

Defect and Perfect of Property Right Institution of Collectively-Owned Forest Rights in China

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Abstract: It is a core content of collectively-owned forest rights reform to make clear property right, which is closely related to stability and perfect of basic rural management institution, increasing of peasant income, biological construction and development of modern forestry. Based on analysis of defects of property right institution of collectively-owned forest rights in China, the paper suggests that the nature of collectively-owned institution should be laid aside, the legal status of rural collective economic organization should be clear, the whole collectively-owned forest rights should be built and the registration of collectively-owned forest rights should be perfected.

Keywords: Collectively-owned forest rights, perfect, property right institution.

1. INTRODUCTION

In China, the collectively-owned forest rights reform cannot copy entirely the idea of the agricultural land reform, and should be based on the characteristics of forestry resources. Based on the analysis of defects of property right institution of collectively-owned forest rights in China, the paper suggests that the nature of collectively-owned institution should be laid aside, the legal status of rural collective economic organization should be clear, the whole collectively-owned forest rights should be built and the registration of collectively-owned forest rights should be perfected.

2. DEFECTS OF THE PROPERTY RIGHT INSTITUTION OF COLLECTIVELY-OWNED FOREST RIGHTS

2.1. The Unclear Nature of Collectively-Owned Institution

About the nature of collectively-owned institution, "Constitution", "Property Law" and other laws regulations provides only for the collective ownership belongs to the socialist public ownership, but the lack of a clear explanation of the meaning and nature of collective ownership, such as Article VI of the Constitution: "The basis of the socialist economic system of the People's Republic of China is socialist public ownership of production, namely, ownership by the whole people and the working masses collective ownership." Understanding of theorists of collective ownership vary widely, there are three main perspectives: The first is based on Roman law theory of ownership and civil law Civil Code

provisions on co-ownership basis or reference, explain the nature and content of the farmers' collective ownership, this research is very popular at present [1]. The second is invoked Germanic law "is always" theory and the corresponding rules interpreting the collective ownership of farmers [2]. The third is to absorb the Germanic law "is always" concept of the reasonable factor, and based on the scientific definition of ownership of the Roman law method and train of thought, to be updated to form the new theory, which explains the farmer collective land ownership of this special form of all together [3]. In addition, in the process of investigation, the author also found that some developed area of The Pearl River delta rural collective economic organizations have set up the collective asset's share, and the "curing" transformation, namely only fixed members can share the collective asset returns, this fact has become a "co-ownership" of ownership form. Therefore, for the nature of collective ownership, is "there is always" or "has"? Is "joint owners" or "co-ownership"? Theory and practice are not reached an agreement.

2.2. The Fuzzy Main Body of Collectively-Owned Institution

Existing law clearly rural collective economic organizations are the basis of the organization of the basic rural management institution and implementation of the premise, the rural collective economic organizations representing farmers collective exercise of collective ownership, such as the provisions of Article VIII of the Constitution: "The rural collective economic organizations practice the household contract management based tier management system that combines unified and separate, the two-tier management system that integrates with." "Land contracting law" regulation, the family of the contractor is the collective economic organizations of farmers." "Members of the rural collective economic organizations shall have the right to lawfully contracted by the

collective economic organizations of the rural land contracting out." But at present relevant laws exist the following problems:

(1) The meaning of the rural collective economic organizations is not clear. Firstly, the name is not uniform. "Rural collective economic organizations" as a legal concept, first appeared in the 1982 Constitution. After the law has basically adopted the title, but "General Principles of the Civil Law", promulgated in 1986 and issued in 1993, "the Agriculture Law", which was used "Agricultural collective economic organizations". Secondly, concrete existence form is not clear.

(2) The legal status of the rural collective economic organizations is not clear. Laws appeared many times "rural collective economic organizations", obviously, the rural collective economic organization is a kind of legal subject, but whether it is a legal person or other organization? If it is a legal person, in the end is what kind of legal? Law is not clear.

(3) Diversification of the main operation and management of rural collective assets. The villagers' committees or groups of villagers can replace the functions of the rural collective economic organizations in the laws of the "General Principles of the Civil Law", "Property Law", "Land Contract Law", "Land Management Law", "Agricultural Law" and so on. Such as "Land Contract Law" Article 12 provides that: "Farmers collectively owned land in accordance with the law is a village of farmers' collective, which is allocated by the village collective economic organizations or villagers' committee. Belongs separately to more than two rural collective economic organizations of farmers collectively owned, which is allocated by the village of the rural collective economic organizations or groups of villagers. The state collective rural land use by farmers in accordance with the law, by the use of the land is rural collective economic organizations, villagers committees and villagers groups."

(4) Basic rural management institution into a new dilemma. On the basis of household contract management, the two-tier management system is suited to the socialist market economy system, accord with the characteristics of agricultural production and the basic system for rural operations, which is the foundation of the party's rural policy. Rural collective economic organization is in fact the basis of the organization of the basic rural management institution and implementation of the premise, but in the actual development of the two-tier management system, the implementation of the household contract responsibility system after the rural collective economic organizations should assume what "unified", the theory and practice there is a clear understanding of the problem. Therefore function and the superiority of "unity" and didn't get to play, in fact is in a state of "dummy" collective ownership, the "separation without unity" and "separation less than unity functions" such as the operation of the chaos [4].

(5) Rural collective economic organization forms and confusion. In China there is no the cooperation law or the law of organization of economic cooperation [5], on the basis of the cooperation the collective economic organizations of the natural have no legal status. Market economy is legal economy, there is no legal identity of the collective eco-

nomical organizations in the daily operation and management will inevitably encountered a series of legal barriers. Survey found that the "economic cooperative" and "economic cooperative shares" of collective economic organizations do not have the industrial and commercial tax registration, also do not accord with the condition of industry and commerce registration, its legal status is questioned by other economic entities in the market. As a result, the use of "cooperative" seal can the economic contracts with other economic subject, so in the name of the village committee and seal to participate in economic activities; Collective economic organizations to subordinate to the assets of the certificate of property title, limits the ability to the management of assets; "Cooperative" is unable to open bank accounts in the legal person, also hard to get bank loans support. Individual collective economic organizations and even in private name in the bank account, deposit collective funds, the personal appropriation collective funds "allowed to abscond" phenomenon.

2.3. The Crippled Power of Collectively-Owned Forest Rights

Collectively-owned forest rights as a kind of compound rights, ownership of forest land, forest land use rights, ownership of trees and forest right and so on four basic forms, as well as cutting right of use, resources collection of power, the landscape development and utilization of power, mortgage, *etc.* comprehensive or derivative rights. Power of collectively-owned forest rights include to possess, utilize, seek profits from and dispose of the four. The power of collectively-owned forest rights incomplete mainly embodied in two aspects:

(1) The Power crippled of forest land use right. Currently, forest land use rights in China are mainly two forms: First, forest land contract and management rights; Second, forest land use rights to forest land contract and management rights. The existing law on whether the property rights of the forest land use rights to forest land contract and management rights are not clearly defined, based on the principle of "real right legal" can only say that such forest land use rights in the law has not been defined as usufructuary right. For forest land contract and management rights, although the "Property Law" has its clear specification usufructuary right reflects the tremendous progress on the legislation, but for the forest land contractual management rights transfer contract family forms regulation is too stringent. The contract is divided into family forms of contracting and contract through bidding, auction and public consultation. According to the provisions of article 49 of the "Land Contracting Law": "contracted through bid invitation, auction and public consultation *etc.* of rural land.....can legally take the transfer, lease, shares, mortgages, or other means." Woodland contracting family forms only requires that the subcontract, interchangeable, rental, cooperative shares circulation forms, due to the internal circulation only in the rural collective economic organizations, their circulation limited role for the transfer of shares and pledged the three most important circulation forms or additional conditions limit its use, such as "Land Contract Law" Article 37 provides that: "the transfer to take by way of transfer, should be agreed by the employer; take subcontract, lease, exchange, or otherwise transfer should be reported to the employer for the record." or simply unspeci-

fied. Land is concentrated to the professional or planting large producers, to moderate scale operation will be very difficult. Because the scale operation of production process often require large amount of money, if you don't allow the contracted management of mortgage loans, is may not be able to realize the real scale operation. Although the transfer of collective forest rights, shares and mortgages in practice there are a lot, and the guidance of "the People's Bank of China, the Ministry of Finance, China Banking Regulatory Commission on the good of the collective forest right system reform and the development of forestry financial services" and other policy documents support, but after all, the basis for the lack of national legal level.

(2) The collective forest disposition is restricted. The forest right system in China is very specific to the disposition provisions, and designs a series of administrative permit system, and regulations without permission, shall not optional treatment. This is mainly because the collective forest have external economy, out of the public interests into consideration, in order to promote social welfare, the state through a variety of policy measures, the administrative licensing of forestry property rights for the corresponding limit is very necessary, but too much regulation measures will also bring a series of problems, influencing the full play of the incentive effect of collective forest rights. Collective forest property rights with constraints and incentive function, but due to the long time pay attention to forest right regulation directly leads to the incomplete of forestry property rights, farmers engaged in forest tree cutting need to apply for the cutting license and business processing wood will obtain business licenses, transportation wood should deal with wood transport, etc. Various kinds of administrative control almost all over the management of each link of collective forests. As a direct result of forestry property right is incomplete, the farmers' residual claims cannot equal to surplus control, caused the lack of investment incentives.

2.4. The Lagging Redistraction of Collectively-Owned Forest Rights

Changes in forest ownership specialized laws and regulations of the "Forest Law", "Forest Law Enforcement Ordinance", "Forest and Woodland Ownership Registration Management Approach" involves not been registered as a mandatory way property changes in combined relevant government departments are not sound enough not placed enough emphasis on the registration of the objective and subjective reasons, resulting in the registration of collective forest right do the right there are the following questions: ①There woodland unregistered, failing to grant forest warrants, some "a forest multi-card". ②Forest warrants styles are not standardized, forest warrants were originally issued by local governments to enact its own, the content is not standardized, making rough, the perennial neglect archiving management, save the poor. ③The forest warrants the issuance of work is not up to standard, the only part of the forest right certificate fill given no area place names, unclear, or fill in the area and the field does not match. ④Not timely woodland, forest ownership change of registration, there are many forest without a certificate or vice versa. Thus in the circulation process mountainous ownership mistaken identity, boundary confusion, "have repeatedly occurred in a forest to

buy more" phenomenon, caused a lot of forest rights disputes [6].

3. THE PERFECT OF PROPERTY RIGHTS INSTITUTION OF COLLECTIVELY-OWNED FOREST RIGHTS

3.1. Laying Aside the Nature of Collectively-Owned Institution

Due to historical reasons, China's rural woodland forest property rights are clearly clear enough. Rural woodland forest property right of the main problems is that the property rights system is incomplete, and the realization of property rights mechanism is not perfect. Urban and rural land system reform of our country after reform and opening-up chose the path of the separation of ownership and use right, "personality appeal for public land ownership, on public land create private land usufructuary right"[7]. Collective ownership of urban land that maintain the public nature of national ownership and rural land ownership under the differentiation of the various types of usufructuary right, such as: the right to land contractual management, construction land use rights, homestead right to use and so on. In August 2002 of the "rural land contracting law" affirms the nature of land contracted management of land usufructuary right; In March 2007 of "property law", innovation to establish the land usufructuary right system with Chinese characteristics. Despite the use of various types of usufructuary right is not ownership, but can be given with usufructuary main part of ownership characteristics, land usufructuary citizens' lawful private property owned by the subject. Land usufructuary right system is used to define the public land use activities in the private sector, and individual citizens to establish its private interests for the purpose of land use mechanism. Established in the public nature of the land of various land usufructuary right, will be more active in the economic and social life, and gradually achieve relative to the prominent status of land ownership.

3.2. Making Clearly the Legal Status of Rural Collective Economic Organization

(1) Formulate national special legislation. Develop the special "Rural Collective Economic Organizations Law" or "Rural Collective Economic Organizations Ordinance" in harmony with the laws of the "Organic Law of Villagers" and "farmers' professional Cooperatives" to clear the management system of rural collective economic organizations and rural grassroots political relations of the organization.

(2) The connotation of rural collective economic organization should been clear. Legislation to resolve the rural collective economic organizations practice the name of "variety" phenomenon can learn from the experience of local legislation such as Guangdong and Hubei, the rural collective economic organizations defined as: refers to the original people's communes and production brigades and production teams formed after the reform, transformation, reorganization of the formation of cooperative economic organizations, including economic jointly suing, economic enterprise, economic cooperatives and joint-stock cooperative economy joint suing, joint-stock cooperative enterprise, joint stock cooperation a doctor of the economic and social.

(3) Clear the rural collective economic organization is the actual management of the rural collective assets. On the one hand, clear villagers' committees and villagers group autonomous organization and the nature of the rural collective economic organizations such as the essence of the difference, will this kind of organization and the rural collective assets operation and management activities strictly separated. Clear the village Communist Party of China macro leadership of the organization of the rural collective economic organizations, but cannot interfere with the autonomy of the rural collective economic organizations in accordance with the law in conducting independent economic activities. On the other hand, correctly the relationship between the coordination level 3 rural collective economic organizations.

(4) To determine the legal status and governance structure of the rural collective economic organizations. "Rural collective economic organizations" to conduct a thorough transformation so that it has the legal conditions, become veritable legal subjects, which can smooth business registration and tax registration, in order to engage in market economic activities. Given enterprise legal status of the rural collective economic organizations, the establishment of a democratic management mechanism should be based on their organizational characteristics, including democratic elections, democratic decision-making, democratic management and democratic supervision [8].

3.3. Building the Whole Collectively-Owned Forest Rights

Through the improvement of regulations and policies, given collectively-owned forest rights of possession, use, income, and dispose of four complete power. On the one hand, for forest land use right, can from the following several aspects of perfect: First, not only for the forest land contract and management rights, but also for other forest land use rights to implement the complete protection of property rights. Second, at the level of national law, clearly defined forest land use rights can be taken for sale, rent, shares, mortgages, or other means, to remove unnecessary restrictions, the normal orderly transfer of forest land use rights, so as to promote collective forest rights circulation and the development of the forestry industry. On the other hand, the change of government on forest disposition too intervention, in the balance of the social and public interests and based on forest right holder, make a fair and reasonable administrative management policy.

3.4. Perfecting the Registration of Collectively-Owned Forest Rights

(1) Forest right registration is the basis and core of forest right circulation. The essence of forest right circulation is forest land ownership of trees or its derivative rights transfer, its essence is a kind of real right behavior, the registration is the sole basis of the changes and the demise of the forest rights established. In the circulation process flow the rights and obligations of both parties have a change, from the effective protection of the interests of the transaction security and operator, against the third person in good faith perspective, it is necessary to fulfill the statutory procedures for the registration of property rights of the forest. According to our

country's judicial tradition and habits, forest right registration authority can't be court, and can only be administrative organs. Therefore, administrative organs do registration certification service work, is to regulate the premise and foundation of forest right circulation, did not have a good registration, there is no standard forest right circulation.

(2) Forest rights circulation registration procedure specification must be made clear. First of all, respect the history and reality, to regulate the registration certification work. The forest resources property right registration should be classified, on different ownership and different situation of forest land or trees registration work take different forms. Hilly land to forestry "fixed quota system" period shall prevail, whoever has afforestation or closed forest and reach the standard, the ownership of trees to individual farmers all, should carry out the forest resources property right registration and issue a certificate; The contracted management of collective forest, for forest land ownership to collective economic organizations, all grassland-use right certificate is awarded to the collective, the contractor not hair grassland-use right certificate; The collective forest value has been transferred to other organizations or individuals, ownership of trees to transferee, registration certification; Joint venture and cooperation of forestation, forest co-ownership, forest land ownership is changeless, grassland-use right certificate to the forest resources property right is registered representative; Compulsory planting trees to plant trees to forest land owners, and give the registration certification. Second, the forest right registration procedures must be made clear. Assignee to pay the transfer fee in accordance with the provisions of the Transfer Contract, the forestry department in charge of the issuance of the original forest resources certificate of ownership or right to use people's governments above the county level shall, in conjunction with the transfer of people to apply for the change of ownership registration. Handle the transfer of forest resources property alteration registration procedures shall meet the following conditions: ⊖ the right certificate of the forests, trees and woodlands grassland-use circulation; ⊖ the state-owned forest right flow must hold the competent forestry departments and the people's government state-owned assets management department approval flow of the approval document; Collective forest right flow must hold a villagers assembly or by representatives of villagers meeting agreed to resolution and the township people's government approval document; circulation contract; ⊕ according to the provisions of the assessment of forest assets evaluation report. Third, norms prohibit the registration of the case. Have the following circumstances shall not process the forest resources property right registration of change: ⊖ the forest resources property rights transfer occurs when the forest resources property rights dispute; ⊖ the collective forest right flow without the collective economic organizations or more than two thirds of the members of the villagers' representatives agree; ⊕ state-owned forest right transfer assets evaluation and without the approval of the competent department agree; ④ the bank loan project and other loans forestation project not clear forest right circulation loan subject; ⑤ signed over the term of operation of the forest resources property rights transfer agreement [9].

CONFLICT OF INTEREST

The authors confirm that this article content has no conflict of interest.

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REFERENCES

- [1] F. Guo, *Property Law*, Tsinghua University Press, China, pp. 89-90, 2007.
- [2] S. Nérison, "Has collective management of copyright run its course? not so fast", *IIC-International Review of Intellectual Property and Competition Law*, vol. 46, no. 5, pp. 505-507, 2015.
- [3] S. Han, *Collective System and Collective Ownership and its Realization form of Enterprise*, Shanxi Normal University Press, China, pp. 90, 2010.
- [4] D. A. Atwood, "Land registration in Africa: the impact on agricultural production." *World Development*, vol. 18, no. 5, pp. 659-671, 1990.
- [5] A.S. Isaksson, "Unequal property rights: a study of land right inequalities in rwanda." *Oxford Development Studies*, vol. 43, no. 1, pp. 60-83, 2015.
- [6] H. Wang, X.U. He, and X. Xuan, "Review of waste tire reuse& recycling in China: current situation, problems and countermeasures." *Advances in Natural Science*, vol. 2, no. 1, pp. 31-39, 2010.
- [7] J.C. Franco, "Global land grabbing and trajectories of agrarian change: a preliminary analysis," *Journal of Agrarian Change*, vol. 12, no. 1, pp. 34-59, 2012.
- [8] M.L. Weitzman, and C. Xu, "Chinese township-village enterprises as vaguely defined cooperatives," *Journal of Comparative Economics*, vol. 18, no. 2, pp. 121-145, 1994.
- [9] E. Silva, "The politics of sustainable development: native forest policy in Chile, Venezuela, Costa Rica and Mexico." *Journal of Latin American Studies*, vol. 29, no. 02, pp. 457-493, 1997.

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