

On the Legal Issues of Urban Housing Demolition

Hong Guo

Hunan City University, Yiyang, 413000, China

Abstract: The legal problem of urban housing demolition is more and more serious. In order to solve this conflict, the legal thinking of urban housing demolition is put forward. Through the analysis of the causes of the problems of house demolition, the corresponding countermeasures are given. The results show that the research has important reference value.

Keywords: House expropriation; Demolition; Compensation; Law

1. Introduction

Urban housing expropriation refers to the activities that the state compulsorily obtains the houses and other real estate of enterprises and natural persons on the state-owned land according to the requirements of laws and procedures from the public interest. As the change of real estate, urban housing expropriation is an administrative act that the state, as the only administrative organ and owner of state-owned land, obtains the ownership of urban housing through the state's coercive force [1-3]. As the subject of expropriation, the state does not directly participate in the practice of housing expropriation, but through giving local governments relevant administrative power to achieve. According to the provisions of Article 4 and Article 5 of the measures of Nanjing Municipality on the collection and compensation of houses on state owned land, the specific work of the collection and compensation of houses shall be completed by the municipal and district governments; the Department of the collection of houses is the administrative bureau of urban and rural construction, which organizes the implementation of the collection decisions made by the municipal government, accepts its business guidance and supervision, and the daily work shall be carried out by the house collection agencies. Therefore, as a kind of urban housing levy adjusted by administrative law, it is a kind of concrete administrative act, and it is also backed by the national compulsory force.

The concept of illegal construction is first mentioned in the administrative measures for individual housing construction in cities and towns in China. However, this administrative regulation does not have a clear definition [4]. The first law to use illegal construction vocabulary in China is the urban and rural planning law. In addition, although the water law and other laws have established legal standards in line with the construction behavior, they have not further elaborated the concept and internal

requirements of illegal construction. Based on the fact that the current law does not clearly define illegal buildings, the subject of expropriation at all levels formulates relevant regulations, methods and red header documents to specifically regulate such issues in terms of the identification of illegal buildings according to different practical needs. However, in terms of normative documents related to house expropriation in practice, most of the illegal buildings are relatively broad descriptions, lacking direct and more accurate definitions [5].

2. Causes of Damage to the Architectural Heritage Caused by House Expropriation and Demolition

There are many reasons for the destruction of architectural heritage caused by house expropriation and demolition, such as the pursuit of the goal of "speeding up the transformation of old cities", the impulse of "seeking new and foreign" for the city's appearance, or the drive of "real estate economy" and "tourism economy", the following are more important, besides these objective factors. There are two reasons:

Conceptual reasons: due to the lag of local government's cultural heritage protection concept, the scope of the objects of expropriation and demolition is too wide, which is closely related to people's cultural heritage concept. In the world, compared with the past, people view the protection of architectural heritage from a more diversified cultural perspective, and propose that not only "artistic masterpieces" should be used as the standard to measure the importance of architectural heritage, but also those local buildings and industrial buildings with unique historical and anthropological values and reflecting the talent of human innovation should be included in the scope of protection; not only individual buildings should be protected Architecture should also be protected as a whole, not only for ancient

buildings, but also for representative or commemorative buildings in modern and even contemporary times. That is to say, people's understanding of architectural heritage has gradually changed from traditional, single and partial "cultural relics" to modern, integrated and diversified cultural heritage, that is, from narrow to narrow. The concept of cultural heritage of Yi has been transformed into the concept of cultural heritage in a broad sense or the concept of cultural heritage in development.

This concept has also been accepted and practiced by the international community and many countries. For example, the Convention for the protection of the world cultural and natural heritage has substantially practiced this concept through the continuous expansion of the world heritage list, that is, when the implementation of the Convention started, the ancient buildings with symbolic significance were included in the list, and later some historical towns, historical centers, local buildings, industrial heritage, etc. were also included in the list. In 1986, "modern heritage" It has also become an important type of world heritage. In the past decade, it has begun to discuss the definition and screening methods of "20th Century Heritage". Many "20th Century Heritage" including single buildings, university campuses, cities, industrial plants and landscapes have been listed in the catalogue. For example, in Britain, buildings built before the Industrial Revolution (1750) or other buildings built later but with high value should be protected, that is, as long as any one of the "historically important, architecturally important, related to historical events or with group value" can be met, the registration can be applied to the local government, once it is determined to be a "registered building". Its demolition will be strictly restricted, and without permission, its demolition, including part of the demolition, will be subject to criminal punishment.

However, for a long time, our understanding of the standards of architectural heritage has lagged behind. In practice, we often treat the protection of architectural heritage with a narrow sense of cultural heritage, usually focusing on the protection of ancient buildings such as Imperial Palace, temple, outstanding ancient villages and ancient houses. In the protection of modern architectural heritage, we only pay attention to the "revolutionary historical relics" and the official. The protection of important buildings, but a large number of local buildings, industrial buildings, religious buildings, traditional villages and modern and even contemporary representative and memorial buildings have not been included in the scope of protection, resulting in them in the process of modernization and urbanization repeatedly become the object of local government collection and demolition. In this case, the scope of collection and demolition is too wide, which leads to me.

China's architectural heritage has died out on a large scale.

Urban planning is not in place. In the practice of urban law enforcement, an important basis for identifying illegal buildings is not in line with the provisions of urban and rural planning. The serious lag of urban planning in China also indirectly leads to or even spawns a large number of illegal buildings. For a long time after the founding of the people's Republic of China, the expansion speed of cities and towns is far faster than that of urban and rural planning, which has resulted in the separation of urban construction from the direction of urban planning. Especially after the 1980s, the rapid development of market economy has promoted the modern development of cities and towns, and more and more workers have flocked to cities and towns. In a short period of time, the supply of urban real estate market is in short supply, forming a large number of houses. However, the previous housing policies and the transformation of the housing collection system and mechanism are slightly backward. In addition, the housing prices are rising all the way, many people build buildings in violation of regulations to meet their housing needs. Under the state of administrative state, many problems need to be solved by the government. The government is in the central position of social management, the comprehensive cause of society needs to be promoted by the government, and the progress and development of cities also need to be effectively controlled by the administrative organs. However, the housing expropriation department is lack of effective macro-control means in the current prominent imbalance of real estate supply and demand, and has never been able to actively participate in the management of housing expropriation, which leads to the disordered expansion of the housing market and provides conditions for the breeding of illegal buildings.

In the face of an increasing number of illegal buildings, the supervision authorities cannot control them in a timely manner. It is even more regrettable that the law of our country does not specify who controls the illegal buildings, nor does it give consistent punishment to the illegal buildings. Therefore, in practice, the main body of supervision of illegal buildings is unclear, and the confusion of administrative power causes the awkward situation of mutual shirking and responsibility shirking in administrative law enforcement activities. Some administrative organs abuse their power, perfunctorily and informally register the real right of real estate, resulting in many illegal buildings in real life. Some administrative departments ignore the illegal construction, do not supervise or even do not recognize and investigate the illegal construction, do not supervise the illegal construction in advance, and directly apply to the court for judicial relocation afterwards, resulting in

the fact that the court is often unable to effectively solve the problem of compulsory execution of illegal construction, resulting in the dilemma of difficult execution. In addition, ignoring the illegal construction and neglecting the supervision and inspection, the collection department will lose the opportunity to punish such illegal acts due to the time limit defense.

3. Legal Measures for House Demolition

First of all, it is necessary to introduce public participation into the construction of "historical and cultural city, town and village". In China, the way to protect the areas with rich architectural heritage is to grant the title of "famous historical and cultural city, town and village" so as to protect them as a whole. However, the status quo of architectural heritage protection in these areas is worrying. Many traditional houses and historical blocks have been demolished because of "old city reconstruction" or for building ancient buildings, streets and ancient cities. As a result, the cultural space of historical and cultural cities, towns and villages has been destroyed, and the historical context has been split.

Secondly, give full play to the role of the mechanism of "famous historical and cultural cities, towns and villages". In addition to conferring titles, the law of China also clearly punishes those who fail to protect "historical and cultural cities, towns and villages" by "listing them on the endangered list" or "revoking their titles" or by "administrative punishment" to those who are directly responsible. However, in reality, there are very few cases of responsibility due to inadequate protection, and the way of "revoking the title" will aggravate the deterioration of its situation. It can be seen that this kind of afterwards punishment mechanism cannot prevent the destruction of architectural heritage.

To protect the architectural heritage in these areas, the key is to establish a prevention mechanism. Therefore, we can give "historical and cultural city, famous town, famous village" In a more legal sense, the introduction of public participation in the identification of architectural heritage in the "transformation of old urban areas" in these areas and it can also make the mechanism of "famous historical and cultural cities, towns and villages" play a preventive role in advance.

4. Conclusion

For illegally built buildings, while not supported within the legal framework, the private rights and interests of the expropriated (including the lessee) must not be ignored. Only by deeply analyzing the properties of illegal construction in laws and regulations, recognizing the relevant rights and interests of illegal construction owners and regulating them rather than denying them completely, can we give full play to the normative functions of laws and regulations and construct a set of reasonable and effective procedures to deal with such problems.

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