

Legal Risk and Prevention of Rural Land Development under the Background of Land Reform

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Abstract: The current land system in China is a dual land system between urban and rural areas. According to land property, construction land can be divided into state-owned construction land and rural collective construction land. Since the new period, in order to revitalize the rural economy, China has put forward the system of housing land use. As well as the rural land contract system, large-scale development of rural collective construction land. But there are also some risks, which need to be guarded against in the development process. Based on this, this paper expounds the legal risks of rural land development by analyzing the current trend of land system reform. And put forward the legal risk prevention measures of rural land development. In order to rationally develop and utilize rural collective construction land, and promote the further development of rural economy.

1. Research background

1.1 Literature review

In 2019, Li Chunyan believed that land was very important for farmers. The government should put the peasant problem at the core and safeguard the fundamental interests of the peasants. At this stage, China attaches great importance to the transfer of rural land, and has made relevant provisions on the contractual and management rights of rural land. In the process of carrying out the work, there are some legal risks affecting the implementation of the policy. Therefore, it is necessary to discuss the current situation and existing problems, and provide suggestions for China's rural land issues (Li, 2019). In 2017, Li Jie and others believed that there were some risks in the transfer process of rural collective construction land, and there were few relevant preventive measures. This requires the deepening of the reform of government departments, which can be carried out from three aspects. We should strengthen the prevention of bottom-line risks, guard against outstanding problems in the process of reform, and strengthen the anti-risk ability of joint property rights. In order to ensure that the reform of rural collective construction land can proceed smoothly (Li and Xue, 2017). Jiang Xiuxian believed in 2017 that the current reform of rural collective construction land entering the market is in the initial stage. The circulation of the right to use, which exists, needs to implement the corresponding circulation procedures. Because the relevant laws and regulations of rural collective construction land entering the market are not mature enough, there are certain legal risks in investment and construction. Therefore, it is necessary to discuss the relevant laws of rural collective construction land, and it can also provide help for rural economic development (Jiang, 2017). Li Zhe and others believed in 2018 that rural land consolidation is a systematic project, which will involve environmental, economic, social and other issues. Under the background of the new era, the state has put forward new strategic requirements for rural land consolidation. This needs to be based on relevant policies and the internal relationship between rural land consolidation and supply-side structural reform. We should also put forward specific methods of rural economic transformation to ensure the further development of rural economy (Li and Li, 2018).

1.2 Purpose of research

At present, China's rural land problem is related to the fundamental social and economic problems in China's rural areas. Land system is the source of these problems. Therefore, in the context of the new era, China has taken important measures to implement the “rural revitalization”. This new land system reform mainly guarantees the smooth flow of rural collective construction land into the market. In order to promote the adjustment of rural industrial structure. Based on the analysis of the current trend of land reform, this paper specifically analyzed the legal risks in the process of transferring rural land to the market, and put forward the corresponding measures to prevent these risks. In the process of developing rural collective construction land, the interests of farmers and collectives are guaranteed. In order to obtain a better land investment environment in rural areas. And in the process of promoting the “rural revitalization” in China, it can be more smoothly and ensure the vigorous development of rural social economy.

2. Current tendency of land system reform

In 2018, in order to improve the effective use of idle land in rural areas, the Chinese government put forward the policy of “separation of powers”. To a certain extent, this policy has solved the institutional obstacles in the circulation of rural residential land. This also effectively promotes the circulation of rural homestead in a wider range. This policy has increased the farmers' income, and has also made full use of the power and vitality in the process of circulation. In the same year, the Ministry of Agriculture issued the Key Points of Rural Management in 2018, which further strengthened the service problems in the process of rural land transfer and strengthened the implementation of national policies by local governments.

The Rural Land Contract Law was revised and implemented on January 1, 2019. The enactment of this law has enabled the circulation of rural land to be governed by law, and also marked the establishment of the “separation of powers”. With the continuous strengthening of the government's policies on the transfer of rural collective construction land to the market, it can effectively promote the further development of rural collective construction land. The Draft Amendments to the Land Management Law of the People's Republic of China and the Urban Real Estate Management Law of the People's Republic of China were promulgated by the Standing Committee of the National People's Congress on January 4, 2019. It establishes the legal guarantee of the rural collective construction land in the process of transferring into the market. The system of permanent basic farmland protection and land supervision, which has been proved to be mature by practice, has been clarified by law, and legal space has been reserved for the construction of land and space planning system (Zhu, 2017).

3. Legal risk of rural land development

3.1 Legal risks in the “sell and transfer” of rural collective construction land

Villagers through collective national voting, public implementation of bidding procedures, collective land through legal means to transfer to investors, that is “sell”. “Transfer” means that the owner of the land use right transfers the land to the investor, who develops and operates the land according to the purposes prescribed by law. However, land acquired in this way may not be exploited for commercial housing, but may be built for commercial or industrial purposes. In 2018, the Guangzhou government promulgated the Opinions on Further Strengthening the Management of Collective Land Retention in Rural Areas. Again, rural collective construction land is prohibited from being used for commercial housing development, and no developer, unit or individual can build small property houses in other names. Under this mode, the rural collective construction land acquired by developers is relatively “clean”. But there are also certain risks, such as disputes over the nature of land rights, the existence of mortgages or legacy historical issues, etc. Attention should also be paid to procedural issues in land acquisition, as well as government approval procedures and villagers' disputes (Peng, 2018).

3.2 Legal risks in the model of “leasing” and “cooperative development” of rural collective construction land

Investors can also lease rural collective construction land. Specifically, developers rent rural collective construction land to carry out commercial property construction, and villagers collectively charge rent to developers. Another way is “cooperative development”, in which investors and village collectives sign agreements to form joint ventures to develop land and distribute operating profits according to the proportion of the agreements. There are also some legal risks in the development of rural collective construction land by these two ways. In the process of cooperative development, the main issues are whether all villagers agree to bid, whether they compete through legal and public procedures, whether the nature of land rights is clear, whether there are mortgages and debts on land (Wen, 2017).

3.3 Image analysis of traditional wood carving language

In 2017, the Ministry of Natural Resources and the Ministry of Housing and Urban-Rural Construction jointly issued the Pilot Scheme of Building Rental Housing with Collective Construction Land. The rural collective land apartment construction pilot projects were carried out in Guangzhou, Foshan and Zhaoqing. Although this model is dominated by relevant government departments and supported by village collectives, there are also related legal risks. According to the policy requirements, the government, investment enterprises and village collective are the main participants in the event. The development of the pilot land for building apartments should conform to the basic criteria of land use. Moreover, we should give priority to the construction land in stock and not occupy cultivated land. Procedure requires all villagers to vote through.

4. Legal risk prevention of rural land development

4.1 Grasp the trend of land policy in advance and strive for cooperation with the government

Before the development of rural collective construction land, we should first understand the policies of the state and local governments, and the policy direction to be implemented in the future. Only by grasping the current investment opportunities according to relevant policies can we have a better understanding of the local rural land policy. It can also better cooperate with village collectives and get the support of the government. The policies that need to be understood include the latest policies such as “land contract right transfer reform” and “collective construction land apartment pilot project”. For example, if we want to invest in rural land in Guangdong Province, we need to understand the “Opinions on the Implementation of Deeply Promoting the Reform of the Three Old” issued by the Guangdong Government in 2018, so as to make better use of the opportunities brought by the policy. Follow the law and the government, so as to get the strong support of the government.

4.2 Conduct a thorough investigation of the land to be developed

Before investing in rural land development, we should understand the relevant information. Only by thoroughly grasping these information, can we be more successful in the future development process. First of all, a thorough investigation of the nature of land should be carried out. To check whether the land to be invested is rural collective construction land, whether there are problems in ownership, whether there are illegal land occupation and so on. Secondly, we should make a thorough policy investigation on land investment. For example, whether the land has been approved by the government, whether there are legal problems in the transaction process, whether there are construction indicators, and so on. Finally, we should check whether there are legal problems in the land, such as ownership, land boundary disputes, seizure of buildings on the ground and so on. Only when we have a thorough understanding of the above situation can we ensure a smoother development in the future.

4.3 Cooperation with the village collective should be filed, and the rights and obligations of both parties should be clearly defined in the contract

According to investment, before investing in rural collective construction land, formal written contracts should be signed with village collectives. The rights and obligations of both parties should be clearly defined in the contract so as to avoid being justified when problems arise. At the same time, the signed contract will be filed in government departments. Some points should be paid attention to in the content of the contract. Firstly, it stipulates that village collectives should complete the examination and approval formalities. Mortgage the corresponding certificates of ownership in third-party institutions to prevent one-place two-sale. Second, clarify the issues of property compensation and payment in the process of land development. Thirdly, it is necessary for the village collective to publish the basic data of the village and to clarify the relevant local policies. The provisions of these clauses can avoid the problem of legal protection in the process of land development.

5. Conclusion

To sum up, in the context of land system reform in the new era, investors who want to engage in rural collective construction land development need to grasp the current national policies and local regulations. Investment should be based on these policies and regulations, through legal procedures and village collective memory cooperation, the development of rural collective construction land in accordance with the law. In this process, in order to ensure the legitimate rights of villagers, we should also do a good job of legal precautions according to the current policy, in order to achieve the ideal effect of investment and development.

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