

Land Expropriation Compensation Based on the Price of Land Use Right Granting

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ABSTRACT

Land expropriation is an activity which transfers the land ownership from collective owned to state owned. The compensation is the core issue in the process of the collective land expropriation. Based on the "Land Administration Law", the government offers low compensation payment correspondingly to the farmers according to the average annual output value of agricultural products and the original purposes of the land, and then gains the increment income by granting the land use right. Such a compensation model ignores the role of market mechanism and is interfered too much by the administrative departments. Obviously the land-lost farmers' interests cannot be guaranteed under such a compensation system. So problems are inevitable in the practice of the land expropriation. For the reform of the current compensation system, the experiences of the developed countries in which land compensation fee is decided by the market are worth referencing. But the more needed to be considered is the fact that the land is public-owned, the land ownership cannot be traded and the primary land market is monopolized by the government in China. Therefore, currently compensation to the farmers based on the price of land use right granting is a better method because it not only reflects the market price of the land in some sense, but also can balance the interests among the governments, the farmers and land users, thereby avoid abuse expropriation by the government for gaining the increment income. Moreover, after decades of reform on the land use system, a mature land use rights market and the land appraisal system have come into being in China; A batch of independent land appraisal institutions and professional land appraisers have appeared. All these create conditions for evaluating the price of land use right granting. However, the compensation payment to the farmers based on the price of land granting which is equal to the land grant fee paid by the first land users who will use the land for decades, is still not a complete compensation. The government always could gain the land income again and again by granting land use right constantly. Nevertheless, because of the limit of the land system and other factors, it is impossible to implement the complete compensation as developed countries at present. The government should continue to increase the compensation payment which comes from the state-owned stock land grant fee. Finally, the aim of complete compensation will be reached when all conditions are appropriate.

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1. INTRODUCTION

With the development of national construction and the boost of urbanization, the expropriation of country's collective land becomes necessary. At the same time, problems on the compensation to the land-lost farmers, the resettlements, the allocation of land's income and abuse expropriation are getting more and more obvious. Among them, the compensation is the core issue of the land expropriation. In a sense, all contradictions caused by the land expropriation will be resolved if we can cope with the compensation to levied land very well ^[1]. Therefore, how to compensate the land-lost farmers has always been a research focus. Based on the situation of China, the new methods of compensation may use the successful experiences of compensation marketization in the developed countries for reference. Anyway, exploring the new methods of compensation fitted to rural conditions and perfecting the current compensation system are beneficial to protect the rights of the farmers, meet the demands of urbanized construction, and finally promote the development of the whole country.

2. THE MAIN PROBLEMS OF THE CURRENT COMPENSATION SYSTEM

At present, the land compensation system is based on the "Land Administration Law of the People's Republic of China". The shortcomings are mostly in the following two aspects:

A. Compensation according to the average annual output value of agricultural products

According to the "Land Administration Law", compensation fees for land expropriation include land compensation fees, resettlement subsidy and compensation for ground attachments or green crops on the land. The land compensation fees shall be 6-10 times the average annual output value of the three years before the cultivated land is expropriated. The resettlement subsidy shall be calculated according to the number of agricultural population to be resettled. The number of agricultural population to be resettled shall be calculated by dividing the amount of cultivated land expropriated by the per capital land occupied of the unit whose land is expropriated. The resettlement subsidy for each agricultural person to be resettled shall be 4-6 times the average annual output value of the three years prior to the expropriation. But the maximum resettlement subsidy per hectare of land expropriated shall not exceed 15 times of the average annual output value of the three years prior to the expropriation.

Land compensation fees should reflect land price which is the capitalization of expected income of land ownership. The average annual output value of agricultural products, however, is not land net income in itself. And land compensation fee by 6-10 times of the average annual output value of agricultural products is not equal to land price either. For the land-lost farmers, land is not only their base for living, but also their capital of development ^[2]. Thus, the compensation based on the average annual output value of agricultural products ignores the land additional value and potential value to the farmers.

To a large extent, how much the farmers can gain from the land expropriated depends on the average annual output value of agricultural products, but evaluating this value exactly is difficult. For example, the output value of planting grain or flowers in one same acre will be definitely different, the government once promulgated in 2004 that the standard of the uniform annual output value must be formulated in the county units. But it is still hard to get a reasonable scalar, even in a small space because of the influences of the nature and the social economy. Therefore, such standards are often judged by administrative departments, which in essence is another kind of government pricing behavior under planned economy so that the current compensation system only has quantity standards without definite value standards ^[3].

B. Compensation according to the original purposes of the land

According to the “Land Administration Law”, compensation should be made according to the original purposes of the land expropriated. It means the farmers won’t get the increment income from the change of the land use. On the contrary, the government could obtain the increment income by granting land as industrial and commercial land which has been collected with low price from the farmers previously in the light of the original purposes. Therefore, it is not strange that land is often levied unreasonably by the government which can get the increment income in the name of public interests. Besides, the disadvantages of the current compensation system also blocks the implement of land expropriation compensation, especially in suburbs where the contradictions are intensified because of the big imbalance between the compensation fees and the income of land granting. So in some places, the local government formulates new regulations to increase compensatory payment. For instance, Beijing local government ever promulgated and implemented a new regulation in 2004. According to this regulation, the compensation payment could be confirmed by the two sides of the land users and the land-lost farmers through consultations in term of law. The government just formulates the lowest standards of the compensation payment.

For avoiding the land levied unreasonably by the government, the reform of the current compensation system is imperative. In the process of collective land compensation in China, the government plays a leading role which is featured of planned economy. So the interests of the farmers cannot be guaranteed because of the inherent limitations of the planned economy

and the drive of gaining the land increment income for the government. Therefore, the reform of the compensation system must be oriented to the market firstly so that the compensation payment can reflect the land market price. Secondly, it needs to try to balance the benefits among the government, the land users and the farmer.

3. THE LAND COMPENSATION SHOULD BE BASED ON THE PRICE OF LAND USE RIGHT GRANTING AT PRESENT

Being in the middle stage of industrialization and urbanization, there is a great demand for construction land in China. But the increased construction land only comes from the expropriation of the collective land because the land ownership cannot be traded in China and the primary market of the land use right granting is monopolized by the government^[4]. Now many researchers think that the problems occurred in the process of land expropriation are related to the ambiguous definition of “public interests”. They think the abuse expropriation would be prevented if the land expropriation was restricted to the aim of public interests strictly. But just as justice has a protean face, public interests also have a protean face^[5]. It is very difficult to make an exact definition to “public interests”. From the practice of western countries, the range of land expropriation often spreads to “public use”. The local governments’ motive to obtain the increment income unreasonably is the crux of the compensation problems. So, nowadays defining “public interests” exactly is not necessary. What we should do mostly now is standardizing land expropriation by establishing fair compensation standards according to the market price of the land^[6].

Different from the process of land expropriation compensation which is full of contradictions, the process of granting the land use right is relatively mild. In this process, the land users are chosen in the market by means of invitation bidding, auction or listing etc. The contract for granting the land use right shall be signed between the land administrative departments of the people's government and the land users in accordance with the principle of equality, voluntary and paid. The land users have an obligation to pay the land grant fee to the government. In fact, land grant fee is the reflection of the price of land use right granting. This price is formed under market conditions and based on the new purpose of the land, so it considers of the expected and potential income of the land instead of the average annual output value of the agricultural products. Therefore, the disadvantages of the average annual output value of the agricultural products, such as the difficulties of evaluating the value, low compensation payment, overmuch intervention by the governments and lack of the value standard, are released. So the compensation of the collective land should give up old methods and is carried out on the basic of the price of land use right granting as well.

For the land potential users, there are two accesses to gain the land use right. One is the government expropriates and grants the use right of the collective land firstly, then obtains the

land grant fee in the market, finally use the land grant fee to compensate to the land-lost farmers. How much the farmers can gain depends on the price of land use right granting paid by the land users. The other is under the guide of the government, the rural collective organization and the land potential users come to an agreement about compensation by negotiation firstly. Then the governments implement the land expropriation and the land users pay the compensation payment to the farmers according to the agreement. Because the land ownership is transferred from collective-owned to state-owned, the compensation payment is also the price of land use right granting actually. This method take account of the expected growth value and selective value of the agricultural land, and so follow the fair market value to some extent ^[7].

Furthermore, after decades of reform on market economy and the land use system, a mature granting and transferring market of the land use right and the evaluation system are forming, which include:

- a) Land evaluation system and land appraiser qualification system which adapt to the market economy in China have been established.
- b) A set of theoretical system and technical standard system about land evaluation have been formed.
- c) Independent land appraisal institutions and professional land appraisers have come into being.

The professional land appraisal institutions are independent of the government and can give a fair evaluation of the land use right. Because the land ownership cannot be traded in China, the price evaluated by the land appraisal institutions is just the price of the right to use the land which reflects the open market price and offers the scientific basis for land expropriation compensation.

As far as the farmers are concerned, the price of land granting is far higher than what they could gain based on the old compensation methods. So their interests can be guaranteed to a great extent by compensation with the price of land granting; For the government, lacking of the encouragement of obtaining the increment income is helpful for it to formulate the planning of land use and increase efficiency of land utilization; For land users, their cost won't be increased either. Therefore, the interests of all three sides are maintained very well.

4. IMPLEMENT COMPLETE COMPENSATION IS THE AIM

Most of countries in the world hold the point of view of “complete compensation”, i.e. compensating the farmers for all of their direct and indirect loss. The compensation payment should be determined according to the direct and indirect loss of the farmers caused by land expropriation. Theoretically, the land property value should be evaluated by the market. The farmers lost the land ownership forever after expropriation, so the land compensation fee should be the capitalization of the undated income of land ^[8]. So the land expropriation compensation based on the price of land granting, however, is still not the complete compensation. Because the compensation payment to the farmers based on the price of land granting is equal to the land grant fee paid by the first land users who have used the land for decades. In Chinese law, the land users must pay the land grant fee renewedly if they want to extend the use of the land after their land use rights expire. Or the governments may recover the land use right, then grant it to a new user and gain the land grant fee again and again. It shows that the government will still possess the land income which should belong to the farmers after decades.

Some researchers suggest that we should learn from the developed countries to evaluate the price of the land, above-ground buildings and other attached objects, and young crops etc in the market and compensate for the farmers according to the appraisal price. They think land expropriation using the appraisal price is beneficial to protect farmland, prevent urban sprawl, control real estate market effectively and resolve the problem of "agriculture, peasants and rural areas" in China. Under the current situation in China, it is not practical to implement complete compensation. Land is socialist public ownership i.e. an ownership by the whole people and ownerships by collectives in China. No unit or individual is allowed to occupy, trade or illegally transfer land by other means. So, no real land transaction market is in China and evaluating the price of land ownership has no practical significance at present. The land expropriation is the unique approach to change the land ownership. The transaction object is only the land use right in the land market in China. And the complete compensation payment to farmers is certain to be more than the income of land granting, the government has no fiscal ability to afford it. Therefore, under the current situation, complete compensation for land with reference to developed countries is not realistic in China but some morality meanings. Increasing the compensation payment to farmers by the government is probably more realistic because of the limit of land system and other factors in China. That can be realized by setting up the land expropriation fund which may come from the state-owned stock land grant fee.

In the future, however, complete compensation is always a trend. For implementing complete compensation, the reform of land system and a real land property market is absolutely necessary, while there is a long way to reach the aim in China.

5. CONCLUSION

Recently the social problems caused by land expropriation have more and more handicapped the harmonious development of the society and also raised lots of concerns. Compensation is the core of all the troubles. So offering equal and reasonable compensation to farmers is always the aim in the reform of the land expropriation compensation system in China. Because of the current compensation methods affected by planned economy and neglecting the land market price and the rights of the farmers, the new compensation system must insist on the direction of market and take the interests of the government, farmers and land users into account. Under existing conditions, farmers can get relatively rational payment according to the price of land use right granting which can increase farmers' compensatory income greatly. Although it is not the price of complete compensation, it can improve land use effectively, decrease the financing difficulties of the government and relieve social contradictions. Also, the price of land use right granting is the most likely compensatory price implemented at present. In the future, the government should continue increasing the compensation payment which comes from the state-owned stock land grant fee and finally reach the aim of complete compensation when all conditions are appropriate.

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