

# A Judicial Empirical Study on the Transfer and Segmentation of Rural Collective Assets and Shares

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## Abstract

Rural collective asset shares are a product of the reform of the rural collective property rights system. The circulation and division of rural collective asset shares are of great strategic significance for revitalizing rural assets, protecting farmers' rights and interests, and assisting in rural revitalization. The collective assets and stock rights of farmers are property rights protected by law, which have strong theoretical and practical significance. However, due to the imperfect stock reform system, the lack of legal system and relevant laws, judicial protection is facing difficulties, and the application of laws is chaotic, making it difficult for farmers' legitimate rights and interests to receive legal relief. Therefore, this article conducts in-depth research on the problems in the circulation and division of rural collective asset shares through empirical analysis and judicial judgment documents, providing suggestions for the improvement of relevant laws, and strengthening the judicial protection of farmers' property rights and interests.

## Keywords

Rural Collective Asset Shares, Share Rights, Transfer And Division, Judicial Dilemma.

## 1. Rural Collective Asset Shares and Their Rights and Powers

### 1.1. Rural collective asset shareholding rights

The share right of rural collective assets is a kind of Usufruct. It is the right of rural collective members to obtain the quantitative distribution of shares of collective operating assets, and is the product of the central government's deepening of the reform of the rural collective property system. Some scholars believe that rural collective asset shares are a form of shareholding realization of income distribution rights in rural collective membership rights. In 2016, the Central Committee of the Communist Party of China and the State Council issued the "Opinions on Steadily Promoting the Reform of Rural Collective Property Rights System", which quantified rural collective operational assets in the form of shares or shares to members of the collective, as the basic basis for collective members to participate in the distribution of collective benefits. This indicates that the prerequisite for obtaining shares in rural collective assets is the identity of members of rural collective organizations, and the right to distribute shares is based on the collective ownership rights of members of the collective. There is a close relationship between shares and member identity.

The quantification of the conversion of rural collective operating assets into shares is actually a secondary distribution and adjustment of the original property rights and interests of rural collective economic organizations, are integration of the development system and resources of the rural economy, in order to revitalize the rural economy and increase farmers' property income. However, due to the current regulations on rural collective asset shares being mostly concentrated in policy legal documents, there are no higher-level laws and regulations, and the implementation policies vary from place to place. Therefore, currently in the academic

community, there is no consensus on the nature of the share rights of collective members. In the current pilot practice, each region has its own confusion about the handling of issues such as the subject, content, and management of collective members' share rights. The pilot practices in each region also have certain differences, and there is even a phenomenon of practical alienation of the nature of collective property rights.

## **1.2. Determination of the Subject Qualification of Rural Collective Asset Stock Rights**

In terms of quantifying the conversion of rural collective assets into shares, the academic community has basically formed a unified conclusion that only members of rural collective economic organizations can obtain shares in collective assets. Rural collective operating asset shares are granted based on the membership rights of rural collective economic organizations, and the acquisition of shares is closely related to member status. Only members of rural collective economic organizations are eligible to obtain corresponding asset shares. The membership rights of rural collective economic organizations refer to the rights enjoyed by members towards the rural collective economic organization. These rights are based on membership qualifications and are manifested not only in tangible rights such as land contract management rights, but also in other forms such as equity. The operational assets of rural collective economic organizations can only be quantified by converting them into shares to their members, so obtaining membership is very important. There are controversies among scholars regarding the determination of membership. Different scholars have different views on the identification of the membership of rural collective economic organizations. Most scholars believe that registered residence should be taken as the basic principle, and other factors should be combined. Scholar Han Song believes that rural agricultural populations who rely on collective land for their livelihoods within the collective community should all belong to the members of the collective. Fang Shaokun believes that the determination of membership should be examined from the perspective of judicial relief, and based on sorting out the trial logic of the people's court, a standard system for determining membership should be determined.

## **1.3. Rural collective asset stock ownership**

In 2016, the Central Committee of the Communist Party of China and the State Council issued the "Opinions on Steadily Promoting the Reform of Rural Collective Property Rights System", which clearly proposed the reform of shareholding of rural collective operational assets, and proposed the comprehensive empowerment of six rights: possession, income, inheritance, paid withdrawal, mortgage, and guarantee. Under the guidance of this opinion, all regions carried out pilot share transfer and formulated relevant measures. Minhang District of Shanghai took the lead in issuing the Interim Measures for Equity Management of Village Collective Economic Organizations in 2016. The Measures clearly pointed out that the articles of association of village collective economic organizations must stipulate the content of paid equity withdrawal. The realization of rural collective asset stock rights plays an important role in the development of rural economy and the increase of farmers' property income. However, due to the current lack of relevant laws and regulations, the pilot methods in different regions are also different, and the realization of the rights and powers of rural collective assets shares is hindered, making it impossible to truly realize the various rights and powers stipulated in the Opinion. In addition, there is also controversy among scholars regarding the discussion of the power of rural collective asset shares in the academic community. Most scholars believe that rural collective asset shares can be transferred, but some scholars hold opposing views. Qi Lei believes that shares can be fully transferred externally and have no relation to the exclusive ownership of collective members. Liu Xiaoping believes that the transfer of shares brings risks to the collective economy and damages the internal shareholders' rights and interests of rural

collective economic organizations. At present, the transfer of collective assets and shares should not be opened up. The ownership of shares in rural collective assets is the key to realizing farmers' property rights. However, currently, neither the national unified laws and regulations nor local regulations have established systematic institutional norms for the realization of rural collective asset stock rights, resulting in numerous obstacles to the realization of rural collective asset stock rights.

## **2. The Current Situation of Judicial Judgment on the Transfer and Division of Rural Collective Assets and Shares**

The author conducted a judicial case search through the "China Judgment Document Network" and searched using the keyword "rural collective asset shares". A total of 102 civil judgment documents and 4 administrative judgment documents were collected. Due to the fact that these four administrative judgment documents are not related to the circulation and division of rural collective asset shares, they are not included in the overall judgment documents. Afterwards, the author conducted a search using the keywords "circulation" and "segmentation" respectively, and retrieved a total of 7 judicial cases involving disputes over the circulation of rural collective assets and shares, as well as 2 disputes over the division of rural collective assets and shares. The retrieval of judicial judgment documents through the above methods can clearly demonstrate the current judicial judgment status of rural collective asset and stock disputes:

### **2.1. Most cases have not been physically tried in court**

In these 102 judicial judgment documents, nearly half of the cases did not go through substantive court proceedings, but directly responded to the litigation requests of the parties by ruling to dismiss the lawsuit. The author found through research and analysis that among the judgment documents that have adopted rulings to dismiss lawsuits, the courts all believe that disputes related to rural collective assets and shares do not fall within the scope of the court's jurisdiction, but only because there are certain differences in the reasons for the court's rejection of the lawsuit. The reason why most courts reject the lawsuit is that the dispute over rural collective assets and shares belongs to the category of autonomy of members of rural collective economic organizations, and should be resolved by democratic resolution within the organization members themselves. For example, in the judgment document (2022) Gui 03 Min Zhong 3364 issued by the Intermediate people's court of Guilin City, Guangxi, the people's court believes that rural collective asset shares belong to the category of villagers' autonomy, and if the litigants believe that their legitimate rights and interests have been damaged, they can apply to the relevant competent authorities for settlement. A few courts believe that there are currently no relevant legal provisions and that they need to wait for legislation to be enacted before proceeding. Some courts also believe that disputes over rural collective asset shares do not belong to disputes between equal subjects and should be resolved by relevant departments of the local government. However, regardless of the reason, the court still believes that the dispute over rural collective assets and shares does not fall within the scope of the people's court's jurisdiction and does not conduct substantive trials of the parties' claims.

### **2.2. Adopting more principled provisions in the application of law**

Due to the current exploration stage of the reform system of rural collective asset shares, incomplete legal provisions, and the lack of specific legislation on rural collective asset shares, courts are unable to cite clear legal provisions and can only apply general principle provisions as theoretical evidence. For example, in the judgment document (2023) Xiang 11 Min Zhong No. 275 issued by the Intermediate people's court of Yongzhou City, Hunan Province, the people's court cited the Organic Law of the Villagers' Committee of the Organic Law of Village

Committees and the Interpretation of the Supreme People's Court on Legal Issues Applicable to the Trial of Cases Involving Land Contract Disputes and other laws in response to the parties' demands for determining the membership of rural collective economic organizations and allocating shares of rural collective assets, And the cited laws and regulations are all principled provisions, which cannot provide specific rules and guidance for the handling of disputes over rural collective assets and shares, and cannot better resolve disputes.

### **3. The Judicial Judgment Dilemma of the Transfer and Division of Rural Collective Assets and Shares**

At present, the reform system and legal mechanism of rural collective asset shares are not perfect, and the relevant provisions for regulating the equity relationship of rural collective assets are still in the exploratory stage. There is a lack of legal rules, and judicial authorities face multiple difficulties in handling disputes over the transfer and division of farmers' collective asset shares. The legitimate rights and interests of farmers cannot be effectively relieved.

#### **3.1. In disputes over the transfer of shares in rural collective assets, the realization of share rights is hindered**

The circulation of rural collective asset shares includes paid withdrawal, transfer, inheritance, and pledge. There are currently no laws and regulations to regulate it, and there is no unified conclusion in the academic community. In terms of paid withdrawal of rural collective asset shares, Fang Shaokun clarified the legal connotation of paid withdrawal of rural collective asset shares. Gao Hai explained the feasibility of collective members' "three rights" withdrawal, and made clear the particularity of paid withdrawal of shares and its application in Substantive law and Procedural law. Scholars have different views on the inheritance of shares in rural collective assets. Han Song believes that the inheritance of collective assets and shares should be limited to the scope of the collective. However, some scholars believe that it is necessary to differentiate between qualified shares and additional shares to inherit collective asset shares. Although it is still in the early stage of the reform of the rural collective asset shareholding system, and there are not many judicial cases related to share transfer, which cannot comprehensively present all the problems of the current rural collective asset share transfer. However, through systematic analysis, the difficulties faced by the current judicial judgment can still be found.

In terms of the inheritance of rural collective assets shares, the understanding of the courts is different. In the case (2018) Chuan 01 Min Zhong 14337 of the Intermediate people's court of Chengdu, Sichuan Province, the court held that the equity of rural collective assets belongs to the human rights share, which is exclusively owned by the members of the collective economic organization and automatically lost with the loss of collective membership, so inheritance cannot occur. However, the People's Court of Yinzhou District, Ningbo City, Zhejiang Province (2018) Zhe0212 Min Chu 19165 case holds the opposite opinion, advocating that rural collective asset shares can be inherited in accordance with the law. With regard to the transfer of shares of rural collective assets, the Intermediate people's court of Ningbo City, Zhejiang Province (2020) Zhe 02 Min Zhong No. 5435 case held that shares of rural collective assets can be transferred according to law, but shares of rural collective assets cannot be transferred beyond the scope of the collective economic organization, and members of non collective economic organizations have no right to accept the shares. However, the People's Court of Yinzhou District, Ningbo City, Zhejiang Province (2018) Zhe0212 Min Chu 19165 case allowed non members of the collective economic organization to inherit shares in rural collective assets, breaking the restrictions on the scope of share transfer by collective economic organizations.

From the differences between the above judicial documents, we can see that in disputes over the transfer of rural collective assets and shares, judicial authorities are facing judicial difficulties such as unclear content of share rights and unclear scope of share transfer. These difficulties are also the main focus of controversy in the current theoretical and practical fields. Therefore, judicial authorities need to clarify the above issues and form consistent guidelines for the basic rules for the realization of equity rights, in order to better handle judicial disputes related to share transfer.

### **3.2. In disputes over the division of shares in rural collective assets, the subject of share rights is subject to controversy**

Among the 102 judicial judgment documents, two belong to the dispute over the division of shares in rural collective assets. Both cases reflect a judicial judgment dilemma, which is that the court currently does not have a clear definition of the rights subject of shares in rural collective assets. In the case of the People's Court of Xihu District, Hangzhou City, Zhejiang Province (2009) Hang Xi Min Chu Zi No. 2069, the court held that rural collective asset shares have identity dependence and are a form of human rights shares. The transfer and division of human rights shares must be subject to certain restrictions. Therefore, the purpose of household shares is to achieve the overall welfare of the members within the household. Only the head of household can hold and dispose of it on behalf of the household, and cannot be divided into several individuals holding it separately. Therefore, it is not allowed to divide the household shares into individual members. From this point, it can be inferred that the court believes that rural collective asset shares do not belong to independent member individuals, and only farmers are the right subjects of rural collective asset shares. However, at the same time, the court also recognized the allocation of labor shares on an individual basis in the region, advocating that labor shares should be controlled and disposed of by individual members. From this perspective, it can be inferred that the opposite conclusion is that the court believes that individual members are the right subjects of rural collective asset equity. From this, it can be seen that the court is also facing the dilemma of unclear definition of the subject who enjoys the right to shares.

In fact, there has been a continuous debate in the academic community about whether the subject of rural collective asset shares is "farmers" or "members". Scholars who advocate that "farmers" are the subject of rural collective asset shares believe that issuing rural collective economic organization stock certificates to members on a "household" basis indicates that the ownership subject of the stock rights is the entire "farmers". At the same time, farmers survive in rural society with households as the basic unit, and the land contract management rights and homestead use rights are distributed to farmers on a household basis. Therefore, "farmers" are the main shareholders of shares. However, scholars who advocate that "members" are the subject of shares in rural collective assets believe that "farmers" are not civil legal person in the normative sense. From the legal perspective, only members of rural collective economic organizations can have the right to shares. At present, with the continuous deepening of the reform of rural collective asset shareholding system, more and more scholars agree that "members" are the main body of rural collective asset shareholding. Therefore, in judicial disputes over share splitting, judicial authorities need to quickly clarify the complex relationship between "farmers" and "members", and clarify the rights holders of rural collective asset equity.

## **4. Suggestions for Improving the Difficulty of Judicial Judgment in the Transfer and Division of Rural Collective Assets and Shares**

The shareholding of rural collective assets has significant strategic significance in revitalizing rural assets, safeguarding farmers' rights and interests, and assisting in rural revitalization. The



collective assets and stock rights of farmers are property rights protected by law, which have strong theoretical and practical significance. However, the current lack of relevant laws has led to difficulties in judicial protection, confusion in legal application, and the inability to obtain effective remedies for farmers' legitimate rights and interests. Therefore, it is necessary to improve the judicial decision-making difficulties caused by the lack of relevant rules for adjusting the circulation and division of rural collective assets and shares based on the current judicial situation, in order to contribute to promoting the unity of judicial decision-making and modernization of legal governance capabilities in China.

#### **4.1. Clarify the boundary between judicial intervention and member autonomy**

At present, the boundary between judicial intervention and member autonomy is not clear. The court, citing the lack of relevant laws and regulations and the significant impact of democratic resolutions, has identified disputes over rural collective assets and shares as a matter of member autonomy, which is not within the scope of the court's jurisdiction. Refusing to hear cases related to rural collective assets and shares does not have legitimacy. The judicial principle of "judges cannot refuse to make judgments" has become an axiomatic concept, which is reflected in China's judicial trial practice. No matter which field it involves, judicial organs cannot refuse to make judgments based on the lack of laws and regulations. In addition, member autonomy in disputes over rural collective assets and shares does not have specificity, and the pursuit of their own interests by members of rural collective economic organizations may also lead to conflicts of interest, which in turn require judicial organs to make fair judgments. Moreover, member autonomy is not perfect and has certain drawbacks. Only with the intervention of judicial authorities to handle disputes over the transfer and division of rural collective assets and shares, and to fairly adjudicate disputes between the parties, can the legitimate rights and interests of members of rural collective economic organizations be better protected. Therefore, the intervention and handling of judicial organs is of practical necessity. Judicial organs need to clarify the boundary between judicial intervention and member autonomy as soon as possible, and cannot blindly reject the trial. It is necessary to balance the relationship between judicial judgment and member autonomy, clarify the scope of jurisdiction of judicial organs in handling disputes over rural collective assets and shares, and achieve judicial justice.

#### **4.2. Legal provisions for improving the system of rural collective asset stock transfer and division**

The shareholding of rural collective assets is of great strategic significance for revitalizing the rural economy, safeguarding farmers' rights and interests, and assisting in rural revitalization. However, the current legal mechanism is not perfect, laws and regulations are lacking, and the circulation and division of rural collective asset shares cannot be carried out smoothly. In the face of judicial disputes, the rights and interests of rural collective asset shares cannot receive good relief. Some scholars believe that the overall attitude of the judicial authorities towards disputes over the quantification of shares is relatively negative, and the failure of collective members to protect their rights is universal, which is closely related to the lack of laws and regulations. At present, the transfer and division of rural collective assets and shares are mostly scattered in policy documents in various regions, and the regulations are different, without clear and unified legal norms, which has caused great obstacles to judicial relief. China should improve the legal provisions of the transfer and division system of rural collective assets shares as soon as possible, so that the judicial authorities have clear legal provisions to provide basis.

#### **4.3. Clarify the rules for the realization of stock rights**

The quantification of rural collective assets converted into shares is a product of China's unique land system background. The six major powers possessed by rural collective asset shares play

an important role in increasing farmers' income. At present, the rules for the realization of rural collective capital share rights are not clear. There are differences in the scope of share transfer, regulations on share division, and policy documents of different regions. Some local governments allow external transfer, while others do not allow external transfer, only internal transfer, and there is no unified and clear rules for the realization of share rights. Unclear rules for the realization of share rights will, to a certain extent, hinder the normal circulation of shares of rural collective assets, so that the normal property value of shares of rural collective assets cannot be exerted, and it is also not conducive to the increase of farmers' income. In terms of share pledge, scholar Zhang Hongbo believes that one of the reasons for the dilemma of share pledge is the small scope of circulation of rural collective asset shares. Therefore, it is necessary to clarify the implementation rules of share rights and allow the external circulation of rural collective asset shares, in order to achieve the normal circulation of rural collective asset shares and effectively promote the development of rural collective economy. The judicial organ should also adhere to the rules for the realization of share rights in the trial of share transfer disputes, fully protect the legitimate rights and interests of farmers, and contribute to promoting rural revitalization and Common prosperity.

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