

Discussion on the Path of Delegating the Right to Use the Living House Base from the Perspective of Rural Revitalization

Yibin Yang, Shourui Ma

Department of Law, Xinxiang Engineering College

Abstract: In order to implement the spirit of Rural Revitalization policy documents and Promote Rural Revitalization Strategy by liberalizing the right to use homestead, we should deeply analyze the connotation of liberalizing the right to use homestead, clarify the value of liberalizing the right to use homestead, investigate the practice of liberalizing the right to use homestead in pilot counties, and then clarify the path of liberalizing the right to use homestead.

Keyword: Rural Revitalization; The right to use homestead should be liberalized; Connotation; Dilemma; Break the game

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2021 In the year No. 1 central document, the CPC Central Committee and the State Council, on the proposal of comprehensively promoting rural revitalization and speeding up the modernization of agriculture and rural areas, pointed out: "strengthening the management of homestead, and steadily promoting the pilot reform of rural homestead system, and exploring the effective realization of Homestead ownership, qualification rights and the right to use the right place." It is a concrete practice to respond to the spirit of No. 1 central document by exploring the circulation, mortgage, voluntary paid withdrawal and paid use of the right to use the homestead, and it is also an important way to promote the strategy of Rural Revitalization.

1 The connotation of releasing the right to use Homestead

On the legal connotation of releasing the right to use homestead. Xia Qin (2018) believes that the right to use homestead is designed as usufructuary right, and the reform of "Three Rights Separation" of homestead is used to release the identity attribute of the right to use homestead and promote the circulation of the right to use homestead; Ding Guomin (2019) believes that the right to use homestead, as a usufructuary right, should include the complete content of possession, use, income and disposal; Wang Liming (2018) and others believe that the circulation of homestead use right should be restricted to protect its identity and welfare attributes.

The constitution, land management law and other laws have clearly stipulated that the ownership of homestead belongs to the collective, and the use right belongs to farmers. From the perspective of the provisions of homestead in China's property law, the right to use homestead is a usufructuary right. However, the law does not specify the content of the right to use homestead in detail. In this way, the provisions on homestead should apply to the relevant provisions of the land management law. However, China's "land management law" also has a relatively conservative attitude to make provisions on rural homestead, especially laying the tone of prohibiting the transfer of homestead. Such provisions not only make such a usufructuary right incomplete, but also limit farmers' enjoyment of the benefits brought by land. Under the background of Rural Revitalization Strategy, the top priority of rural homestead separation of three rights should be to activate the right to use, so that farmers can enjoy the benefits from the land price rise, and ease the urban-rural economic contradiction under the urban-rural dual system.

2 The significance of liberalizing the right to use Homestead

For the significance of releasing the right to use homestead. Wang Xiaohua (2018) believes that the release of the right to use rural homestead is compared to a wheel to promote the continuous progress of rural revitalization, opening and entering the door of social capital flowing into the field of rural life; Dong Zuoji (2018) believes that this is a breakthrough in the separation of the two rights and the formation of the separation of homestead property rights, which not only conforms to the law of free and fair operation of the market economy, but also meets the practical requirements of the current deepening development of the rural economy; Zheng Jinlong (2018) believes that the decentralization of the right to use the living house base from the perspective of "separation of three rights" of the homestead is to release the policy dividend generated by the clarity of the land property right system.

It has certain value in the allocation of land resources, the construction of homestead system, the improvement of rural management system and the realization of Rural Revitalization. First, it is conducive to optimize the allocation of land resources: it is conducive to the intensive and economical use of homestead, and it is conducive to the efficient use of land resources. Second, it is conducive

to the construction of homestead system: it is conducive to the construction of homestead ownership, the construction of homestead use right and the construction of homestead qualification right. Third, it is conducive to improve the rural management system: it is conducive to improve the villagers's self-management system, and it is conducive to improve the risk prevention management system. Fourth, it is conducive to Rural Revitalization: it is conducive to supply side structural reform; It is conducive to promoting the process of urbanization.

3. Practice of liberalizing the right to use Homestead

It seems to be a simple requirement of homestead reform to "liberalize the right to use Homestead", but many factors need to be considered in the process of reform. The first is to explore ways to revitalize the right to use homestead. The survey found that the practice of each pilot county is different on how to activate the right to use homestead. It is the consensus of 15 pilot counties to set up the homestead mortgage guarantee company and allow farmers to have the right of rural housing mortgage. A small number of pilot counties not only implement homestead mortgage guarantee, but also broaden the scope of homestead transfer, and expand the homestead transfer from the village to the county. At the same time, some pilot counties with better development also explore the reform path of homestead circulation in order to maximize the property value of homestead.

4. The destruction of releasing the right to use Homestead

Let go of the right to use homestead and grasp the premise of "maintaining rural social stability"; We should take "cautious treatment of homestead transfer" as the way; The content is to reduce the restrictions on homestead mortgage; In order to "develop a diversified way of use" as the form of realization.

First, moderately liberalizing the right to use homestead must be placed under the premise of maintaining rural social stability. It has also become a trend to moderately liberalize the right to use homestead. In practice, the way villagers use the homestead is not limited to living, not a few villagers living in the suburbs of the city use their homestead to build a large number of houses and then rent them. Although this way of using the homestead according to local conditions conflicts with the contents of the current laws and regulations, it does bring extra income to the farmers. Second, the transfer of rural homestead should stick to the bottom line of "home ownership". First of all, the transfer of the main body to review "Rural villagers can only own one homestead, and those who apply for homestead after selling or renting their houses will not be approved. It is not difficult to understand that the main reason for the strict restrictions on the subject is to ensure that "home ownership" and maintain the order and stability of the grassroots society as far as possible. Third, reduce the restrictions on homestead mortgage. In order to realize the property rights of rural homestead and turn assets into capital, we must make an issue of "mortgage and transfer" of homestead. Although China's "guarantee law" has set many restrictions on homestead mortgage, the pilot counties have achieved good results in exploring homestead mortgage guarantee after temporarily implementing the relevant provisions of the "guarantee law". Fourth, to develop diversified ways of use. Conditional rural residents can increase property income through leasing. Of course, in the villages with conditions, especially for the villages with more external leasing operation, the village collective can increase the income of the village collective and the villagers by collecting the income adjustment fund of homestead operation, and at the same time, it can also protect the public interests of the villagers. Of course, in addition to transfer, mortgage and lease, we can also boldly promote the reform of rural homestead use right in new ways such as joint construction.

Reference:

- [1] Wang Xiaohua. Rural Homestead "separation of powers" is an institutional wheel to promote rural revitalization [J]. *Economy and management*, 2018, 32 (05): 21-23.
- [2] Dong Zuoji. "Separation of three powers" -- a major innovation of rural homestead system [J]. *China land*, 2018 (03): 4-9.
- [3] Zheng Jinlong. Exploring the "Three Rights Separation" of homestead to release the policy dividend of homestead [J]. *Zhejiang land and resources*, 2018 (05): 12-13.
- [4] Chen Xiaojun. Institutional Dilemma and solution of homestead use right [J]. *Legal research*, 2019, 41 (03): 48-72.
- [5] Xia Zhuzhi. Evaluation and Analysis on the pilot reform of homestead system in central Anhui, Jiangxi and Hubei provinces [J]. *Journal of Changchun municipal Party school*, 2018 (01): 20-24.
- [6] Dong Zuoji. Taking "separation of powers" as the breakthrough of rural homestead Reform [J]. *China Rural discovery*, 2017 (01): 93-99.
- [7] Lu Junshu. Research on the legislation of rural homestead in China [M]. Law Press, 2019.

About the Author:

Yang Yibin (1994 -), male, Han nationality, master degree, assistant professor of Law Department of Xinxiang Institute of technology, intern lawyer of Henan Muye law firm. Main research direction: law.

Ma Shourui (1994 -), female, Han nationality, master, assistant professor of Law Department of Xinxiang Institute of technology, lawyer of Henan Baiquan law firm.