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征地补偿款分配纠纷法律问题研究

Research on the Legal Issues about the Dispute
over the Distribution of Compensation Payments
for Land Requisition

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内 容 摘 要

村民与农村集体组织之间因征地补偿款的发放而引发的征地补偿款分配纠纷是近年来审判实践中出现的新类型案件。由于我国相关立法的滞后和配套规定的缺失,征地补偿款分配纠纷已成为突出的社会问题。此类纠纷可否纳入司法救济范围、适用何种诉讼程序予以受理、有关案件的实体问题又该如何解决,是摆在司法审判机关面前的一道难题。本文从征地补偿款分配纠纷所涉法律问题入手,遵循集体土地所有权主体、征地补偿款性质、集体成员资格界定、征地补偿款分配原则以及农民集体成员分配利益保护(亦即征地补偿款分配方案合法性审查问题)的处理思路,对相关问题进行研究与探讨。全文除引言和结语外,共分为四章。

第一章结合集体土地制度的发展沿革,通过对现行法律、法规、规章、政策规定的检索,明确农民集体是我国集体土地所有权的权利主体,农村集体组织(即农村集体经济组织、村民委员会和村民小组)是集体土地所有权的行使主体,集体土地所有权的法律性质是一种新型的总有。

第二章从土地征收补偿的法理依据入手,明确我国土地征收补偿的性质在于维系失地农民保持原有的生活水平,提出土地补偿费和安置补助费的受益主体应为被征收土地所属农民集体的成员。

第三章通过农民集体成员资格立法现状的分析,明确农民集体成员资格界定的意义和界定的标准,并就集体成员资格的取得、丧失、保留和否定之情形采取列举式予以区分归类,较为系统地阐述了农民集体成员资格的界定问题。

第四章以农民集体成员权的法理解读作为导引,明确征地补偿款的分配原则,并把征地补偿款分配方案合法性的审查与农民集体成员分配利益的保护紧密结合起来,在现行法律规定下提出以先行政裁决后行政诉讼的方式解决征地补偿款分配方案合法性之争议、以提起给付征地补偿款之民事诉讼解决农民集体成员资格之异议的征地补偿款分配纠纷解决办法,并对将来立法的完善提出合理性建议。

关键词: 征地补偿款; 集体成员; 分配纠纷

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ABSTRACT

One of the new types of cases that have arisen from the trial practice in recent years is the dispute over the distribution of the compensation payments for land requisition between villagers and the rural collective organization. Due to the lagging of pertinent legislation and related regulations in China, the dispute over the distribution of the compensation payments for land requisition has become an acute social problem. Whether this type of dispute can be incorporated into the scope of judicial aid, what kind of litigation proceedings should be applied for hearing the case, and how to resolve the issue of entity in related cases have become a thorny problem confronting the judicial trial organs. This paper starts with the legal issues involved in the dispute over the distribution of the compensation payments for land requisition and follows the articulating line of thoughts along the principal entity of the collective land ownership, the nature of the compensation payments for land requisition, the definition of collective membership qualifications, the principle for the distribution of the compensation payments for land requisition, and the protection of the distribution interests of members farmers' collectives (i.e. the issue of the examination of the legality of the scheme for distributing the compensation payments for land requisition) to probe and discuss related issues. In addition to a preface and conclusion, this paper consists of four chapters.

Chapter I provides a review of the existing laws, codes, regulations and policies along the development and evolution of the collective land system, asserting that the farmer collective is the principal entity of China's collective land ownership, the rural collective organization (i.e. the rural collective economic organizations, villagers' committee and villager groups) are the principal entity for exercising the collective land ownership, and that the collective land ownership is a new type of common possession in terms of its legal nature.

Chapter II begins with the legal principle basis for land requisition compensation, asserting that the nature of the compensation payments for land requisition in China is intended to maintain the existing quality of life for displaced farmers, and arguing that the principal beneficiary of the compensation payments for land requisition and the subsidies for relocation should be members of the farmer collective whose land has

been requisitioned.

Chapter III, by analyzing the current situation of the legislation regarding the qualifications of the members of the farmer collective, clarifies the significance and criteria for defining the qualifications of members of the farmer collective, and, by listing, differentiates and classifies the circumstances of the attainment, loss, retention and denial of the qualifications of collective members, thereby providing a systematic elaboration of the issue of defining the qualifications of the members of the farmer collective.

Chapter IV, guided by the interpretation of the legal principle of the member rights of the farmer collective, defines the principle for the distribution of the compensation payments for land requisition, and closely combines the examination of the legality of the scheme for distributing the compensation payments for land requisition and the protection of the distribution interests of the members of the farmer collective; under the existing laws and regulations, this chapter proposes solutions to the dispute over the distribution of the compensation payments for land requisition through resolving the dispute over the legality of the scheme for distributing the compensation payment for land requisition by first making an administrative ruling and then conducting an administrative litigation and by settling the controversy over the qualifications of the members of the farmer collective by bringing a civil litigation over the payment for land requisition compensation, and presents rationality recommendations for improving future legislation.

Key words: Compensation Payments for Land Requisition; Collective Members;
Distribution Dispute

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引言

随着城镇化建设进程的加快,农村集体土地大量被征收,因征地而引发的征地补偿款分配纠纷大量涌现,集中体现在村民对村集体组织制定的征地补偿款分配方案不服,进而起诉要求与其他村民享有同等分配利益的权利取得同额补偿款。仅厦门地区而言,2002年此类纠纷初现端倪,2003年之后呈快速增长之态势,自2004年1月至2005年6月厦门市中级人民法院就受理此类纠纷上诉案件共计127件。^①由于征地补偿款分配政策性强,我国相关立法滞后,有关学理研究也较为鲜见,对此类案件能否作为平等民事主体之间的民事纠纷予以受理、受理后诉讼主体的确定以及案件的实体如何处理等问题,审判实践中分歧较大,而征地补偿款的分配与农民的切身利益密切相关,成为影响农村稳定的不安定因素,也直接关系到社会的经济发展,因此,此类纠纷的处理成为审判实践中面临的一个重大课题。虽然最高人民法院刚发布的《关于审理涉及农村土地承包纠纷案件适用法律问题的解释》(2005年9月1日开始施行,以下简称“土地承包纠纷司法解释”)就上述若干争议作出明确规定,但如何界定集体成员资格、如何看待征地补偿款分配方案也就是村规民约的效力、如何在村民自治与村民利益保护之间寻找法律的支撑点等问题仍悬而未决。纠纷的处理离不开对纠纷所涉法律问题的研究,集体土地所有权的主体、征地补偿款的性质、集体成员资格的界定、征地补偿款的分配原则以及村规民约(征地补偿款分配方案)的效力审查等成为解决征地补偿款分配纠纷亟待厘清的法律问题,架构了案件处理的法理基础。本文拟就征地补偿款分配纠纷所涉法律问题进行研究探讨,以期从理论上寻求解决此类纠纷的法理依据,明确享有征地补偿款的权利主体,进而公平合理确定分配原则,并通过对村规民约的审查达到保护农民合法权益的目的,使征地补偿款的分配趋于合法、合理。

2004年3月14日通过的第四次宪法修正案对原有的土地征用制度区分为土地征收和征用制度,集体土地所有权转变为国有土地所有权的为征收,土地所有权属不发生改变只是使用权转移的为征用,因此,本文在开篇之初有必要对探讨

^① 此数据来源于笔者所在单位厦门市中级人民法院民事审判第一庭对征地补偿款分配纠纷案件受理情况的统计。

的征地补偿款分配纠纷的相关概念进行界定。本文表述的征地为农村集体土地所有权转变为国有土地所有权的统称；补偿款则指向《中华人民共和国土地管理法》规定的土地补偿费、安置补助费和青苗补偿费三项；所谓的分配纠纷仅限于因征地补偿款在村集体内部成员之间进行分配而引发的纷争。

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第一章 集体土地所有权主体及其法律性质

征地补偿是以土地为客体,依所有权或其他物权的物上代位权所发生的民事权利,其目的是补偿土地权利人与被征收客体有直接关联的经济损失,保护土地权利人具有财产内容的民事利益。^①因此,土地权利人的确定成为处理征地补偿款分配纠纷的首要问题,这必然涉及对我国现行集体土地所有权制度的研究。

一、集体土地制度发展沿革

中国农村土地制度的改革是一个渐进的过程,其他相关制度的改革也是渐进的,现有农村土地制度并没有完全推翻原有制度,而是保留了原有制度的许多内容。因此,历史的分析和讨论,并非仅是出于一种学术性的兴趣或一种好奇心的需要,回顾历史,有助于我们更清楚今天的现实。

自新中国成立后,我国农村土地制度的发展过程大体经历了四个阶段,即土地改革时期、农业生产合作化时期、人民公社化时期和改革开放时期。^②土地改革时期,剥夺地主的土地均分给佃农,确立农民土地私有制,土地的所有权归农民,使用权和所有权合一。农业生产合作化时期,合作化经历三个阶段,一为互助组阶段,由相邻的4—5户农民组成,通过临时性的短期合约,在农忙时将各自的劳动力、农具和牲畜集中起来使用,这种形式的合作基本不影响资产的所有权归属;二为初级合作社阶段,一般由20—30户农户组成,或将土地、牲畜、农具归合作社所有,按投入资产享有收益,或资产个人所有不变,根据劳动情况付给报酬,该阶段体现了我国农村土地的所有权形态开始从农民私有制向集体公有制过渡;三为高级社阶段,取消资产的私人所有,个人的劳动作为分配的基础,并开始实行工分制,规模也从最初30个左右的农户变成由一个村所有的农户(150—200)组成,标志着农民土地私有制的消亡和集体土地所有制的初步确立。人民公社化时期,即在高级社的基础上建立规模更大的(由几个到几十个不等的村组成)管理农业生产的人民公社,基本上是以原有的乡为单位,实行政社合一,我国农村集体所有和集体使用的“三级所有,队为基础”的土地权属关系被正式

^① 李少学.试述农村征地款分配纠纷的性质及法律适用[A].康宝奇.征地款分配纠纷审判实务与研究[M].北京:人民法院出版社,2004.106.

^② 陈晓东.集体土地物权制度研究(硕士学位论文)[D].厦门:厦门大学,2001.2.

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