

The Analysis of House Demolition Compensation System in China From the Perspective of Administration and Ethics

NIU Qingyan^{[a],*}

^[a]College of Political Science and Public Administration, Southwest University, Chongqing, China.
Corresponding author.

Received 21 August 2014; accepted 8 October 2014
Published online 26 November 2014

Abstract

Since the lastest 1970's and the early 1980's, China has carried out the reform and opening-up, the urbanization is being accelerated and efforts made for city reconstruction are intensified. As a result, relocating urban housing in cities has become common and frequent. However, along with this phenomenon, many issues have come into being. In the light of the public interests and compensation system in house demolition institution, this essay, bringing forward measures for improving it so as to strike balance between defending legal rights of citizens and safeguarding public interests.

Key words: Administration and ethics; China; Civic building; Demolition compensation

Niu, Q. Y. (2014). The Analysis of House Demolition Compensation System in China From the Perspective of Administration and Ethics. *Higher Education of Social Science*, 7(3), 171-175. Available from: URL: <http://www.cscanada.net/index.php/hess/article/view/5987>
DOI: <http://dx.doi.org/10.3968/5987>

INTRODUCTION

Since the lastest 1970's and the early 1980's, China has carried out the reform and opening-up, the urbanization is being accelerated and efforts for city reconstruction are being intensified. Along with the city reconstruction, housing relocation project which is an important part of Chinese economic development and city construction plays a crucial role in raising people's housing conditions, promoting the renewal of old urban areas, improving the

city environment and so on. With the rapid development of economic, disputes involved with land occupation have increased tremendously. There are a large number of relocation disputes emerging constantly and in some places also appear aggressive behaviors in the process of house demolition. Since 2010 in particular, dramatic incidents have occurred frequently on land using and house demolition. Analyzing the reasons that lead to these dramatic incidents, we get that the fundamental reason lies in the city house demolition compensation system in China it is not perfect so that it is difficult to safeguard the legitimate rights and interests of the relocated people effectively. Particularly, the housing removal compensation system gives not the public interests as well as the complex compensation questions a clear definition and solutions.

1. A SUMMARY OF CHINESE HOUSING DEMOLITION COMPENSATION SYSTEM

Problems related to city housing demolition and compensation in China have drawn more and more attention from the theorists and practice branch, and theory research also has made preliminary results. Chinese scholar Shi Guoqing in "Defect of city house demolition compensation system" ("city problem" 2004 fourth) has analyzed to some extent the defects of city house demolition compensation system in the paper from the aspects of the city housing monetary compensation system and the city housing property transfer compensation system, pointing out that the city housing units monetary compensation system defects are reflected in the assessment methods, selection of the assessment mechanism, way to the land allocation, and benchmark price guided by government. In addition, he says that the defect of city housing property exchange compensation system mainly embodied in two aspects, and they are price difference calculation as well as the houses of

property transfer. The analysis given in this essay is in detail, but not comprehensive, still needing to explore the issues such as the definition of public interests, the compensation and relief procedure and etc. In the paper “Existing in our city house demolition in the problems and Countermeasures to perfect” (“Journal of Hunan College of Finance and Economics” in 2007 twenty-third volume 109th issue) Song Yang studied the city housing demolition permit system, city housing units valuation system, city house demolition compensation system and other aspects of the problem respectively, and put forward the countermeasures to perfect. The author set forth his proposal in four respects. They are to expand the scope of relocation compensation, improve the compensation standard, diversify the compensation mode, intensify protection for the needy households and so on, which has a certain value. Wu Fangfei in “On thinking the urban housing demolition compensation problem” (“Journal of Shenyang Construction University 2006 fourth) defines in an article the commercial demolition and the demolition of public interest, and points out that the commercial demolition is a kind of civil contract that belongs to the category of private law and adjusted by the civil legal. Meanwhile, demolition should follow the market system from beginning to end and solve the demolition and relocation compensation dispute of human by resorting to civil legal relation. Public demolition is mandatory due to government intervention and it is a part of the public law that adjusted by the administrative department of law. These two kinds of compensation programs, in accordance with the law of compensation, have different duty subjects. Hence, it is important to formulate relevant laws to define the range of standard public welfare projects, to establish the hearing preceding procedure to ensure the rationality of the compensation cost, to set people-oriented principle, to implement humanistic demolition and to start the administrative compulsion relocation mode as soon as possible so as to perfect the urban housing demolition system.

According to *Regulation of Relocating Urban Housing*, Chinese government stipulates that

the pulling down of city houses must be in accordance with the city planning which benefits the reconstruction of old areas, the improvement of environment and the protection of cultural heritages in city relocation executors should make up for relocation households according to this legislation and the households should move out within deadlines.

Guided by these prescriptions, both two sides should negotiate over the issues about compensation and resettlement. If the negotiation fails, they can apply for arbitration to administrative authority of Housing Units. They also can take legal action if all else fails. It seems equal, however, according to Article 17 of this regulation, which says: “If relocation households or tenants of the houses to be pull down fail to move out in due time, they

will be forced to be demolished by the authority of city government.” Therefore, as long as relocation executors get the permit for house demolish, the pulling down of the houses must be enforced which causes the unfairness between administration and households.

Therefore, city house demolition system in China is not consummate and cannot protect the lawful rights and interests of the relocated to the full.

2. PROBLEMS EXIST IN HOUSE DEMOLITION COMPENSATION SYSTEM

2.1 “Public Interest” Is Being Ambiguously Defined and Abused

The third clause of Article 13 of *Constitution* specifies that: “To meet the needs of public interests, our country has the access to collect or use the private properties of citizens and gives them compensation.” According to the first item in first clause in Article 1 of *land management law*: “Government can recover the land tenure when in need for public interests” Also *Property law* prescript in first item of 42nd clause: “Land and unit of collective ownership, personal households and other real estates can be recovered for public interest within the law.” In addition, the 20th clause in *city real estate management law* says: “under some special circumstances, country can recover the property of land use in advance following the lawful procedures.” From that, it can be concluded that whether the housing demolition or the recovery of state-owned land right, both of them must solve one common issue—“public interests”.

Nevertheless, the position of the concept and the scope for public interests is still not clear, resulting in some law enforcement departments in government violate individual rights .In the course of pulling houses down by force, many government officials pretend to make benefit for public while satisfy their own or other ‘s demands .In this way, the confidence of government has been reduced a lot and their behaviors incur abhorrence of people as well as the defense of the forced demolition, clashing the public right with her individual right.

2.2 The Role Position of Government Is Not Fixed Clearly During the Process of Demolition

Today, as the current of reshaping government emerges, many a scholar holds that the macroeconomic control should be the main function of government instead of interfering at the micro level, which should be concerned by market players. Government principally performs the duty of serving society besides implementing the necessary regulations to maintain social order. While, in the course of house demolition, the government intervenes unconditionally which leads to the reversed identities of market players and administrative subject.

2.3 The Relocation Compensation Standard Is Not Fair and Its Information Is Not Transparent

As the guardian of people's interests, government is obliged to the public for the relocation compensation standard that must be known to all. Only government itself or the construction unit does not decide them. However, the public degree is not enough for some relocation households get much compensation while some get far from enough, which is not fair. Only by making the compensation standard transparent, households can be reassured. Indeed, the standard should be specialized. For example, some well-decorated houses are supposed to be highly made up. Furthermore, the standards are ought to be reasonable which can not be lower than the market price, and taking specific loss of individuals into consideration is necessary.

2.4 More and More People Get Rich Overnight in the Course of Demolition

Demolition compensation has been the key point all the time in the system of demolition. And it is frequently to get complain about the low compensation standards. While it is hardly unusual that there are many cases of getting rich overnight because of demolition. For example, some persons get tens of millions and even hundreds of billions as compensation fees for a building by turning an illegal construction into a legal one. Moreover, there are some people who become rich immediately because of the high compensation. For instance, in order to avoid conflicts; construction unit gives several folds compensation fees for some important projects.

3. ADVICE ON PERFECTING HOUSE DEMOLITION COMPENSATION SYSTEM

The Chinese government to improve housing demolition compensation system should be from the compensation principles, compensation methods, compensation measures set out three dimensions.

3.1 Housing Demolition Compensation System Should Be Established in the Principle of Fair Compensation

China is still at the primary stage of socialism, the state financial resources are limited, if the implementation of "full compensation" is not actual, but should be in terms of the country's constitution to impose compensation as soon as possible to establish the principle of fair compensation. The principles include the following four meanings: First, the compensation must be "fair", also is the amount of compensation must reflect expropriation or requisition of the "fair market value" of the property. The second is to impose discriminatory, namely the same area, the same treatment to treat different regions is different. Third, shall be the compensation standard in order to meet people's basic life safeguard as the starting

point, the government must ensure that the amount of compensation, at least not less than the price is to be demolished, namely obtain compensation should be basically meet their in other parts of the city to purchase another set of housing, ensure the life of a person can maintain the original level. Fourth, fair should always be reflected in the administrative compensation procedural law in the specification. Entities with fair and content of administrative compensation.

3.2 The Ways to Improve the Housing Demolition Compensation

Combines the actual conditions of China, this paper argues that the country's housing demolition compensation mode improved from the following several aspects:

Firstly, the guarantee is to be demolished man's free choice. Although the "regulations on the administration of urban house dismantlement" can specify the dismantled in monetary compensation and the way of building property right exchange to make a choice, but some local regulations and not to be demolished one of the options to give enough attention and protection. Such as some local laws only "compensation for property rights exchange or monetary compensation", the dismantles did not mention free choice; Even in some places the legislation also directly "encourages monetary compensation". Such regulations, have not only deviated from the spirit of the "regulations for the administration of urban house dismantlement", and give a dismantled unilateral decision provides the reason compensation method, seriously violated the interests of the people be torn open. Legislation, in practice, the rights and interests are not guaranteed: due to the blind pursuit of demolition speed, many in the "one size fits all" approach, use only monetary compensation mode, is to be demolished people have no choice, demolition on the generation and intensify contradictions.

Secondly, about the monetary compensation mode. Monetary compensation because of its easy operation, convenient and flexible, is conducive to simplify the process of resettlement compensation is widely used in practice, but in order to ensure the smooth operation, the compensation mode should strengthen the supervision and management of funds for compensation and resettlement for the demolition. In the course of demolition, is part of the dismantling shall issue a false proof or misappropriate the funds for compensation and resettlement for the demolition, cause a shortage of funds in the process, the late and resettlement for the demolition work is not completed in time and resettlement, form a very bad influence on society, seriously endanger social stability, has violated the demolition work to speed up the urban construction, the improvement of people's living conditions in the first place. This requests the house dismantlement administrative department issued demolition license, whether should carefully examine

and verify the funds for compensation and resettlement for the demolition in place; Ensure that all funds for compensation and resettlement for the demolition compensation and resettlement for house dismantlement, shall not be misappropriated it to use, should set up a special account, special fund is special.

3.3 The Improvement of the Housing Demolition Compensation System

3.3.1 Define the Scope of “Public Interest” Strictly

A reasonable identified standard on public interest can prevent law enforcement departments enlarge or narrow the scope of public interest casually for the purpose of violation so that fair and rigid legal procedure for identifying public interests can be set. Besides, it prohibits law enforcement departments to perform discretionary power by abusing public interests in the process of exercising public power. This essay holds that the definition of “public interest” should consider two things: One is about the operability since the enforcers cannot judge exactly of the expropriation of houses or the recovery of state-owned land according to relevant laws at present. Therefore, the enumeration of some projects as rough scope for public interest is beneficial to practical process as well as law application. The other is about the elimination of the arbitrary of explanation for there are open spaces for the interpretation of public interests, and it is inevitable that people may amplify and explain the prescriptions casually in reality, resulting in the harm of relocated households ‘interests by means of abuse. So, it is necessary to define the public interest.

3.3.2 Considering Other Damages Expect House Damage Caused by Demolition

There are plenty of issues involved because of relocation. For example, a matter of emotion. If one has been accustomed to where he lived, once he moves to a different place, he has to adapt himself to the unfamiliar place in terms of interpersonal relationship and psychology. So the implicit costs need to be taken into consideration. In addition, a large number of households are resettled in suburban areas. And many who have got compensation fees buy new houses on the outskirts of a town they cannot afford a house on the same lot. But difficulties concerning traffic, children education come into being, so the cost of living is greatly increased which aggravates their financial burden. Thus, these implicit costs are required to be considered.

3.3.3 Regulate the Behaviors of Government to Protect the Rights of the Households to Be Relocated

In general, two sessions should be controlled during the demolition in our country. One is to process hearings during the censorship of the release for demolition permit. That is, whether the project should be given the compulsorily implement power by country. The other is the prerequisite that to apply for the permit of the

project, enforcers are asked to negotiate with the people being relocated to reach an agreement on demolition compensation and resettlement firstly. Confining government power and performing government functions are important embodiment of administrative power as well as the government management authority endowed by citizens.

3.3.4 The Demolition Standard Shall Not Be Less Than the Market Price

The primary cause for dispute in the course of demolition is due to the disagreement on the demolition standard. Many expropriation departments make compensation fees lower than market price clearly so that the rights of households are not guaranteed which triggers issues as removal and demolition by force. Referring to the *Regulations on the Expropriation of Houses on State-owned Land and Compensation*, the compensation for expropriation of houses should be made fair and reasonable, while this kind of compensation is supposed to be higher than the real estate market prices comparable to the houses to be expropriated on the date of the publish notice of the housing expropriation decision. Using market prices to determine the compensation standard, thus, those being relocated who get compensation can afford houses in the same location at housing market prices. This is a market - based measure and it is also an important yardstick to protect legitimate rights and interests of the expropriated.

3.3.5 The Demolition Should Be Carried Out After the Expropriated Get Redundancy Payments

Before the relocation takes action, the related departments should carry out the demolition plan, and the planning process demands the participation of the public, such as the hearing upon compensation for the demolition, then the publicity can be made following the hearing after which assessment should be given. Only after the relocated make their alternative evaluation, the compensation price can be fixed. Furthermore, the assessment of the price should be on the basis of the real estate market prices similar to theirs, and compensation should reach their hands before the demolition. In this way the interests of the relocated can be taken into full consideration.

In conclusion, housing demolition compensation system matters for it concerns the livelihood of Chinese, the social stability and harmony and the modernization of China as well. If the job is not done well, it will affect people’s living conditions directly and block the realization of living a prosperous and contented life. If it fails so, it is also disadvantageous to establish the authority of government, not conducive to the maintenance of social stability and unity. Therefore, in current China, city housing relocation compensation system must correctly define “public interests”, realize the way for compensation, rationalize the scope and the standard, clear the role and orientation of the government

and strengthen the judicial relief so as to further improve the city house demolition compensation system.

REFERENCES

Fang, Z. D., & Liu, J. (2000). Some views on the compensation and resettlement house demolition in the city. *South of the Yangtze River Forum*, (07)

Jiang, S. J. (2009). Existence of city house demolition compensation system problems and improvement. *Chinese Business*, (08).

Li, H. W. (2011). The conflict theory of public and private rights and its solution—in city demolition perspective. *Tribune*, (03).

Liu, P. P. (2009). Reconstruction of the public interests as the system of city house demolition compensation premise—Based on the framework of empirical analysis. *Journal of Guangxi Administrative Cadre Institute of Politics and Law*, (03).

Wei, F. (2009). On perfection of China house removal compensation system. *The Special Economic Zones*, (06).