

Study on Dual-Track System of Chinese Land Ownership

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Abstract

In China, there are two tracks in the system of land ownership which are respectfully adaptable for urban citizens and for rural farmers. The ownership of rural land belongs to the village whereas the ownership of urban land belongs to the state, the government, in a sense. Therefore, based on the double-track system the land in urban can be sold to anyone for use but the land in the village can only be sold to the villagers, that means, the identities of buyers must be restrained, which is absolutely unfair and unjust to Chinese people. Therefore we need to change the double-track system into unitary-track system, that means every citizen or farmer, whatever, so long as a Chinese would have the right to buy the land wherever is located in the rural area or in the urban area. Everyone in China has the right to buy or to sell the land you have occupied lawfully. Cancellation of the special track to farmer's land, making all lands belong to the state, controlled and supervised by state special departments, is not just imperative, but also feasible.

Key words: Dual-track system; Ownership of land; Nationalization, Rural area

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INTRODUCTION

Rural land collective owner system makes the low efficiency of the rural land use. Meanwhile, distributive

benefits system under the double track system seriously violates the principle of fairness and justice, irritating the traditional contradiction between the urban and the rural groups, and other social contradictions of different classes and levels, which directly affects and restricts the continuous developments of the whole society. Nationalisation of rural lands will not only balance the heavily or lightly increasing land-added benefits shared by different land-owners, but differ due to different land type, which is belonging to the state or belonging to the collectivity, but also push the land-added benefits keeping the rules of markets seriously in a benign circulation, ensuring the interests of farmers, and achieving fairness and social justice.

1. INTRODUCTION TO CHINESE LAND OWNERSHIP SYSTEM

1.1 Concept of the Dual-Track System of Land Ownership

Currently in China, there are two types of land ownership between the rural and urban area, which forms a dual-track system of land ownership in reality, respectfully adaptable for urban citizens and for rural farmers. The ownership of the rural land belongs to the village whereas the ownership of urban land belongs to the state, the government, in a sense. Therefore, based on the dual-track system the land in urban can be sold to anyone for use but the land in the village can only be sold to the villagers, that means, the identities of buyers must be restrained, which is absolutely unfair and unjust to Chinese people.

1.2 History of the Dual-Track System of Land Ownership

The dual-track system of land ownership is also known as the two kinds of ownership of urban and rural land, is our current system of land ownership. The so-called double-track system of land ownership is that the urban

land owned by the state and the rural land owned by the rural collective economic organizations after a series of land reforms. The Constitution of the People's Republic of China provides: The city's land belongs to the state. Rural and suburban areas of land belong to the collective economic organizations except belong to the state by law, house sites and private plots, retained hills also owned by collectives. According to the law, the state can expropriate or expropriation the land and compensation for the public interest. The Land Administration Law of the People's Republic of China provides that the land of the People's Republic of China belongs to the whole people or the whole collective organization. The whole people mean the ownership of the state land is used by the State Council which is on behalf of the State. It is ban that any unit or individual to occupy, trade, or other forms of illegal transfer of land. The use rights of land can be transferred by the law. According to the law, the state can expropriate or expropriation the land and compensation for the public interest.

1.3 The Historical Contribution of the Double Track System of Land Ownership

As a matter of fact, the rural land collectivity-owned system and the rural land family-renting-operating system has achieved and contributed a lot for the construction of Chinese socialist economy and development of the society with historic significance, realized the stable transition of the whole society, and also pushed the industrialization and urbanization of new China by providing very strong and powerful industrial support and effective capital accumulation (Tao, 2008).

2. DILEMMA CONFRONTED IN NEW ECONOMIC SITUATION

Rural land owned by collective organization and rural land household contract management system had made a great historic contribution to China's socialist economic construction and the development of the social ,achieving a smooth transition of the society as a whole, provide a strong Provide a strong industry support and efficient capital accumulation for New China's industrialization and urbanization. However, since the mid-1990s,the inherent flaws and shortcomings of China's rural land system are gradually exposed:

2.1 The Owner of Land Is Unclear

The Constitution of the People's Republic of China stipulates that the city's land belongs to the state. Rural and suburban areas of land belong to the collective economic organizations except belong to the state by law, house sites and private plots, retained hills also owned by collectives. The provisions of Article 10 of the Land Administration Law of the People's Republic of China is that: The land owned by the whole collective economic

organization is operated and managed by the organization or the village committee; the land belonged to more than two rural collective economic organizations of farmers collectively separately operated by the village of the rural collective economic organization or the groups of villagers; the land had belonged to the township (town) peasants' collective was management by the township (town) rural collective economic organization .

From a legal point of view, the rural collective land ownership is clear, namely, collective economic organization. But the owner is not clear if there are more than two rural collective economic organizations or collective township farmers in the village (Liu, 2006). Who is the owner of the land owned by the whole collective economic organization, the village collective economic organizations or villagers' committee, isn't clear. Who is the owner of the land belonged to the township (town) peasants' collective, the township government or the township enterprises and institutions occupied land, is yet clear.

According to the law, the collective of collective ownership only refers to "all farmers" in the range of some rural communities, but, here, the "collective" constituted by all farmers is just an abstract concept. It is not a legal entity and can not assume ownership functions ought to people or legal entity.

2.2 Land Ownership Are Not Defined Clearly

Land property rights is confusing. Whether a specific land is stationed or collective-owned, is not very clear. This often leads to disputes or interests lost over land. Rural Land Contract Law of the People's Republic of China provides: The farmers are legally entitled to the contracted land use, income and land contract and management rights transfer rights, the right to self-organization of production, operation and disposal of products.¹The party awarding contract shall not adjust the contracted land during the contract period.² The contract period of arable land is 30 years.³But in reality, farmers' rights and interests are often violated. Collective organizations use the owner status intervened contract, take back the contracted land and shorten the period of contract arbitrarily. Frequent adjustment of the land contract weakened farmers' expectation of the investment income and lead to short-term behavior of the farmers, resulting in predatory business on the land.

2.3 The Contradictions Between Efficiency and Fairness

The advantages about the household contract

¹ The Article 16 of the Rural Land Contract Law of the People's Republic of China.

² The Article 27 of the Rural Land Contract Law of the People's Republic of China.

³ The Article 20 of the Rural Land Contract Law of the People's Republic of China.

responsibility system for the rural land use, has been released rapidly and effectively, but it has also become an irreconcilable contradictions between the large-scale operation pursuing efficiency and the small-scale operation pursuing fairness.

2.4 Large Area of Rural Land Has Been Collected

With the progress of urbanization, the large area of rural land is collected. The model of land proliferation interests and the distribution system are violated fairness and justice seriously. Land rent-seeking phenomenon becomes more and more serious, Land problem finally deductive became a social problem and even political issues. Path and the proliferation of land interests distribution system violated by the fairness and justice seriously. Increasingly serious phenomenon of land rent, the land problem will become a social and even political problems eventually.

2.5 Farmer's Opposition to the Rural Grassroots Political Power

To the land ownership, due to the double track system, especially the collective land ownership legislation subject leads to rural grassroots political power and the farmers in different or even in opposite positions, that's not only endanger the party and the government and the farmers' relationships, but also has increased and the rural social contradictions directly.

2.6 Farmers' Value Is Omitted and Disregarded

Farmers' land rights of cognitive models and their behavior have been far away from those items of value foundation established by the existing land legal system.

The phenomenon of villages inside a city concentration shows this point: Part of the city farmers or suburban farmers through illegal means holding the land and enjoying high land revenue, that makes the government in a dilemma. Object to say, the "City Village" phenomenon⁴ is merely a simple redistribution of wealth. In order to reduce the cost and achieve steady growth of realistic interests. On the one hand, the farmers refuse to increase investment, refuse to put the benefits or profits from the land into the field of city construction; on the other hand, the farmers also refuse to increase or spread the professional knowledge about production activities, and even refuse to participate or adjust the statutory tax. This eventually forms a "reference example group" in the national scope. It restricts the power and strength of government intervention in decision-making and the public interest in the opposite direction. So far, the rural land problem has become the negative factors restricting China's future social modernization. The problem of rural land can induce serious and profound social contradictions, becomes a strong resistance and even destructive force for the modernization (Shen, 2009).

⁴ It means the phenomenon that some villeges is surround by city buildings. It is due to the imblance development of some cities.

2.7 Disadvantages of Urban Residents Under the Dual-Track System

The current system of land ownership limits the rights of urban residents at a certain extent, disadvantaged the urban residents. Combining with the current dual household registration system, it is not difficult to see that farmers are encouraged to enter city and farmers can purchase the house in the city and means getting the right to use the land occupied within the house. However, urban residents are banned to purchase homestead in rural areas⁵, yet get the contract and management rights of rural land. In fact, this is not fair for urban residents.

3. NECESSITY AND POSSIBILITY OF LAND OWNERSHIP UNIFICATION

Therefore we need to change the double-track system into unitary-track system, that means every citizen or farmer, whatever, so long as a Chinese would have the right to buy the land wherever is located in the rural area or in the urban area. Everyone in China has the right to buy or to sell the land you have occupied lawfully.

3.1 Necessity of Rural Land Nationalization

Nationalization of the rural land is the development tendency of history, also the necessity of the existing reality. The necessity embodies as the following statement.

No.1 it will be favorable for optimizing the benefits of rural lands. Just as stated above, the value of current structure of rural lands attaches great importance into fairness but neglects the efficiency of use of lands. It not only hampers the farming land operation in a big scale, but also prevent the production power from improving in rural areas. Achievement of land nationalization in rural areas will, on one hand, make the state follow the rule of justice in alloying the land resource and re-alloying the benefits generated from the lands, on the other hand, make operation of the land in big scale fully impossible (Dang, 2005).

No.2 it will be more easy to distinguish the rights and obligations attached to the rural land between the state, the collectivity, and the farmers. In fact, it is the intermediate zone of interest distribution between the state and the farmers. In a sense the current rural collective land ownership is a buffering storage which can be owned by the farmer, and will also be transferred by the state through an "adoption" way in necessity. That means, the collective land ownership is a handicapped ownership, which can not be fully operated as the state land ownership does, containing the rights of occupying the land, using the land, benefiting from the land and dispose the land freely

⁵ The Article 10 of the Decisionon of Deepening the Reform of Strict Land Management by the Sate Council. The Article 13 of the Opinions on Strengthening the Management of the Rural Homestead by the Ministry of Land and Resources.

(including purchasing and selling). When we check the effects of the ownership of the collective lands, on the one hand, we find that collective land ownership weakens the protection of the farmers' rights severely, since it is not possible for the collective land ownership to confront with the state ownership when some conflicts appear between the two ownership. The collective land ownership can not prevent the implementation to the nationalization of rural land; on the other hand, since the implementation of the household contract management is launched, especially after the exemption of agricultural tax, the collective functions of economic organizations and other relevant social functions of the collective land ownership system had severely degraded. Such an implementation of the rural land nationalization, will inevitably cause the collective ownership of land to fade out, relationships of land ownership only existing between the state and the users. In that case, both sides can clarify the relations about rights and obligations directly through making contracts, to prevent the social harm caused by the serious unbalance of current legislation of rights and obligations (Xu, 2004, pp.35-51).

No.3 it will be advantageous to promote the progress of marketization and commercialization on the rural land. Single and closed structure of the current rural land ownership will inevitably lead to the way of tending the realization of its social security function, whereas too many restrictions on the transfer of ownership, and poor marketization and commercialization system greatly lower the transferring progress. After nationalization of the rural land, unifying both of the rural land and urban land into the nationalized land, from a dual system into a unitary-system, will establish a unified market system throughout the country, promoting the progress of marketization of all the land finally (Liu, 2006).

No.4 it will be favorable in promoting the transfer of surplus labor in the rural area freely and effectively. Rural land nationalization can also promote the free transfer of rural surplus labor, making the farmers off the land while benefiting from the land interests, avoiding potential unemployment which may cause heavy burden brought about by the rural society. Therefore, in a economic society this can achieve a lot to the maintenance of the social stability and the development of the social economy, by which the farmers will also feel more fair and equal when they are no more bounded with the farming land before urban citizens.

No.5 it is advantageous in promoting the city's capital, industrial and commercial capital to flow to the direction of the rural area. The current closing and inefficient structure, make it extremely difficult to attract the urban capital, industrial and commercial capital to make investments in the rural area. In the current stage of the development of the rural village mostly depends on the farmers' limited accumulation and some types of financial supports from the state, by which it may cause an awful

result in the economic running and operation. After the nationalization of rural land ownership, the open-pattern structure of land's rights will inevitably push the factors of production to be in high improvement, especially a large number of capitals, such as the city's capital, commercial capital and even foreign capital, will come into the countryside based on the market demand when necessary (Yan, 2008).

No.6 it is useful for the state to gather vast social capitals that the social security needs. After nationalization of rural land, the vast majority interest of proliferation is still owned by the state except the part owned by the users of the land. Thus, the state can achieve the capital accumulation required by the rural social security through taxation and land development fund, the two channels.

3.2 Possibility of Rural Land Nationalization

Nationalization of the rural land is the development tendency of history. It is not only necessary for very realistic significance, but also with its history basis and current logic possibility the possibility of the land Nationalization embodies as follows.

No.1 it is based on the historical thoughts. Nationalization of the rural land, has become a "social tendency" with no doubt. Any refusal to this tendency will absolutely end in vain. All the people's thoughts in the rural area like to do things with government, to be protected by the government, rather just a unit called collective organization whose benefits protected by a self-rulled organization. The economic relation between the land and the land users makes the vast farmers in China, with very strong traditional thoughts of trusting, loving and depending on government, support the nationalization of rural land. In the eye of a farmer, cancellation of dual-track system of ownership of the land, will mean nationalization of all the land, will mean to cancel the "rural servant" system, to make the farmers equally with citizens.

No.2 it is based on our political system. We are in socialist system, this system demand us to share benefits with all the people from different circles of society. However the farmers are always at the bottom of society. They can not change their life style through their wealth-the rural land even after more than 30 years reforming policies. On the rural land the dual-track system restricts the farmers to use their wealth to improve their living standard. The government hopes the rural society in harmonious status, but actually in so time during these years many conflicts occurred in the rural area. The current existing collective ownership, with too many leakages which is used by some of the cadres in the villages, causing some corruptions occurred, will also block those leakages after the reform of the dual-track of ownership, and irritate the productive power of the farmers, to do the first, the second or the third industry. Since the top ownership is, whatever, belonging to

the state, nationalization of the rural land, making the collective ownership retired, can solve this problem at the root.

No.3 it is based on the public opinion. Most of the farmers appeal by the clarified and confirmed rights and observations coming from the land, especially after the law of the ownership takes effect.⁶ Based on investigations of the majority of farmers believe that the land ownership belongs to the state in essence. Therefore the farmers hope their rights from the land can be fixed and stabilized, which will not do harm to them but better for their future benefits.

CONCLUSION

From all the above statement, we can see that cancellation of the special track to farmer's land, making all lands belong to the state, controlled and supervised by state special departments, is not just of necessity, but also with feasibility. Maintaining nationalization of the land in the rural area, referring to the retracting way of the construction land in urban area, will contribute to the scale operation of the land in the rural and remote area. The state will act as the contractee, signing land use contracts with farmers or organizations in line with farming industry on the operation of the rural lands, to define each other's rights and obligations. Through this model of land operation, we can realize the land use and operation in large scale, and industrialized by enterprise, adding more land benefits; we can also ensure the land rights and benefits distributed in a square and fair way under the unified adjustment and control by the state (Chen, 2010). And meanwhile, it is conducive to the realization of the integration of urban and rural development, promoting city capital to flow into the rural villages and areas, establishing a practical and feasible system of rural social security system.

Rural land nationalization is not only reasonable but also beneficial. On the one hand, it can balance the

interests of the relationship between the owners and the users, on the other hand, it can also make the proliferation of land interests distributed between different parties strictly following the market rule. It also makes urban residents and the members of rural collective economic organizations enjoy equal rights and assume equal obligations in the market economic activities, ensuring the interests of the members of the rural collective economic organizations with no infringement, reducing the governmental pressure and promote solutions of the potential or existing social conflicts, realizing more social justice based on the civil law and related regulations.

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⁶ Real Right Law of the People's Republic of China