

The Legality of the Government's Reform and Innovation from the "New Model" of Settling Down of the Farmers of Xi'an High-tech Zone

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Abstract. China is now in a special stage of economic and social transferring. The reform and innovation needs stimulation and encouragement. The government's exploration and practice in the usage of land should be taken with a tolerant view. The high-tech region of Xi'an takes a "comprehensive compensation" new model in the settling of the farmers, which adopts public, transparent, equal, fast and effective ways to protect the interest of the farmers, has been warmly welcomed and keep balance of the interests of the parties concerned. However in the practice there exist phenomena that do not go with public interest, do harm to the benefit of the farmers, and the role of the government misplaced, which publicly criticized. Through thorough study, the author of this paper believes that the new model of reform and innovation has a good result and can stimulate the smoothness of the development of the society, and in legal theory it has got lawfulness, so it needs to be explained in its value and in the precinct of public interest, in practice importance should be attached to its pre-conditions.

Keywords. levy land and remove; reform and innovation; legality; government

1 Propose the problems

The levy land and remove is always attached to the dispute. It has branded into people's impress though it isn't its innate character. Nevertheless, a few of local reform and innovation would defuse these contradictions and turn around the bad impress. The "comprehensive compensation" model in the settling of the farmers taken by Xi'an High-tech Zone is a typical example.

Xi'an High-tech Zone is one of the first batch national level High-tech Zones approved by the State Council, it was founded in 1991. During the last 20 years, Xi'an High-tech Zone has displaced and resettled more than 40 villages, and has finished more than ten thousand "farmer turn to resident". Its peasant resettlement modes have experienced five stages one after another: upstairs resettlement; one household one house resettlement; currency resettlement; the early stage's resettlement modes were in point at that time because of the specific history condition. Nevertheless, with the change of the land policies such as the policy of land use intensively, the resettlement modes are difficult to adapt to the development of circumstance and need to find new resettlement modes until the new mode "comprehensive compensation price" come into being. The principle of "comprehensive compensation price" is: the compensation according to right and the placement according to person.

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That is legal property right is treated as the basis, and person is as the unit to calculate the placement area. If farmer choose the “comprehensive compensation price” mode, his legal residence and attachment wouldn’t need to be measured and evaluated any more, and he will be given the comprehensive compensation. Every farmer with one story building will be compensated for 250.000 Yuan, and every farmer with a multiple-story building will be compensated for 300.000 Yuan. It implements the setting mode by house, not by currency. One person is treated as a unit to calculate setting area. The setting area of every person is 80 square meter’s residence and 5 square meter’s commercial housing estates.

The mode of “comprehensive compensation price” has deeply into human mind and has been accepted by land expropriation’s farmers. It preferably balances all kinds of benefit during levy land and remove, curbs the wasting of resources and flowing dust pollution caused by illegal construction, and realizes the demolition and relocation’s speediness and harmonious.

All in all, the main reason that mode of “comprehensive compensation price” is given affirmation is the reasonable policy enacted; “sunny”, “transparent”, “dialogued” principle taken by government, furthermore, it wins the farmers’ trust and coordination.

From the implementation effect of view, the mode speeds up the speed enhances the efficiency of levy land and remove. However, according to the existing law, the reason that the citizen’s property could be turned over to the state is to realize the public interest. Nevertheless, in practice, the aim of land expropriation is head and shoulders above the public interest’s scope, the main aim is to introduce major construction projects and promote the economic development and urban construction. The legality of local government’s reform and innovation during land requisition and demolishing has suffered numerous query and faced many interrogatory, such as “illegal administration”, “improving achievements”, “Invading private property”. The reality forces us to think: if we hold back the local government’s reform and innovation, how to safeguard the large plenty of land needed by urbanization rapid expansion and how to stop the illegal building and territorial behavior? If we popularize local government’s reform and innovation, how do we safeguard the authority and uniformity of law? Keeping this in mind, this paper plans to research the legality of local government’s reform and innovation during land requisition and demolishing by tracing investigation the high-tech region of Xi’an levy land and remove.

The basic hypotheses that writer want to propose and argue: we shouldn’t always emphasize blindly the farmers’ interest in the process of levy land and remove but need to reduce metaphysic and speculative academic arguments without any factual basis. The main point of levy land and remove is keeping a watchful eye on the actual result of reform and the heart sound of farmer. The conclusion that writer want to argue: we think the continual reform and innovation of local government during levy land and remove is efficient and all-win including society, peasant and government, if we view it from implementation effect. Therefore, we affirm the reform and innovation of local government during levy land and remove is active, however, we need to explain and expand the new mode and limit a rational scope for government.

2 The effect of government’s reform and innovation in the “new mode” settling down of the farmers of Xi’an High-tech Zone

(1) Open, transparent, sunny government reform and innovation. In the past, the main reason of removing disputes arising continuously was “black box operation“ that farmers very hate to. The policy, which is not transparent and sunny, not only provided opportunities for corruption but also veiled fragile trust between government and farmers.

Therefore, the government and housing collection departments need to open timely and accurately the scope of house removal, standard of compensation etc, to make house owner acquire information and take part in house demolition at the first time, and to reduce the dispute and contradiction caused by information asymmetry^[1]. At the same time, because of regulation and policy possessing logicity, abstraction, complexity and systematicness, it is a difficult problem that farmer could understand totally and grasp accurately the regulation and policy by once or twice preach in a short time.

Therefore, land expropriation compensation policy is turned into straightaway language and is added to instance to farmer, which is the premise of policy propagandize and explained successfully^[2]. At the beginning of demolition, Xi'an High-Tech Zone printed and distributed detailed demolition guides, which were given out from house to house in order to let common people read carefully and be familiar with the relocation policy. As an example of Hechi Village of Xi'an high-tech zone, the demolition guidelines provided include many detailed policies, measures, work procedure and placement community planning: a letter to He Chi all villagers, Xi'an high-tech zone Hechi Village announcement of relocation, Xi'an high-tech zone Hechi Village embodiment of relocation, Xi'an high-tech zone Hechi Village working process of relocation, Xi'an high-tech zone Hechi Village work program of relocation ect. This fair, transparent and sunny interference mode essentially is respect for farmers' rights and interests. The farmers' right to know, option and land right to development which is neglected in the past are be appeared through specific policies. It could let the house owner make a rational choice under the premise of acquiring full information, and it could avoid effectively the contradictory caused by the misunderstanding for demolition policy.

(2) Equality, quick and efficient government reform and innovation. Collection right is one of government public power in nature. It is one basic means that government realizes the space allocation of resources and controls the land use. Collection right is kind of natural and inherent power of government as sovereign as same as citizens' private right. Every country's law all ensure the Collection right of government. Collection is one of national compulsive behavior, which is government's administrative action. Nothing could intervene on the collective or private property and transfer forcefully it to the state but the state^[3]. Levy land and remove involves in planning, construction, land, urban management and other specific administrative act coming from different administrative organs. Furthermore, some local governments, in the history, have had the particular case that they enjoyed compensating for the obligee beyond the standard. These actions cause a kind of mistake induction so that the land-levied farmers think wrongly they can acquire more compensatory through delaying. At last, it causes the work of levy land and remove is generally difficult and inefficient.

By practicing, Xi'an high-tech zone has established the equal consultation platform and smooth channels for dialogue. Its equality is in its transparent policy, which could let farmers never know and create dialogue platform, at the same time, more care about the rights and interests and development of farmers. Xi'an High-tech Zone, in the process of removing, request to put the equality into practice even in some subtleties, and come up with the security personnel should not only protect the removing staff but also protect the personal safety of villagers. Its quick and efficient is embodied in: Due to the transparent of policy, don't need to do every family's work; Due to the appropriate "placement per capita" mode explored in the resettlement, namely the compensation calculated per capita, don't need not permutation and combination, it makes complex problem more simple. The government behavior by means of dialogue make the levy land and remove between main body of policy implementation and farmers is set up on the basis of equality, which is not only benefit to increase the farmer's consciousness of rights, obligations and responsibility but also benefit to improve main body of policy implementation's responsibility and service concepts.

(3) To ensure social harmonious development government reform and innovation. A promising government should form partnerships with the institutions of civil society, and promote the revival and development of society. Therefore, a service-oriented government must build up cooperative governance platform, strengthen communication and feedback, equal dialogue and mutual cooperation in the process of policy implementation, ensure practically the policy key node's smooth and responsiveness, avoid to produce shuffle and uncooperative phenomenon^[4]. We need to make simple farmers know and understand fully that the aim of land acquisition of government is to develop economic, service the public, and improve people livelihood. Specific to the practice, it needs the commander managing land acquisition have the mass viewpoint and strong service awareness, could in-depth investigation and listen attentively to the opinion of the landless village collective two committees, as a man of intention^[5]. At present, the central government puts forward "to promote the urbanization development actively and steadily", one of the important purposes is to let the large of people share the fruits of reform and open, and let farmers live and work in peace and contentment.

Therefore, promoting the reform of levy land and remove, considering the landless farmers resettlement mode from strategic height, solving the long-term livelihood problem effectively, ensuring landless farmers not lost their benefit, it is very important. The practice has proved that Xi'an high-tech zone "comprehensive compensation" new model has been deeply rooted in the hearts of people and has realized rapid, harmonious demolition.

3 The query for the legality of government's reform and innovation during levy land and remove

(1) The levy land and remove is not in conformity with the purposes of "public interest". Up to April 2013, the removal of four villages in Xi'an high-tech zone, including Gaomiao village, Dongzhu village, Xiaoren village, and Hechi Village, are drawing to a close. The villages are located in the key development area of high-tech zone. There are several municipal key project planned. For example, the area of Gaomiao village has been introduced several key projects such as Owens Corning, Toyosawa, Hua Qin Technology. No doubt, the land of key construction projects is mainly for industrial and commercial land. According to the constitution, the property law, the eminent domain of government must be based on the purpose of public interests. Although the law has not define the scope of public interests, key construction project land is different obviously from other well-known public land such as parks, roads etc. As a result, some scholars raise doubts whether the aim of levy land and remove of government is in line with the public interest or not. The reason that government may make citizen's property be turned over to the state is in order to achieve the public interest^[6]. In practice, local governments often have expansionary interpret for the "public interest" because of economic interests and achievements. Therefore, promoting economic development and meeting to the demand of urban construction land and government key project construction land, even "managing city" "land reserve" are also explained completely the demand of public interests, which is beyond the scope of public interest^[7]. Because the collective land expropriation involve government, farmers and enterprises' interests, the expropriating purpose of collective land is limited within the scope of public interests, it is the requirement to respect the constitution and farmers' property rights^[8].

(2) The levy land and remove damage the interests of farmers. Urbanization needs take the dimensions of field, in addition to vitalize the stock city land, most of land are acquired by levying the collectively owned land. There are two dispositions of the land: most land isn't used for public interest in addition to part land for public interests. The data information shows most urbanization land is not used for the public interest. The national relevant statistics shows: about the income distribution generated from the change of rural land use, its 60% to 70% acquired by government, its 25% to 30% acquired by the village collective economic organizations, and only 5% to 10% acquired by farmers^[9]. In addition, the official data published by Ministry of Land and Resources displays the total cost of national land grant up to 15910.2 trillion Yuan, which year-on-year growth is 63.4%, accounting for 23.22% of national fiscal revenue. In the corresponding removing work, local governments often involve in the removing work directly in the name of smooth remove whether public interests purpose or commercial purposes.

Not to mention the compulsory demolition and removal of government, the sunny, transparent demolition and removal without more contradiction, and the farmers agree on it, it also meets with scholastic query because they believe the levy land and remove damages the interests of farmers, and they think the government is for the purpose of their interests. In the process of removing, not only "compulsory demolition and removal" but also "persuasion and education", they all ignore and infringe people's human rights and property rights^[10]. Peasant collective and farmers do not share the developmental interests occurred in the process of land expropriation; Land expropriation compensation standard is too low; Land income distribution is focused on the people's government of a town or a county^[11]. In the relationship of levy land and remove, the usufruct of land is swallowed by state ownership, and the principle of private rights protection is deviated from during the levy land and remove^[12].

(3) The dislocation of government's role during levy land and remove. The government has

always been at the centre of levy land and remove in Xi'an high-tech zone, farmers are the relative party. The requisition and removal office Xi'an high-tech zone determined the demolition scheme, developed village relocation procedures and standards and signed the compensation and resettlement agreement with farmers by communicating with village cadres and discussing with villagers' representatives. But the role of government in requisition was widely doubted. Many scholars put forward that government can't be directly involved in the land market. Because once the government has both "referee" role and "athletes" role, it is impossible to protect the interests of land value increment of collective and agricultural class. As the government heavily involved in the economic process, it inevitably became the counterparty of conflict of interest and it was hard to practice the role of defending fairness^[13]. Being a direct demolisher in a certain project is not what the government should do^[14]. The local government should abandon its role as the organizer and leader in land expropriation and play the supervisor of land expropriation^[15].

4 Government's reform and innovation has legality in levy land and remove

The writer think we should applaud the legality of government's reform and innovation about the "New Model" of settling down of the farmers taken by Xi'an High-tech Zone. Because it is all-win from the implementation effect and it could promote effectively social development.

(1) The scope of public interest is an international difficult problem. Taking into account the reality of transitional society of China, furthermore, a plenty of fact indicate that peasant is not oppose to levy land and remove. The reason of conflict arising from levy land and remove is not public interest but compensations standards.

We can not apply mechanically unclear scope of public interest in itself to evaluate government levy land and remove's illegality. Because in other countries public interest is opinions vary fuzzy words^[16]. One common trait of land expropriation system not only in the US but also in other countries is that public interest is indefinite law concept and has certain vagueness^[17]. Public interest is not a static and determinate concept but a dynamic and indeterminate concept. People have different interpretations for public interest according to different development stages, different national conditions and different situations^[18]. Once put it into practice, we quickly saw that the concept of public interest was flexible, it is difficult to define it so that we do not seem likely to work out a generally accepted clear standards^[19].

According to most scholars' idea, the scope of public interest is hard to be defined. For this reason, we can not totally deny the aim that government introduces key project for economic development is not for public interests^[20]. So how to judge whether land requisition and removal is public interest or not? At present the law has not explicitly stipulated. In practice, some scholars propose variety of solving ideas. Such as holding hearing with stakeholders participating in, the participants vote whether one demolition fits for the public interest or not. Or it should be solved by The People's Congress System^[21]. The court should make final decision whether the land requisition fit for public interest^[22]. Public interest should be decided by land acquisition committee or local people's congress^[23].

(2) Value judgment. We could judge the legality of government action by determining the value which linked to the legality of government action. Although the government objectively benefits from reform and innovation during levy land and remove, the land value comes from economic development, urban expansion and system arrangement, not absolute value in terms of the source of land value. For instance, Xi'an Qujiang New Zone began to develop cultural industries as the theme in 2003. In a few years, the house prices have soared to the peak of Xi'an. But it was fail that the same pattern was used to Famen Temple in 2006. The main reason is Qujiang New Zone locates in metropolitan areas but Famen Temple locates in the place where is far from city. It is hard to enhance the value of the surrounding land. Differential land benefit which came from specific location, land use control and tight land non-agricultural use policies made expropriated land generate differential benefit far above the farmland^[24]. In essence, the appreciation of land development comes from social development which is the outcome of joint effort. It gathered in one land under corporate effect of

various factors^[25]. As a result, the incremental benefit caused by upward sharply land price surrounding metropolitan areas or particular locations shall not and cannot be occupied exclusively by the farmers whose land is requisitioned^[26]. For two pieces of land with same acre, there are very different proceeds between one in remote mountain areas and another in the outskirts of city. The price difference is obviously irrelevant to the labor input of farmers. From analyzing input-output, farmers did not buy inputs. Hence, it is not objective that saying interests of farmers have been damaged. On the contrary, nothing could guarantee the farmer's benefit but accelerating the levy land and remove. And it is an all-win situation from the practice because of farmers support, resource conservation, urban development and economic growth.

(3) The land is a kind of special commodity. Any parcel of land belongs to the state which has ultimate disposition right for its internal land. The scarcity of land determines the land ownership and its derived right are not integrity. It does not like car or Clothes because it could not be bought and sold by buyers and sellers voluntarily. Each country in the world, even including private ownership of land countries, all interferes with various land rights. Moreover, the levy land and remove is not only the behavior between farmers and industrial and commercial subjects but also involving urban planning and development. The planning right is one of the government public power. In Tiebout's world, cities cannot naturally develop along the best path without intervention. The government can and should intervene in economy. Nothing can survive their cities during the brutal competition in economy but those city governments who are good at managing urban^[27]. Moreover, the premise of government as the referee during demolition is that land acquisition and demolition has had perfect relatively market. In fact, at present, our market economy system is still too young. Although in a few places, such as Shenzhen where won approval to market the rural collective land from Department of Land and Resources on January 2013. However, it is a special case after all. The collective land of our country has not fully entered the market yet. At present, the subject of land expropriation system is still government. The premise and condition of consultation in using land between farmers and commercial subjects has not had.

In summary, in view of China is in a particular period, social transition is occurring, reform and innovation need to be inspired and encouraged, the writer argue we should look on the government's practice in land use and management with comprehensive attitude. But it needs the reform and innovations would be institutionalized and based on information disclosure and sun operation. This paper agrees with the reform and innovation of Xi'an High-tech Zone and thinks the mode needs to be explained and extended as soon as possible. But the mode can not be simply copied. There are a few of preconditions when learning the mode. Firstly, compensation can be in place in time; Secondly, we have highly qualified and effective government workers. Thirdly, information is full disclosure and both sides can have negotiations in order to prevent a contradiction. Fourthly, it is easy to attract investment and bring about commercial circle in the city's fringe areas. After settling down the farmers, the right to development will be protected.

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