

Analysis of the Legal Problems of Small Property Right Housing

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Abstract

The Land Management Law of the people's Republic of China has been formally implemented since January 1, 2020, and it has made major adjustments in many aspects, the most important of which is to expand the sources of access to the land market. It is this change that makes the hot topic of "small property right house" even hotter. This paper will first define the concept and types of the small property right house, and then clarify the cause of the burst of the small property right house and its impact, and end with the proposal on the small property right house.

Keywords

Small Property Right House; Interest Dispute; Land System.

1. Types of Houses with Small Property Rights

The current law of our country does not define the concept of small property right house, so the academic circles have different opinions on it. By consulting the literature, I tend to define the house with small property rights as follows: village villagers, collective economic organizations or those who build on homestead, construction land or agricultural land alone with real estate developers or real estate developers, most of the buyers are individual living organizations other than village collective economic organizations that need to pay the land transfer fee at the time of transfer, the township government or the village committee shall issue the certificate of property right.

On the basis of the basic definition of the small property right house, from the point of view of the nature of the land, the small property right house can be subdivided into homestead, building land and agricultural land. Because of the national conditions of our country, there are differences in the protection of homestead, construction land and agricultural land in the current law, so the treatment of buildings on different land will be different. This reality determines that we should analyze the specific problems in solving the problem of small property rights housing.

2. The Cause of the Burst of Small Property Right House and its Influence

2.1. The Cause of the Burst

2.1.1. The Current Urban-rural Dual Structure in China

The reason for the emergence of small property rights is not only the impact of the failure of the real estate market and government regulation, but also the drawbacks that can not be ignored in the current dual structure of urban and rural areas in our country. Under the existing system, the subject of collective ownership of the village is empty, which makes the bookmakers in the collective organization have no channel to make use of the collective rights, and the cadres in the collective organization become the actual power. This model not only becomes a hotbed of corruption among officials, but also infringes on the compliance rights of general bookmakers. With the increase of urban area from time to time, the urban demand for land also increases, which makes the land continue to appreciate, but farmers can only get less land value-added income during land expropriation. In addition, some local governments even

misuse the right to expropriate land to buy land cheaply. When the interests of farmers' collective economic organizations are constantly violated by the local government, it is very difficult for them not to take measures to protect their own interests. Most of the ways of resistance of collective economic organizations are to skip the government, either to cooperate with real estate or to create houses with small property rights through real estate. In this way, collective economic organizations can obtain more abundant allocation of interests.

2.1.2. The Win-win Demand of the Transaction Subject

Two conditions must be met for the market to play a coordinating and controlling role: first, under a balanced market, the market mechanism can play a role. The necessary condition for the market to maintain equilibrium is that the two elements of supply and demand in the market are equal in strength. Second, the effectiveness of supply depends on the effectiveness of needs. The main reason why China's real estate market is not a balanced market is that it dominates the real estate market. The most important feature of China's real estate market is the seller's market, so its pricing method is the price leadership system, in other words, the developers who first enter the market take the lead in pricing, and then those who enter the market accompany the former. Its essence is price collusion or price collusion. The reason why house prices remain high is not only because it dominates real estate, real estate investment or speculation is also an important influencing factor, which makes house prices remain high from time to time. Although the state has issued a series of policies in recent years in an attempt to oppress abnormal housing prices, due to the fact that real estate has dominated real estate and our country has more people and less housing, the national adjustment policy has achieved modest results.

It is based on this situation that the small property right house arises at the historic moment. All parties build houses on land that fails to pay land transfer fees, so that the price of the house itself is at least 30% 50% lower than that of the developer's house, even if the house does not comply with the current laws and decrees, but people still choose houses with small property rights with the mentality of being irresponsible and cash-strapped. And most of the houses with small property rights are built next to the city, close to the city, but not as expensive as the city, which makes it the best choice for people who cannot burden the city with high housing prices and do not want to be out of touch with the city.

2.1.3. Weak Supervision by Government Departments

It was once an indisputable reality that many governments relied heavily on land finance, so in order to defend their own interests, they held a restraining attitude to the development of small property rights from time to time. However, the township government can not obtain financial revenue by selling land, and it can bring greater economic benefits to it by neglecting the development of small property rights. It is for this reason that some township governments are willing to take legal risks to join the development of small property rights houses. And after the creation and sale of small property rights houses, it plays an important role in promoting local economic development and promoting economic development, so many urban governments have neglected the expansion of small property rights houses.

2.2. The Impact

2.2.1. Buyers of Houses with Small Property Rights Will Fall into Legal Risks

According to the current laws and decrees of our country, buildings on agricultural land are not allowed and houses built on homestead cannot be transferred to people other than members of collective economic organizations.

Based on this, the house purchased by the owner of the small property right house has no legal foundation, so it is impossible for the department in charge of the house to issue the ownership of the house, that is, the property right can not be confessed and protected by law. When the

property right is in an unstable form in law, it is very easy to generate interest transaction disputes. For example, when the price of the house rises, the village collective economic organizations and bookmakers regret it. Although the property owners of small property rights have concluded a sale and purchase contract that they want to do, because the sale and purchase contract is in line with the laws of our country on the invalidity of the contract, the sale and purchase contract is null and void. The small property right house owner is unable to request public assistance based on this. When there is a quality problem in the small property right house, the owner of the small property right house cannot effectively seek public assistance because he does not have the right to comply with the rules and regulations of the house. When the house with small property right is demolished, it is difficult to make up for it. In addition to the appeal, the house with small property rights cannot be pledged, nor can it be passed on in compliance with the regulations of the estate. The small property right house is in an unstable form from time to time in law, which can easily lead to the lack of the best use of the small property right house, and at the same time, it is not conducive to the maintenance of transaction security. At the same time, the law of our country does not have any law on how to carry out the rescue after the infringement of the small property right house, which makes the buyers of the infringed small property right house unable to rely on. At the same time, most of the buyers of small property rights houses belong to the party whose economic strength is relatively weak. When all of their post-purchased real estate is damaged, it is difficult not to burst out some efforts to hinder the society. After many buyers of houses with small property rights have the so-called property certificate issued by the township government, the houses with small property rights are still restricted, so it is difficult for them not to burst out suspicion of mistrust of the government.

2.2.2. Hinder the Protection of Cultivated Land and Crisis Food Security

Protecting cultivated land and safeguarding national food security are important reasons for the government to stop the development of houses with small property rights from time to time. In some towns, the need for small property rights houses is constantly added, which leads to many village economic organizations and real estate taking up a large number of agricultural land driven by interests. If this model is not obviously curbed, it will endanger the security of cultivated land to a great extent, thus endangering the red line of 1.8 billion cultivated land. At the same time, as China's agriculture is moving towards specialization, the emergence of small property rights houses in agricultural land will hinder the development of agricultural land specialization.

2.2.3. Disturb the Country's Overall Layout of Land

The expansion of small property rights houses in cities and towns will affect the overall layout of land to a large extent, because the whole process of small property rights houses from construction to sale is not under the supervision of state organs, and developers who develop small property rights will choose small delivery rooms in a relatively important position under the consideration of interests, so it is difficult for the wanton expansion of small property rights houses not to affect the overall layout of land in the country. If the small property right house is located in the delineated area, assuming that it is overturned, it involves the question of whether to make up for it, and assuming that it will constitute a scene of the compliance of the small property right house, but if it is not made up for, the interests of the purchasers of the small property right house will be difficult to be guaranteed.

2.2.4. It Increases the Difficulty of Government Supervision

The wanton expansion of small property rights houses not only increases the burden of government land management departments and construction departments, but also involves a large number of interests from the time of construction, so it is difficult to avoid conflicts of interest in the process from construction to sale and then to after-sale. however, most of the

small property rights houses do not pass the legal trial order, and our country does not want to do the laws and decrees for the small property rights houses and involves the interests of the masses. This makes it difficult for the courts and government agencies to make decisions because they do not want to do laws and decrees, which virtually increases the burden on the courts and the governments concerned.

3. The Solution to the Problem of Small Property Right House

3.1. Measures of Government Regulation and Control

According to the law of the market economy, the modern real estate economy does not need the government to intervene too much in the allocation of resources, but only needs the government to create a good competition mechanism for the real estate market. From the current policy of treating small property rights housing in our country, the macro-control of the government is still based on hindrance. Although these measures have achieved some results, they do not fundamentally solve the problem, so we should adhere to the attitude of specific analysis of specific problems in order to solve the housing incident of small property rights.

First of all, strictly restrict the small property rights housing into compliance channels, which will help to break the psychology that people are not responsible for the small property rights housing penalties. The following small property rights houses have the opportunity to become compliant: first, both in the urban layout, the housing quality is in line with the relevant national standards; second, the house must exist objectively; third, it has completed various procedures and various taxes and fees; fourth, look at the previous crimes have assumed the corresponding legal responsibility; fifth, when begging for the property right certificate, the price difference of the land transfer fee should be paid. As for the construction of collective economic organizations, assuming that it conforms to the laws and decrees of the current Land Management Law, and has formed market transactions and reasonable prices, it should be regulated. Because the entry of a large number of collective land into the market will not only help to create greater economic benefits for farmers, but also enable urban residents to buy housing at a more reasonable price, this measure will not only help to alleviate the problem of "housing difficulties". It also helps to protect people's right to live. Secondly, the houses with small property rights that are not in the layout of urban development, the construction quality does not meet the national standards, and are built on agricultural land should be ordered to be overthrown. Because the main body that joins the small property right house has the mistake that wants to do, so it should bear certain loss. This measure cannot be implemented immediately and should be carried out slowly with the process of urbanization. When taking measures to do what they want to do, they should set a reasonable compensation, which will help to reduce the outbreak of social conflicts.

3.2. Speeding up the Promulgation of the Housing Security Law

The important reason for the emergence of small property rights houses is that people's right to live is not guaranteed. Since the housing market reform, China has issued policies that want to do, and also created a basic housing security policy system. Although it has also achieved results, with the integration of a large number of village population into the city, the original housing security system has been unable to meet the housing needs of the urban population. Therefore, we should formulate a special "Housing Security Law" to meet people's housing needs. Based on this, we should make a reasonable layout of the housing supply structure, so that the land resources will not be overcharged, and at the same time guide the people to establish correct housing values. At the same time, it is necessary to formulate clear measures to control housing prices, such as reasonable evaluation of housing prices, determine

a reasonable range of housing prices, on this basis, clear punishment measures, punish malicious speculation of high housing prices.

3.3. Concrete Analysis of the Specific Problems of Existing Houses with Small Property Rights

Want to do government departments to deal with the issue of small property rights housing from time to time to take an one-size-fits-all approach, practice has proved that this approach does not effectively solve the problem of small property rights housing. I think a more rational approach should be: according to the different types of houses with limited property rights, we should do specific analysis of specific problems.

3.3.1. Small Property Right House of Agricultural Land

Strict land system is a tradition in dealing with land problems in our country from time to time, which makes it necessary to go through a series of strict checks if we want to change the assumption of land nature. Because China has a large population from time to time, land resources are in an extremely urgent form from time to time. Admittedly, China is a country with a large population, and food supply cannot rely entirely on imports. Keeping the red line of 1.8 billion mu of arable land is the basic requirement of our national conditions, so the houses with small property rights built on agricultural land should be forcibly overthrown. At the same time, in order to increase the criminal cost, they should be required to restore the original land, and for those who cannot answer the original condition, they should either reclaim the wasteland of the same area or pay the reclamation fee. The reason why it is severely punished is not only based on the need to protect arable land, but also that this kind of small property rights houses clearly violate the national laws and regulations, such as the formalities for the conversion of untreated agricultural land into construction land; no construction land layout license and construction project layout license; no land use right, house sales license and so on.

3.3.2. Houses with Small Property Rights Built by Farmers and Sold to Urban Residents

If this kind of small property right house is assumed to be transferred within the collective economic organization, then there is no problem of committing a crime. Because the land under the building is a village homestead that applies for government approval according to regulations, and because the source of the land is in compliance, the building is also in line with the overall layout of land use, town layout, village and town layout, and so on. Thus it can be seen that the non-compliance of this kind of small property rights housing lies in the non-compliance of the sales object. But the cause of this non-compliance is full of controversy from time to time, because farmers want to have complete ownership of this kind of house, based on this, farmers should have complete property rights, and farmers are making use of the right of disposition when they transfer their houses, which is in accordance with the law and law. The current Land Management Law has also made corresponding adjustments, at the same time, the state has also started the pilot reform of the separation of powers of homestead. I think the advantages outweigh the disadvantages to allow this kind of small property rights houses to enter the real estate market, because farmers are no longer fettered by the fields, they hope to enter the city to live and work, and people living in the city also hope to live in the village. The needs of the two main bodies are just the opposite, so spreading the restrictions on homestead is conducive to meeting the needs of both sides, while alleviating the current urgent housing situation.

3.3.3. Houses with Small Property Rights Built and Sold by Village Collective Economic Organizations

A small property right house built on the idle homestead or construction land of the village dominated by the village collective economic organization. The land on which this kind of small property right house depends is in accordance with laws and regulations, so it is also in line

with the desired layout led by the local government. In spite of this, this kind of house still violates many laws in our country, that is, the point of this kind of small property right house is that in order to carry out examination and approval, it does not pay the land transfer fee, and it does not comply with the national laws and regulations in the future. Therefore, it did not comply with the regulations and obtained the qualification certificate that the state wanted to do. Although the release violates the laws of the country, it cannot be forcibly overthrown across the board and should be further refined. According to the use of the house, this kind of small property right house can be divided into self-occupied small property right house, investment small property right house and luxury enjoyment small property right house. Among them, for self-occupied houses with small property rights, they should be allowed to obtain corresponding national qualification certificates after fulfilling their legal obligations. Because the residents who buy this kind of small property rights houses are just unable to buy high-value commercial houses in the city and cannot leave the city because they have no land and other reasons, so they choose to buy small property rights houses next to them. The goal of their purchase is only to meet the lowest cost needs of their lives, so out of the need to safeguard human rights, we should also make the houses they buy comply with the regulations, so that the real power is used by the people. Ensuring the compliance benefits of the people is not only conducive to enhancing the authority of the government, but also conducive to realizing the great ideal of common prosperity. For investment-oriented houses with small property rights, they should be fined and repurchased at the same time. Although this batch of small property rights housing is not for self-occupation, but the emergence of investment-oriented real estate speculation is also the inevitable product of the market economy, therefore, want to do government agencies to fine and buy back. For the repurchased houses, government organizations want to check them, and for those that meet the standards, they can be incorporated into the local indemnificatory apartment system, so as to alleviate the urgent situation of local housing. For those that do not meet the construction quality, they can be made up accordingly according to the specific local conditions, and then overthrown, which is conducive to the burst of a certain deterrent effect in the society. For luxurious and enjoyable houses with small property rights, assuming that they are built on ploughed fields, they should be forcibly demolished and fined, and the builders should be ordered to restore the original state of the land, and for the land that is difficult to restore, they should be ordered to pay the cost of reclaiming the corresponding land. Increase the cost of committing a crime. At the same time, it is responsible for the government officials who join them and the stakeholders they want to do, which helps to form a deterrent role in the society, as well as the management of the administrative team.

Because the small property right house still violates the national law of wanting to do to a certain extent, the buyer of the small property right house should bear the main burden of proof. Property buyers can only provide convincing evidence to make their purchase of small property rights in line with the regulations. Assuming that there is no convincing evidence, it is presumed to be speculative purchase of small property rights housing, the purchase of small property rights houses not only can not comply with the regulations, and should be under other considerations, further decide whether it should be overturned or included in indemnificatory housing. At the same time, the government should establish a personal information registration system for houses with small property rights. For registered houses with small property rights, it is assumed that there are interest subjects who advocate that a small property rights house should not comply with the regulations and can complain to the relevant departments, and the relevant departments should examine it, and those who are unyielding to the examination results can not only bring a reconsideration case, but also directly file a lawsuit with the relevant court.

4. Conclusion

According to the common sense of economic law to analyze the cause of the burst of small property right house, it can be concluded that the origin of the burst of small property right house is the Urban-rural dual structure currently implemented in our country. If we want to get rid of the problem of small property right housing, we must change the dual structure of urban and rural areas in our country. Although the solution is extremely clear, we cannot ignore the large number of interest groups involved in small property rights houses, so the reform should not be extremely decisive. We should ensure that the purchase of small property rights houses in order to meet the housing needs of people with the right to live, and then reform the small property rights house.

Acknowledgments

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