The Reform of Rural Land Law System and the Establishment of Integrated Construction Land Market in China

Abstract

In China, dualistic land ownership system, which is divided into urban state-owned land and rural collectively-owned land, has been formed since the movement of Advanced Agricultural Producers’ Cooperative in 1956. As a result of socialism ideology and the strategy of economic development, the rural area and agriculture was subordinated to the need of economic development in the urban area, particularly the development of heavy industry in the first 30 years since the foundation of People’s Republic of China, and the factors of production in the rural area were exported to the urban area contributing to its development. So the farmers were prisoned on rural land to produce the materials for industrial production before the Reform and Opening-up of 1978. As the most important factor of production, rural lands were only restricted for the agricultural use subordinated to the need of the urban area. So in the context of central-planned economy, the property rights on rural lands were discriminated.

In the past 3 decades, most of the dimensions of the Chinese society have experienced important social changes, and the reform has granted liberty and equality to citizens in the urban area and farmers in the rural area. However, the property rights on rural lands are left to be the last exception, because the dualistic land administration system is inherited and strictly followed by the existing land law system, under which the rural lands are subject to a set of restrictions for its capitalization, compared with the urban lands. The most serious is that this dualistic system of land rights is strictly provided by the current land law system, without any essential alteration in the past 30 years, and even after the enaction of the highly appreciated “Property Law” (2007), the situation does not change.
In the first place, the ownership of land is not tradable in the market, and only the use right of the land could be transferred. However, from the point of view of land supply, the rural land cannot be freely circulated in land market, only should the rural land be converted into state-owned land through expropriation by government, can it then be used for civil and commercial purposes, for example commercial residential building. In this way the State monopolizes primary market for land supply, and thus it deprives the farmers’ economic benefits from the transfer of their own land. At the same time, the government has accumulated abundant capital through expropriation of rural land with a comparatively lower price than the market price to support the local economic and social development, and this is vividly described as “Land Finance”. For this reason, the conflict between expropriation of rural land and farmers lost their lands is always a hot and sensitive topic for the public debate.

Except restrictions on the supply of construction land, other private property rights on rural land are also prohibited to be created or transferred. For example, the land-use right on the rural farmland and homestead cannot be transferred to the subjects who are not the member of the village collectivity, or mortgaged for loan from banks. This is why the market value of rural land is lower than that of the urban lands. One political consideration for the restriction on the free circulation of rural land and the property rights on them is to prohibit the land annexation in the rural area so as to secure the fundamental production factors of farmers. Its economic essence is a kind of social security for the farmers who will not be subject to unemployment even if the economic turmoil, and in this way the government purports to keep the social stability in the rural area. The existing legislation also imposes limits on the specific use of rural lands for other policy considerations. For example, in order to secure the food supply, the farmland is strictly forbidden to be converted into land for construction. However, the economic consequence of this dualistic land system is that the farmers in China are prohibited from participating in urbanization with their own land as the most important kind of capital; on the other hand, without free circulation of rural land in land market, the problem of structural shortage of land used for construction
between urban and rural area is serious, i.e. the urban state-owned land cannot meet the demand of urban development while large amount of rural collectively-owned construction land is used inefficiently or even left unused.

With the above-mentioned restrictions on the rural land, we are wondering whether the rights on rural lands enjoyed by the farmers are pure and complete property rights, and whether the above-mentioned policy considerations could justify the restrictions on the property rights on rural lands and its free transfer in land market. The answer seems no. So it calls for radical reform of the current land law system, in which the legislature shall wipe off all the unreasonable restrictions on the property rights on rural land and establish an integrated land market, through which the rural land will be granted the same and equitable legal status enjoyed by the urban state-owned land.

In fact, lots of local provincial governments, such as Chongqing, Guangdong, and Sichuan, have implemented several plot initiatives to reform the existing land law system, attempting to grant more property rights to the farmers and allowing the free trade of rural lands so as to permit the farmers to share the economic benefits of urbanization with the contribution of rural lands. However, these pilot reform initiatives have violated the existing land-related legislations, particularly the “Property Law” (2007) and the “Land Administration Law” (2004). The lack of legal justification from the positive law means high legal risk for these reform initiatives. For this purpose, it needs a systemic and comprehensive reform of the current land law system, and needs to establish an integrated construction land market in urban and rural areas. This is what the current research will focus on.

The dissertation consists of six chapters as explained in the following:

Chapter One: Introduction.

Chapter Two: It focuses on the legal framework for the land rights, both ownership
and land-use right. The most important characteristic for the Chinese land law system is that it is a dualistic ownership system composed by the state-owned and collectively-owned lands, through which the state-owned and collectively-owned lands are in differentiated legal statuses. At the same time, as a result of bias over rural collectively-owned lands, the existing land law system imposed series of restrictions and even deprived it of the possibility for its circulation in land market. The discriminated legal status and restrictions on property rights on rural land result in the fact that farmers cannot share the benefits from the economic development with capitalization of rural lands in the process of urbanization and industrialization. In this part, I will undertake a general review of all the policy considerations for this dualistic system for land ownership and the property rights on lands, and try to explore whether the restrictions on property rights on rural lands are still justified by the social and economic development in China. In fact, the swift social change in the past 3 decades in China has imposed great challenges to the existing dualistic land law system which now cannot meet the requirement of the changed social circumstance.

Chapter Three: This chapter will focus on the expropriation of rural collective land, which is the most unique mechanism by which the property rights on rural lands can be circulated and at the same time the Chinese government gets sufficient construction land to support the fast urbanization and industrialization at the expense of the farmers’ economic interests. This part will analyze the existing problems of collective land expropriation in China and its harm to the circulation of rural construction land. One of the most debated problems is the scope of public interest which is not clearly defined by the existing legislation and thus does not specify exactly the boundary between the private property liberty and government restriction on rural collective land. And this is also one of the possible causes for the violent expropriation in the past decade. So in this part, I will explore how to reform the expropriation mechanism, through the strict definition, procedure of expropriation and the reasonable compensation to expropriated farmers, so as to protect the legitimate rights of the farmers who will lose their land for ever. And the more important or
ambitious purpose is to restrict the expropriation of collective land only for the purpose of public interest, so as to eliminate radically the institutional backdoor and economic incentives of the local governments for expropriation.

Chapter Four: This chapter will explore the feasible market-oriented reform of the circulation of rural collectively-owned land for construction. The fundamental cause of the violent expropriation of rural land lies in the fact that there is no institutional channel for the free circulation of rural land in the primary land market, except the state expropriation. Besides, the circulation of rural lands in the secondary land market is also imposed with series of restrictions. So the problem is how to re-construct the land law system so as to lay down the legal foundation for the free circulation of property rights on rural lands, particularly for those on the land for construction. In this case, an integrated market-oriented construction land market shall be established both in the urban and rural areas. At the same time, this part will also analyze pilot reforms in local province of China, such as Guangdong, so as to explore the possible means for the collective land circulation in China. It is anticipated that rural land could be circulated in the following ways: to lease, to transfer, to offer as equity contributions, to donate and to mortgage for bank loans. Because of the complexity of the property rights on rural land, we have to carefully analyze subjects, objects and purpose in the circulation of the use-right on collective construction land, and explore the possible and equitable way to distribute the economic revenue deriving from the circulation of the right to use collective land for construction so as to let the farmers share the benefits from urbanization.

Chapter Five: This chapter will discuss the creation of development rights on rural land in China. This part explores the possibility to introduce into China the land development rights system prevalent in the United Kingdom and United States of America. Under the circumstance of land-use planning and land control, land development rights shall be a new type of property rights. Through the grant of development rights on rural lands, the conflict between the severe restriction of
land-use control by the State and the free development of collectively-owned land by farmers will be mitigated, and the balance of economic interests among the rights holders of farmland and those of construction land could be achieved, which may reduce the disordered and even illegal conversion of agricultural land into non-agricultural land and may promote the reasonable circulation of urban and rural construction land.

Chapter Six: Conclusion. Based on the above analysis, it is suggested to undertake a radical reform of the existing land law system to eliminate the discrimination on the rural land and to grant it the same legal status with that enjoyed by the state-owned land; as for the circulation of the property rights on rural land, the institutional barriers shall be removed so as to establish an integrated market for urban and rural land.

**Key words:** legal reform, land market, restriction on land rights, use right on land for construction, expropriation, market-oriented circulation, development rights on land