

On Dispute Resolution of Land Ownership and Use Rights

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ABSTRACT

With the rapid development of our country in recent years, disputes over land ownership and use rights have also increased. Due to the frequent and complex disputes over land ownership and use rights, some regulations and processes in practical operation have not kept up with the times, resulting in a series of problems in the process of handling disputes over land ownership and use rights. Therefore, further research is needed to resolve disputes over land ownership and use rights, and to improve the mechanism for resolving disputes over land ownership and use rights. This article delves into the general theory of disputes over land ownership and use rights, summarizes and organizes the main contents of dispute resolution methods for land ownership and use rights, and based on this, proposes the problems in dispute resolution for land ownership and use rights. Finally, it improves the countermeasures for resolving disputes over land ownership and use rights.

KEYWORDS

Land Ownership; Land Use Rights; Land Disputes; Dispute Resolution; Resolution Mechanism.

1. THE CONCEPT AND CLASSIFICATION OF DISPUTES OVER LAND OWNERSHIP AND USE RIGHTS

1.1. The Concept of Disputes Over Land Ownership and Use Rights

Disputes over land ownership and use rights typically involve disputes arising from core issues such as land ownership, use rights, and revenue rights during land registration, circulation, and other processes. These disputes may involve the confirmation of land ownership, the definition of land use rights, and the distribution of income rights, leading to differences between the two parties at the legal and practical levels. Disputes over land ownership and use rights are a macro concept, not just a single type of dispute, but a collection of various types of disputes involving land ownership and use rights.

1.2. Types of Disputes Over Land Ownership and Use Rights

According to the Land Management Law, land rights are subdivided into two categories: land ownership and land use rights. Land ownership grants owners comprehensive rights to occupy, use, benefit from, and dispose of their land. The land use right provides users with a series of rights, including the right to occupy, use, and partially dispose of profits from the land. In the legal system constructed by the Civil Code, land ownership and use rights are further divided into three main categories: land ownership, land usufructuary rights, and land security rights. Specifically, when it comes to usufructuary rights, they are further refined into four types: construction land use rights, homestead use rights, land contracting and management rights, and servitude rights. This article categorizes disputes over land ownership and use rights into the following categories based on their different causes:

1.2.1. Disputes Over Land Ownership and Use Rights Arising from Historical Reasons and Policy Changes

Based on China's socialist land public ownership system, the privatization of land has been abolished, and the ownership of land in China belongs to the state or collective. The evolution of the land use right system has become a key way to achieve the concretization of land ownership. After long-term development, especially in urban areas, land is mainly utilized through transfer and allocation, while in rural areas, distribution of homesteads and land contracting are more commonly used. In the development process of this system, historical legacy issues have become a complex challenge in handling disputes over land ownership and use rights. The root of these disputes lies in historical legacy issues and changes in land reform policies, including improper land use management, non-standard land acquisition procedures, incomplete cadastral registration, and other issues, which have become the core challenges in handling disputes over land ownership and use rights.

1.2.2. Disputes Over Land Ownership and Use Rights Arising from Registration Errors by Administrative Authorities

In China's legal system, the legal status of real estate property rights on land is established based on land registration behavior, especially in the protection of changes in land property rights, which adopts the principle of registration effectiveness. Administrative registration error refers to the situation where the rights recorded in the registration are inconsistent with the actual rights status. Any registration content that cannot accurately reflect the true rights status is considered incorrect. Land registration errors are generally divided into two types: one is registration errors based on basic factual errors. The second type is the recording error caused by the administrative agency's simple registration behavior error.

1.2.3. Disputes Over Land Ownership and Use Rights Arising from Civil Legal Relationships

Disputes arising from transactions such as buying, selling, renting, exchanging, gifting, and mortgaging land rights, as well as marriage, inheritance, and co ownership relationships, mainly involve changes in land rights and obligations. These disputes have legal effects in private law and reflect the adjustment of rights and obligations between civil subjects. This type of legal fact does not involve the attributes of administrative management, and its inherent compulsion is weak. It is mostly based on the free will of civil subjects and falls within the scope protected by private law. Although in practical operations, the people's government exercises land ownership on behalf of the state and implements land transfer, the transfer of land use rights therefore carries certain administrative implications. In this process, the government not only assumes administrative management responsibilities, but may also transform some administrative responsibilities into contractual obligations, making the relevant transfer contracts contain administrative elements. However, when dealing with disputes over land ownership and use rights, whether in accordance with legal provisions or judicial practice, such disputes are resolved in accordance with civil legal principles through civil litigation and other means to ensure that the rights and interests of the parties are fairly protected.

2. THE MAIN CONTENT OF DISPUTE RESOLUTION METHODS FOR LAND OWNERSHIP AND USE RIGHTS

2.1. Negotiation

The core of negotiation lies in the voluntary and equal participation of both parties, based on honesty and impartiality, reaching consensus through communication and discussion, and resolving disputes over land ownership and use rights. Autonomy of will is one of the basic principles of negotiation, and being able to make one's own true expression of will is the prerequisite for negotiating and resolving disputes over land ownership and use rights. According to Article 14 of the Land

Management Law, it is the primary means to handle disputes over land ownership and use rights. The adoption of the above regulations is mainly due to the fact that in practical operations, resolving disputes over land ownership and use rights through administrative or judicial means may often face many difficulties. In addition, timely grasping the timing of negotiation and resolution can also prevent disputes from arising, ultimately minimizing the losses caused by disputes over land ownership and use rights.

2.2. Mediation

The main difference from negotiation lies in whether there is a third party involved in the process, which can be the government or other organizations, intervening as a third party in the resolution of disputes over land ownership and use rights. Civil mediation is a mediation method presided over by communities, village committees, or other non-governmental organizations. In civil mediation, the parties voluntarily submit disputes to a third party. Under the supervision of a third-party mediator, they investigate the facts, distinguish right from wrong, clarify responsibilities, and under the persuasion and guidance of the mediator, encourage the parties to reach an agreement voluntarily based on mutual understanding and compromise, thereby resolving the dispute. Administrative mediation refers to the handling of disputes related to the administrative power of the state administrative organs in accordance with relevant laws and regulations. Specifically, it refers to the act of persuading all parties to reach a consensus agreement through equal consultation within the scope of policies and regulations, in order to resolve conflicts and disputes. In the resolution of disputes over land ownership and use rights, the intervention of administrative mediation is usually the responsibility of local governments or land management departments. In real life, mediation is an effective means to deal with disputes over rural land ownership and use rights. The People's Mediation Law of the People's Republic of China, implemented on January 1, 2011, provides a legal basis and clear procedures for resolving disputes over land ownership and use rights through mediation. This regulation sets out the basic principles and procedures for mediation, providing legal support and guidance for the resolution of disputes over rural land ownership and use rights.

2.3. Administrative Rulings

Administrative adjudication, also known as administrative justice, includes the following steps in the administrative adjudication process: first, after the people's government makes an acceptance decision, it should immediately organize staff to conduct empirical research on the disputed land, understand the reasons, process, history, and current situation of land ownership and use rights disputes. This requires accurate understanding of the disputed area, quantity, location, etc. during the on-site investigation process, and collecting relevant evidence as the basis for the ruling to ensure the accuracy of the ruling. Based on the results of the investigation and research, the people's government should make a decision on handling the case in accordance with relevant national laws and regulations, draft a closing report and decision letter, and mail the handling results to the parties involved. If the parties are dissatisfied with this administrative act, they can choose to seek relief by filing an administrative reconsideration. In disputes over land ownership and use rights, administrative reconsideration provides a remedy for parties in cases of unfair or unsatisfactory administrative rulings. If they are still dissatisfied with the reconsideration decision, they can resort to administrative litigation procedures in the court. When the parties concerned do not raise objections to the decisions of the people's government and have not applied for administrative reconsideration, they shall comply with the decisions of the people's government, enter the execution procedure, and execute the administrative rulings made by the administrative organs.

2.4. Administrative Reconsideration

When there is a dispute over land ownership and use rights, the parties can use administrative reconsideration to resolve the dispute. Because in judicial channels, factors such as cumbersome litigation procedures and high costs make it difficult for many parties to resolve disputes. Administrative reconsideration has become a more suitable solution.

Administrative reconsideration refers to a legal system in which the administrative counterpart believes that the administrative act taken by the administrative subject has infringed upon their legitimate rights and interests, and applies for administrative reconsideration. The administrative reconsideration authority reviews the legality and rationality of the administrative act in accordance with the law and makes a reconsideration decision. Although the Land Management Law does not explicitly stipulate the administrative review procedure for disputes over land ownership and use rights, according to the Measures for Investigation and Handling of Land Ownership Disputes, parties can choose to apply for administrative review or file an administrative lawsuit to resolve the dispute. In practice, administrative review is often prioritized according to the provisions of the Administrative Review Law, treating autonomous selection as a special case, highlighting the crucial role of administrative review in handling disputes over land ownership and use rights.

2.5. Administrative Litigation

Administrative litigation, as an important legal mechanism, provides a remedy for individuals or organizations whose legitimate rights and interests are infringed upon by administrative actions taken by administrative agencies. In administrative litigation, the people's court reviews the sued administrative act to determine its legality and reasonableness, and resolves relevant disputes in the judgment, ensuring the protection of civil rights and the legality of administrative actions.

Administrative litigation, as an important way to resolve disputes over land ownership and use rights, has obvious advantages. Firstly, administrative litigation is based on substantive law, which means that judicial organs will handle disputes objectively and fairly based on substantive law provisions such as laws, regulations, and judicial interpretations, ensuring that the final result is in line with legal provisions and public interests, and protecting the legitimate rights and interests of the parties involved. Secondly, administrative litigation not only ensures the fairness of rights, but also emphasizes the application of procedural law. The judicial procedure standardizes the specific operational steps of trial procedures, evidence presentation, debate, and judgment, safeguards the litigation rights of parties, and ensures fairness and legality.

However, there are also some shortcomings in the practical operation of administrative litigation. The essence of judicial review is mainly limited to the accuracy of procedures, laws and regulations, as well as the normative review of administrative actions made by administrative agencies. This means that the court can only judge whether administrative actions are legal and compliant, and cannot deeply resolve the fundamental issues arising from disputes.

3. ISSUES IN THE RESOLUTION OF DISPUTES OVER LAND OWNERSHIP AND USE RIGHTS

3.1. The Provision of "Administrative Processing First" is Too Vague

The Land Management Law is the fundamental law of land management in China and holds an important position in the land legal system. However, only Article 14 of the Land Management Law briefly mentions the process for handling disputes over land ownership and use rights. This article stipulates that the parties should first resolve the dispute through consultation. If consultation fails,

they can apply to the people's government for resolution. If the dispute still cannot be resolved, they can file a lawsuit with the people's court, that is, resolve the dispute through administrative litigation.

There are different interpretations and viewpoints in academia and legal practice regarding the specific definition of disputes over land ownership and use rights. Some scholars believe that the disputes over land ownership and use rights referred to in this area are limited to those arising from the lack of administrative confirmation work. Other scholars believe that the disputes over land ownership and use rights here not only include disputes over the ownership of land and use rights, but also include infringement behaviors such as illegal encroachment, covering various types of disputes caused by infringement of land ownership and use rights. Another viewpoint is that the disputes over land ownership and use rights in the Land Management Law cover all types of land disputes. This is a unified summary of land disputes, which not only involves the ownership and use rights of land, but also includes all disputes related to land, not limited to specific types of disputes.

How to define "handled by the people's government"? Interpreted in legal provisions, "handling" has a more managerial color and does not specify which administrative act it belongs to. It is debatable whether "handling" should be attributed to administrative confirmation or administrative adjudication. Referring to other literature, there are differences in whether to file a civil lawsuit, administrative lawsuit, or administrative incidental civil lawsuit when dissatisfied with the "handling" made by the people's government.

Given the core position of the Land Management Law in China's land legal system, the academic community and legal practice should first refer to the provisions of this law for the resolution of disputes over land ownership and use rights. However, due to its vague expression, it is easy to mislead and confuse academic research and legal practice. Therefore, further in-depth research and discussion are needed for the specific interpretation and application of this clause, in order to better guide practical work and judicial decision-making.

4. COUNTERMEASURES FOR RESOLVING DISPUTES OVER LAND OWNERSHIP AND USE RIGHTS

4.1. Clarify the Scope of Application of Article 14 of the Land Management Law

The provisions in Article 14 of the Land Management Law are too general, and if based on textual interpretation, it may lead to the inclusion of all disputes related to land ownership and use rights in the scope of administrative processing. This broad prerequisite for application may result in almost all land related cases needing to be processed by administrative authorities first, which to some extent affects the role of laws such as the Civil Code, the Rural Land Contracting Law, and the Civil Procedure Law in protecting land rights. However, the original intention of Article 14 of the Land Management Law is not to require all disputes over land ownership and use rights to be first handled by administrative authorities.

The initial purpose of its establishment should be based on the government's understanding of policies and history, which gives it an advantage over courts in handling such disputes. At the same time, administrative agencies do have extensive discretion and various power resources that judicial agencies do not have, including but not limited to tax reduction, land lease approval, and the grant of franchise rights. These administrative measures enable administrative agencies to mediate and handle disputes in a more flexible and diverse manner through the allocation of different resources before formal judicial intervention. Such mediation can not only resolve disputes faster in certain situations, but also alleviate the pressure on the judicial system, especially in areas such as land management and use. The professional knowledge and resource allocation ability of administrative agencies can greatly promote the effective resolution of disputes. Therefore, this article believes that the scope of

application of Article 14 of the Land Management Law should be disputes over land ownership and use rights related to government administrative management functions.

This article believes that the regulations on the types of disputes over land ownership and use rights that require administrative agencies to handle first are not clear enough, and are only expressed as disputes over land ownership and use rights. In fact, disputes over land ownership and use rights that require administrative agencies to mediate first should be limited to situations involving administrative rights. The overly vague provisions of the law have forced some disputes over land ownership and use rights that do not require administrative mediation and rulings to be handled by administrative authorities, thereby prolonging the processing cycle of disputes over land ownership and use rights. At the same time, due to the overly vague provisions of Article 14 of the Land Management Law, it is likely to result in negative court filing, mutual buck passing among different authorities, and difficulty in accepting lawsuits from the parties involved.

In response to this issue, this article proposes a suggestion for a legal interpretation of Article 14 of the Land Management Law, which aims to further clarify the scope of application of the administrative pre-treatment procedures and avoid misunderstandings as much as possible. Especially, it is more appropriate to interpret "disputes over land ownership and use rights" as "disputes over land ownership or use rights", which can avoid bringing disputes that should fall within the jurisdiction of the people's court into the scope of administrative agency handling.

5. CONCLUSION

This article analyzes the current concept and classification of disputes over land ownership and use rights, the main content of handling disputes over land ownership and use rights, the problems in handling disputes over land ownership and use rights, and the countermeasures for handling disputes over land ownership and use rights from multiple perspectives.

This article argues that the legal nature of disputes over land ownership and use rights is diverse, and it is unscientific and imprecise to summarize the legal nature of disputes over land ownership and use rights solely through a single standard. This article argues that the reasons for disputes over land ownership and use rights are multifaceted, including historical legacy issues, policy changes, legal deficiencies, and chaotic land management. In terms of resolving disputes over land ownership and use rights, this article mentions five approaches: negotiation, mediation, administrative adjudication, administrative reconsideration, and administrative litigation. In practical applications, negotiation and mediation are the main methods, followed by administrative rulings and administrative reconsideration, and administrative litigation is the least common.

In the face of complex and diverse disputes over land ownership and use rights, China has established different dispute resolution models during legislation, which can be mainly divided into two aspects: administrative procedures and judicial procedures, and five small aspects: negotiation, mediation, administrative adjudication, administrative reconsideration, and administrative litigation. Based on considerations of both public and private rights involved in land ownership and use rights, it is possible to better coordinate the relationship between administrative and judicial procedures, in order to achieve efficient and fair handling of disputes over land ownership and use rights.

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