation Standard

The compensation modes for land expropriation could be divided into the following categories: the first mode is the times of the annual output value, namely, the method of explicitly stipulating the times of the annual output value; the calculation formula of land compensation fees is: The total sum of the land compensation fees= the number of mu of the expropriated land * the previous three-year average annual output value*compensation times. Among it, the compensation times are the core and key element to determine the land compensation fees and resettlement subsidy. The second mode is the integrated land section price. This mode refers to that within the scope of the construction land determined by the overall planning for land utilization in the administrative districts of cities and towns, divide the land section and calculate the comprehensive compensation standard based on the factors of land types, output value, land location, grade of the agricultural land, the amount of the arable land per capita, supply-demand relationship of the land, the local economic development level and the minimum living standard security for city residents. In principle, the compensation fees for attachments to the ground and young crops are not included. Thirdly, other modes, namely, authorize other departments to make separate stipulation or directly stipulate the compensation for land price.

The common practice in various countries in the world is referring to the land's market price and make complete

compensation to the land-expropriated person for their loss due to the land expropriation. The compensation for farmers' land development rights should be taken into full consideration when making compensation for land acquisition. Land development right is the real right separated from the land ownership. It refers to the owner's right to profit from changing the existing use of the land possessed. When making land compensation, it should take full account of farmers' land development rights and give them fair and reasonable compensation.

As for problems with too low compensation standard and narrow scope of the compensation, the current compensation standard for land acquisition should be adjusted and the compensation standard should be raised properly. First of all, stick to the principle of equality; in the same land section as is determined according to the planning, unified standards should be adopted during the land expropriation, and great differences should not appear due to the differences in the nature of the projects. Secondly, about the compensation standard, the neutral and independent third party should be introduced to participate. In the concrete operation, land asset evaluation could be hired to assess the value of the land and then the compensation price is determined. The participation and negotiation of the government, the third party and land-expropriated farmers will contribute to the land-expropriated farmers' recognition of the expropriation standard. On the basis of following the law of value of the market, the third-party evaluation agency makes the assessment and make a price for compensation, which could not only guarantee the land-expropriated person's private property right, but also is the objective requirement of establishing the integrated urban-rural construction land market. Besides, as for the compensation scope, compensation should also be made to the land-expropriated farmers for their investment in collective land, damages of dividing the residual land and economic loss so as to make them enjoy the compensation for land appreciation. The local government should determine reasonable distribution ratio of the land revenue based on the principle of "giving more, taking less and allowing flexibility", and make farmers participate in the distribution of land appreciation income to protect farmers' long-term interest.

3.3 Exploring the Distribution Mechanism of the Land Acquisition Income

As for the relation between the peasant household and rural collective, there are different ways of solution. One is to keep the current compensation mode for land expropriation and directly give out the compensation fees to farmers in full amount. In practice, many places explore to determine the individual farmer's property right prior to the land expropriation. For instance, in Nantong, individual farmer's land contract right is converted into stock right to realize the clarity of property right.

During the process of giving out the compensation fees for land expropriation, establish the system of publicly displaying the grant of compensation fees; establish the system of pre-deposit of the compensation fees for land expropriation and the supervision system to reduce the intermediate links as much as possible and prevent the funds from being retained and embezzled. The pre-deposit system of compensation fees for land expropriation is a kind of management system of the compensation funds for land expropriation carried out in Beijing and other areas, namely according to the principle of "deposit in special account, special fund for specific purpose, closed operation and direct subsidies to farmers", the unit or individual applying for land expropriation should deposit the compensation funds into the special account for land expropriation compensation in full amount before submitting the land use application and attachments to provincial land and resources departments for examination. After the land use application gets the green light, compensation fees should be given to the land-expropriated rural collective organization and farmers timely and in full. Another mode is that the compensation fees for land expropriation belong to the rural collective. Those used and managed by the collective economic organization should be made public in village affairs. At places where the land cannot be adjusted after the expropriation, all or most of the compensation fees for the expropriation should go to the land-expropriated farmers.

3.4 Perfecting the Procedure of Land Expropriation and Compensation

In consideration of various disadvantages of our country's land expropriation procedure, Hebei province should use advanced experiences of the relevant countries and regions for reference to perfect the relevant land expropriation procedure.

First of all, improve the participation procedure. One is to improve the announcement and notification procedure. The related laws and regulations on land expropriation in most of the countries require the government to inform the party concerned in the form of issuing announcement or notification. This is the premise and basis for the related oblige to participate in the land expropriation. The content of the announcement should cover multiple aspects, including the purpose of the land expropriation, compensation standard and resettlement measures, etc.. Without the announcement, farmers have the right to reject the land expropriation. The time of making announcement should be ensured and notify farmers from door to door if necessary to prevent the land-expropriated farmers from being unable to participate due to the ignorance of the announcement. The second is to establish the mechanism of negotiation with the land-expropriated farmer collective and farmers. Invite farmers to directly participate in the negotiation on the land expropriation and the compensation fees are determined through the

negotiation between the two sides. The land-expropriated rural collective economic organization should pass the compensation agreement for land expropriation in written form and through democratic procedures, such as villagers' meeting and villager's representative meeting.

What is more, perfect the hearing procedure. Hearing is the right that land-expropriated person should enjoy, and at the same time, it is also the obligation of the organ expropriating the land. In order to regulate land expropriation, the government should organize various parties concerned to conduct hearing on whether the land should be expropriated, whether the land is expropriated for public interest and the compensation standard for land expropriation. The participants in the hearing should include the land management department of the government, farmers of land expropriation and representatives of people from all walks of life in society. In order to avoid the formalism in the hearing and prevent the occurrence of "hearing without cross-examination", foreign advanced experiences could be used for reference. The organ of land expropriation should make detailed stipulations on the time, procedure and content of the hearing, as well as the adoption of opinions. The record of the hearing on land expropriation should be reflected in the scheme of the land expropriation to make sure the hearing gives play to its due functions.

3.5 Establishing Diversified Compensation Modes for Land Expropriation

Land is the most important resource that farmers depend on for survival and development and it carries the function as the guarantee of farmers' basic living. The land-losing farmer is forced to change their original lifestyle and they have to face the unfamiliar environment in cities and reselect the occupation. What is more, the land-losing farmers not only lose their own means of livelihood, but also lose their descendants' means of subsistence on which they depend on for survival. The occurrence of the above-mentioned cases of all result from the government's land expropriation, because the government has the responsibility to balance the relevant interest. Government should make compensation for land expropriation according to law, adopt multiple ways to resettle the land-expropriated farmers to make sure their original living standards do not decline and guarantee the long-term livelihood.

Monetary compensation is the important way of compensation for land expropriation. Besides, houses for relocation of families and social security are also important ways of compensation for land expropriation. Construction of buildings for relocation of families should speed up to solve the housing problem of the land-losing farmers. Carrying out the housing resettlement could make up for deficiencies of monetary compensation, satisfy land-expropriated farmers' various requirements and ensure the land-expropriated person's housing conditions.

This method should follow farmers' will and they cannot be forced to accept it. In reality, many farmers are forced to live in buildings. Tragedies in housing demolition and relocation are mostly caused by the lack of comprehensive consideration of farmers' lifestyle and production modes when formulating the related policies.

Furthermore, new models should be explored actively, such as buying shares of the land use right. Using shareholding of the infrastructural project, commercial and residential construction projects as the compensation mode for land expropriation, farmers and developers could achieve double benefits. For farmers, the one-time compensation becomes continuous return. For developers, it could not only partly solve the financing difficulty, especially solving the problem of capital shortage after the reform of the charges collectable items in the construction of infrastructure, but also solve the problem of "nail household" and gain a group of cooperators. In the design of the system, this compensation mode should be designed to be an option compensation mode along with other modes like monetary compensation. Land-expropriated farmers should not be forced to accept this compensation way. Certain risks exist how the market operates, therefore, the land-expropriated person could make the best choice after rational consideration.

CONCLUSION

To crack the problems in land acquisition and compensation, we should take measures, such as establish the compensation principle for land acquisition; establish reasonable compensation modes for land expropriation and raising the compensation standard; Explore the distribution mechanism of the land acquisition income; Perfect the procedure of land expropriation and compensation; Establish diversified compensation modes for land expropriation.

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