

Problems And Countermeasures Of Housing Expropriation And Relocation In Small And Medium-Sized Cities In Southern Shaanxi, China

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Abstract: Based on case analysis and literature research, these paper analyses eight major problems and their manifestations in the housing expropriation (relocation) on state-owned land in small and medium-sized cities in South Shaanxi, China. The eight major problems are: contradictions and conflicts caused by urban expropriation and relocation occur frequently and cause serious consequences; driven by interests, local government expropriation agencies instructor imply that the evil forces forcibly demolish and brutally treat the owners of houses; in the process of expropriation, political achievements collude with profits; expropriation lacks legitimacy and openness, compensation is not open and transparent enough, and the concealment is too strong; lack of perfect laws and regulations for expropriation; unreasonable price evaluation of housing expropriation compensation; the long period of requisition and relocation leads to the increasing cost of requisition and relocation; local governments illegally invite relevant companies to participate in the requisition and relocation. Finally, some suggestions are put forward.

1. Introduction

At present, it has been more than 9 years since the State Council issued and implemented the “Housing expropriation and compensation regulations on state owned land”. However, in the tide of real estate development, the local governments in southern Shaanxi (Hanzhong, Ankang and Shangluo) have not strictly implemented the regulations, which have resulted in many contradictions. Therefore, in order to further protect the rights of the legal property owners, regulate the behavior of relevant government agencies and developers, and make the development of cities in southern Shaanxi healthier, it is necessary to discuss some of the problems involved.

Housing expropriation (relocation) on urban state-owned land refers to the behavior that in the process of urban construction, in order to successfully complete the project construction, the expropriator (remover) levies and demolishes the houses on the state-owned land in the urban planning areas, and give the persons whose houses are to be expropriated (relocated) reasonable compensation, hereinafter referred to as expropriation and relocation. The expropriator here refers to the organization authorized by the people’s government at the county (city, district) level, whose behavior represents the people’s government at that level, and is responsible for the people’s government at that level; the remover here refers to the unit that has obtained the demolition permit, which should give reasonable compensation and resettlement to the demolished person, and it is its basic obligation; the expropriated person refers to the owner of the demolished house, and it is its basic obligation to move within the time limit. In the process of expropriation and relocation, the expropriation of houses on state-owned land is generally involved. Therefore, urban expropriation and relocation mainly involves the “Housing expropriation and compensation regulations on state owned land” issued and implemented by the State Council on January 21, 2011.

In the process of urbanization in China, urban expropriation and relocation is of great significance. First, it can promote urban economic development. Demolition of those houses that have been abandoned and affected the beauty of the city will not only benefit the infrastructure construction and improve urban functions, but also attract more investment, optimize the urban

industrial structure, and thereby improve the economic benefits of enterprises. Second, it can improve the urban environment. In the early days of the founding of the People's Republic of China, due to the lack of a deep understanding of environmental issues and unreasonable urban planning, a large number of heavily polluting enterprises appeared in urban areas, and the profits they could earn after the implementation of the market economy were very small, which seriously hindered the development of cities, so dismantling or relocating these enterprises can greatly improve the urban ecological environment. Third, the quality of life of urban residents can be greatly improved after the expropriation and relocation. For example, before the demolition, many houses and buildings in the city have poor service functions (many old residential houses did not have separate toilets, kitchens, heating, etc.). The demolition of these old houses can provide important space resources for the construction of new houses, and then provide good living conditions for people. Fourth, it can promote the rational use of urban land resources. For example, the demolition of old houses can make the urban development change from extensive expansion to intensive development.

2. Analysis of the problems in the acquisition and relocation of small and medium-sized cities in southern Shaanxi

To sum up the research results of the academic circles and the cases in the process of urban expropriation and relocation in southern Shaanxi, the main existing problems are as follows:

1) Contradictions and conflicts caused by urban expropriation and relocation occur frequently and cause serious consequences. According to the statistics of the Ministry of Construction, only during the period from January to August 2002, the Ministry of Construction received 4820 letters, 28% of which were related to demolition; it received 1730 visitors from the localities appealing to the higher authorities for help, 70% of which reflected demolition problem; it received 123 batches of collective appeal, the demolition problem accounted for 83.7% ^[1], and among these visitors, visitors in southern Shaanxi were included. During the period from January to July 2002, there were 5 accidents above level 3 caused by house demolition in China, resulting in 26 deaths and 16 injuries ^[1].

2) Driven by interests, local government expropriation agencies instructor imply that the evil forces forcibly demolish and brutally treat the owners of houses. In order to complete the tasks assigned by the higher level government on schedule, the local government expropriation and relocation agencies do not act in accordance with the laws and regulations, and carry out rough administration. They often force the residents to move by means of intimidation, water, electricity and network interruption ^[2]. Even if there are people living in a building, they start to demolish it (see Figure 1, Figure 2 and Figure 3), without considering the safety of the residents who still live in the building. The bad ones even adopted containment and restrictions on the personal freedom of house owners, forcing house owners to sign relocation agreements with them (Figure 4). The main reason why residents are still reluctant to move in this situation is that the compensation for relocation (expropriation) is not in place, which is mainly manifested as follows: the relocation agreement plays tricks on the house owners, the compensation price is significantly lower than the price of the commodity houses around the houses being expropriated, the buildings that are not registered are not compensated or low-compensated, and the evaluation value of the indoor decoration of the houses is low.



Figure 1. The appearance of a residential building in an urban area of southern Shaanxi before relocation



Figure 2. The daytime photo of a residential building in an urban area of southern Shaanxi during relocation



Figure 3. The night photo of a residential building in an urban area of southern Shaanxi during relocation. From the light, it can be seen that there are still residents living in the building.



Figure 4. (a) 4 persons from an expropriation and relocation agency and a development company in an urban area of southern Shaanxi blocked a house owner in the direction of the exit



Figure 4. (b) 7 people from an expropriation and relocation agency and a development company in an urban area of southern Shaanxi blocked a house owner in the opposite direction of the exit

Figure 4 Nearly 20 people (in the photo, the people in uniform are the security guards of a development company) were sent out by a expropriation and relocation agency and a development company in an urban area of Southern Shaanxi. 11 people blocked the two ends of the corridor, and several others blocked the owner of a house in a residential building in the form of guarding gate, forcing him to sign a relocation agreement. The besieged man called the police and was not free until the police arrived.

3) In the process of expropriation, political achievements collude with profits. The so-called alliance of political achievements and profits refers to the coordination between local government officials and real estate developers. Local government officials pursue political achievements and real estate developers pursue profits. In order to achieve the purpose of both, the interests of residents are often ignored, and the resettlement compensation is inadequate, and there may be corruption issues. Even when a real estate developer is interested in a certain golden area, the government will levy the houses in the name of the shantytown transformation, and then allocate or transfer the land to a specific real estate developer for development. In the process, In the process, the interests of residents and the country are lost (the country's shantytown reconstruction funds are defrauded), the real estate developers, government officials, and evaluation agencies are enriched. For example, in 2012, a real estate development company took a fancy to a central place in an urban area of southern Shaanxi, and then it colluded with some officials to sign a development agreement, but it was not until 2016 that the municipal government determined the area as a shantytown for housing expropriation and relocation on state-owned land. Strange things happened frequently during the expropriation process: (1) the estimated house price is nearly 2000 yuan/ M² lower than the price of the commodity within 100 meters nearby, which is not in line with the real estate price evaluation specifications. According to the specifications, three different methods should be used for evaluation, and finally the average value of the three kinds of evaluation price should be taken. (2) The storage room owned by the owner of each house is evaluated as 750/M², and no one explained whether this evaluation value is the evaluation value of illegal buildings or the evaluation value of legal buildings. (3) At first, the agency responsible for the specific expropriation and relocation not to let the property rights replacement agreement be seen until the agreement was signed, and the agreement also set up several traps. In addition, it contradicts with the regulations of the municipal government and the "Housing expropriation and compensation regulations on state owned land". The author found the traps and required two words to be added. The deputy director of the agency said that no word can be changed or added, which violates the principle of freedom of contracting. (4) The name of the agency responsible for specific expropriation was changed for several times. It started to be called the office of the headquarters of a certain shantytown reconstruction and construction, and later to be called the office of house expropriation on state-owned land, which was extremely arbitrary.

4) The expropriation lacks legitimacy and openness, compensation is not open and transparent enough, and the concealment is too strong ^[2].

Firstly, the local government must be legal when determining a certain area as a shantytown reconstruction project, but in practice, the legal basis and standards have never been seen for the local government to determine a certain area as a shantytown reconstruction project, let alone heard that the local government has held a hearing for this purpose, which is completely driven by the subjective intention of individual leaders or the profits of real estate developers. According to the stipulation of the "Guiding Opinions on Promoting the Reconstruction of Urban and State-owned Industrial and Mining Shantytown" (Jian Bao [2009] No. 295) [hereinafter referred to as the "Guiding Opinions"] issued by the five ministries and commissions, including the Ministry of Housing and Urban-Rural Development, and "Notice of the State-owned Industrial and Mining Shantytown Renovation Planning and Compilation Work" (Jiang Bao [2010] No. 58) and other documents, "Shantytown refers to the residential area where there are many simple structure houses in the state-owned land, the building density is large, the infrastructure is simple and crude, the building has been completed for a long time, the use function is not complete, and the security risks are prominent." ^[3,4]. However, the "definition" or standard of the shantytown is only the level of

department regulation, the legal rank is not high, and the terms such as “time”, “function” and “simple” are lack of vector evaluation standard, lack of practical operability, which become the legal gap for local governments to abuse their power, forcibly dismantle and forcibly levy.

Secondly, the process of expropriation and relocation is illegal. For example, in an expropriated area in a certain urban area of southern Shaanxi, because there are two households who have not signed the relocation agreement for more than the time specified by the specific relocation agency, the specific agency responsible for relocation organizes its personnel to forcibly demolish it. In order to put the legal cover on the forcible relocation, the local fair organization is invited to perform compulsory demolition. Moreover, the so-called planning behavior of the county or district government is often in contempt with the municipal government, so that the result of administrative reconsideration usually ends with rejecting the request for reconsideration, becoming a legal process game. In this way, the agency responsible for specific relocation is both athletes and judges. How can citizens' rights be ensured according to the Constitution, the Real Estate Management Law, the Property Law and other laws?

Thirdly, the compensation value of the same era of the same building in the same community should be the same, but the agency responsible for the specific expropriation often sign the compensation agreement with the expropriated persons in secret on the basis of flexible working methods, which serious violates the provisions of Article 3 of “Housing expropriation and compensation regulations on state owned land” that “the relocation and compensation of houses shall follow the principles of democratic decision-making, proper procedures and open results”^[5].

5) Lack of perfect laws and regulations for expropriation and relocation^[2]. The imperfection of the laws and regulations for expropriation and relocation is mainly reflected as follows: (1) there is no clear compensation standard for the expropriation of urban houses, which leads to the low actual compensation and serious damage to the interests of the expropriated persons. The regulations in the “Housing expropriation and compensation regulations on state owned land” only states that appropriate compensation is needed, but the specific compensation is not clearly defined. (2) There is no clear positioning for the compulsory expropriation and no specific operation process, which leads to the excessive rights of the local government. (3) In the actual expropriation process, a small number of expropriated persons use “The Real Property Law” to put forward excessive compensation requirements, and if they are not satisfied, they will not sign the agreement. (4) Some of the staff of the expropriation agencies, even the leaders of the expropriation organizations of local governments, promised to solve various problems and give various preferences to the expropriated people in the process of expropriation, but they failed to fulfill them afterwards, which is harmful to the construction of the honest government and has a great response among the people. For example, they promise the expropriated people that they will not pay the property fee, the fund for major repairs, and solve the employment of their children after they move into the new residential area, etc., but when there is a conflict, they just ask the expropriated people to solve it through judicial channels, saying that no one dares to violate the policy without a court decision.

6) The price evaluation of house requisition and relocation is unreasonable, the compensation procedure is lack of transparency, and the requisition and relocation procedure is lack of standardization^[6]. For example, in southern Shaanxi, in the expropriation practice for a certain area of a city, in order to maximize the interests of the expropriation agency itself or developers, or in collusion with evaluation agencies, or in order to save costs for developers, the average house price in the city is often used as the evaluation price of the whole city's houses to be expropriated, regardless of the influence of geographical location of the houses to be expropriated, the degree of old and new and other relevant factors to the compensation standards, thereby making the compensation standards lose objectivity and impartiality. And such compensation standards are often difficult to restore the quality of life of the requisitioned people due to the requisition of the houses, and the gap before and after requisition are difficult to make up in a short time. Moreover, the speed of the government's adjustment of the benchmark compensation price cannot keep up with the changes of the urban house price, resulting in the evaluation system deviating from the market pricing system. At this time, the expropriated people may suffer greater economic losses.

Also, if the expropriated people are not satisfied with the evaluation result, they lack the corresponding legal relief channels. At the same time, in the whole process of house expropriation, the people have no sufficient opportunities to participate in the negotiation, the compensation results for expropriation and relocation are often passive output. Therefore, the progress of the project usually produces many contradictions and conflicts, especially after the implementation, the compensation are not in place in time. The compensation issues and the implementation of resettlement work lack transparency. In addition, temporary agencies or community agencies are arranged to complete the expropriation work, and most of the staff in the community agencies are temporarily employed, and they are not able to bear the relevant legal obligations at all, so the problem of separation of rights and responsibilities will be formed.

7) The long period of expropriation and relocation leads to the increasing cost of expropriation and relocation. There are two main reasons. The first is that the requisition and relocation agencies do not strictly follow the laws and regulations at the beginning, which makes it impossible to complete the expropriation and relocation through the judiciary later, or once the holders of the houses to be expropriated and relocated maintain their rights through the judiciary, the period of expropriation and relocation is extended. The second is that the budget is not enough for expropriation and relocation. Especially when the real estate market is in a downturn period, the development enterprises can't provide funds for the relocation agencies, which lead to the unlimited extension of the relocation period. For example, a municipal government and its district government in southern Shaanxi encountered such a dilemma when relocating a house in an urban area.

8) The local government ignores the legal provisions of Article 27 of the "Housing expropriation and compensation regulations on state owned land", which prohibits the construction units from participating in the relocation activities"^[5], and still invites relevant companies to participate in the relocation. For example, when relocating a residential area in the urban area, a municipal government in southern Shanxi and the district government invites the heads in charge of the city investment company and the development enterprise to be important responsible persons of the relocation agency and responsible for some important work.

3. Suggestions to Solve the Problems of Housing Expropriation (Relocation) On State-Owned Land in Small and Medium-Sized Cities in Southern Shaanxi

In view of the problems mentioned above, the paper puts forward the following suggestions to ensure the healthy development of small and medium-sized cities in southern Shanxi and protect the legitimate rights and interests of the people in southern Shanxi.

1) Continuously improve the laws and regulations on expropriation or demolition, and improve the legal system of expropriation or demolition. At present, in the existing "Housing expropriation and compensation regulations on state owned land" issued by the government, many details lack operability. It is recommended that the Standing Committee of the Provincial People's Congress formulate implementation rules, which will further clarify the expropriation procedures. It is proposed to amend the Criminal Law to increase the punishment for crimes such as "deliberate destruction of property", "illegal detention", and "forced trading" to deter illegal developers.

2) Before developing a certain area, local governments and developers must ensure that the purpose of relocation is the construction of public welfare projects, and make a feasibility study to fully evaluate the risks and impacts they will face after the project is launched.

3) The local governments and developers implement expropriation or demolition in accordance with laws and regulations. The key aspects are described as follows:

(1) Local governments and developers must strictly determine the nature of the expropriated or demolished area in accordance with laws and regulations, and organize owners of house in the expropriated or demolished area to hold a hearing. Only when more than 70% of the owners of house agree, the acquisition or demolition can be started, which can protect the rights of the owners of house and prevent developers from increasing unnecessary time costs.

(2) The local governments and developers evaluate the value of houses to be acquired or demolished according to laws and regulations. Local governments and developers should conduct

comprehensive assessments based on market, revenue, and cost. For development projects of different natures, local governments and developers can use three methods to evaluate the conclusions and give different weights when compensating the owners of requisitioned or demolished houses. For public welfare projects, governments and developers can increase the weight of cost assessments and reduce the weight of market assessments; the practice of commercial development projects is the opposite. In addition, special attention should be paid to the identification of illegal buildings. The government must have evidence to identify illegal buildings and punish the relevant management department for previous in-actions. The government shall inform the owners of the evaluation results, and the owners shall propose re-appraisal or reconsideration and review within a certain period to ensure that the expropriation process is legal.

(3) The local governments and developers should strictly follow laws and regulations, and draw up an agreement on expropriation or demolition on the basis of agreement with the owner of the house being expropriated or demolished. When local governments and developers sign agreements with the owners of requisitioned or demolished houses, they should strive to sign collectively or in batches.

(4) For very few owners who do not want their houses to be expropriated or demolished, the relocation agency shall promptly initiate judicial procedures, and the people's court shall make a ruling on the expropriation procedures in strict accordance with the law, and then hand them over to specific authorities for execution. It should be noted that it cannot be identified and implemented by the expropriation or demolition agency.

4) Establish and improve the mechanisms of the judicial and news media involved in the process of expropriation or demolition. In essence, the compensation of housing expropriation or demolition on state-owned land is a game process among local government, developers, people whose houses are expropriated or demolished. Due to the interrelationship between local government and developers, it is difficult to form Nash equilibrium. The judicial department and news media become the fourth party in the game, which is conducive to the formation of Nash equilibrium. At present, the state has changed the main body of administrative litigation trial to railway court, which is a beginning. As a neutral institution, news media should report every trial of the court in a neutral position.

5) Accurate positioning of government's functions. At present, under the background that China's market economy system has been initially established, the government only needs to govern the areas within its own functions, and only exercise macro-control over the social areas of citizens, because market contracts are the main means of managing civil society. In the process of housing expropriation or demolition on urban state-owned land, supervision and adjustment are the main functions of the government. In order to perform this function well, the government needs to use various effective methods to deal with the relationship between itself and the expropriation or demolition department, the owner of the house, the evaluation organization, the specific operators in the expropriation or demolition.

6) Adhere to the principle of people-oriented and attach importance to the development of ideological work in the process of expropriation or demolition. In the process of housing expropriation or demolition and reconstruction on urban state-owned land, the government must adhere to the principle of "humanization", and use the wishes of the people as a reference to strengthen the cohesion of the people. In the process of housing expropriation or demolition on urban state-owned land, the government must do a good job in guiding the ideology of the owner of the expropriated or demolished house on urban state-owned land and publicizing the policy. The government should take the expropriation or demolition of houses on the urban state-owned land to the level of "in-depth, meticulous and practical" to truly protect the interests of the public. The government must pay attention to the ways of housing expropriation or demolition on urban state-owned land, publicize the purpose and relevant laws and policies of housing expropriation or demolition on urban state-owned land through various ways, and inform the public in detail, which can win the support of the masses. In addition, hotlines and online platforms can also be constructed to relieve the doubts of the masses and solve their worries.

7) Establish and improve a long-term mechanism for accountability for violations. At the legislative level, the accountability of public officials' illegal and disciplinary actions in house expropriation (demolition) should be clearly defined, and promptly respond to and deal with people's feedback, and deal with inaction and disorder in demolition seriously. At the same time, in combination with the ongoing special campaign to combat crime and eliminate evil, the government should severely crack down on forced forcible demolition by idle personnel in the society organized by relevant companies.

8) Establish an examination system for the qualifications of the staff of the expropriation and relocation agency. The staff in the expropriation and relocation agency should take three exams, including politics (mainly examining their mastery of the party's basic knowledge and purpose), laws and regulations (mainly investigating their mastery of the Basic Provisions of the Regulations on the Expropriation and Compensation of Houses on State Owned Land, the Criminal Law, the Real Estate Management Law, the Property Law), and the basic knowledge of construction, etc. After passing the basic examination, the staff can obtain the qualification certificate, and can be included in the relocation agency, which can avoid the illegal behaviors of the relocation agencies and their staff, and avoid stigmatizing the government and the party.

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Appendix

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