

A Study on the Right to Use Rural Homestead: Taking Changchun City and the Surrounding Area as the Example

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Abstract

Based on the analysis and comparison of the data collected from a field survey on the status quo of the right to use rural homestead in Changchun City and the surrounding area, this paper not only reflects on the history and theory of the right to use rural homestead in China, but also proposes solutions and suggestions in accordance with the reality towards the development of rural areas in China.

Key words: Rural homestead; The right to use; Changchun

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1. A BRIEF INTRODUCTION TO THE RIGHT OF USING RURAL HOMESTEAD

The current laws and regulations concerning rural homestead were established during the Land Reform Movement at the early stage of the founding of People's Republic of China. The land ownership system in rural China experienced two

phases: Peasant's private land ownership and rural collective land ownership. Therefore, the use of rural homestead also experienced a change: peasants as owners in making use of the homestead, but then making use of the homestead under its property right of another.

After the foundation of the People's Republic of China, a large-scale Land Reform Movement took place in rural areas of China. The Land Reform Movement guaranteed peasants' right of using the homestead as follows: Firstly, the residency rights of peasants were strictly guaranteed according to the regulations; Secondly, the homestead were distributed equally and free of charge with peasants themselves as a unit; Thirdly, it established peasants' ownership of the land and houses. (Wang, 2001, p.41)

After the mid-term of the 1950s, a land reform focusing on the collectivization of agriculture was gradually carried out in China. The rights of peasants enjoyed towards homestead also changed following the change of forms of land ownership in rural areas: Firstly, the concept of the right of using homestead was established with the previous land ownership changing into the right of using homestead; Secondly, the right of using homestead was not allowed to be purchased, sold, rent, or mortgaged; Thirdly, the principle that the house ownership and the right of using homestead cannot be divided under natural conditions; Fourthly, the property nature of the right to use homestead became ambiguous; Fifthly, contradictions appear in laws concerning house ownership and the right of using homestead. (Meng, 2004, p.2)

After that, laws and regulations concerning the right of using homestead were gradually adjusted on the premise that rural land was owned by collectives. In 1982, the State Council issued *The Regulation of Rural Land for Construction*, explicitly noting the subjects, the process of application and approval, the criteria and the basic rules of land use concerning the right of using homestead. Though the *PRC Law on Land Management* issued in 1986 (used as *Law on Land Management* in short as follows) set specific regulations on land for county/town construction, the details concerning the right of using homestead were not so different from that regulated in *The Regulation of Rural Land for Construction*. Though revised in 1988, the new part of *Law on Land Management* did not concern the right of using homestead. It did set the principle that the right of using rural homestead must be applied with family as a unit, and clearly noted that a rural family can only own the right of using only one homestead (Liu, 2006, p.164). Meanwhile, the *Property Law* passed in 2007 failed to make breaking regulations concerning the right of using rural homestead.

2. THE SURVEY ON THE RIGHT OF USING RURAL HOMESTEAD

The survey concerning the right of using rural homestead lasted for almost a year from May in 2013 to April in 2014. We visited Changchun City and its

surrounding counties, and made a survey of the condition of rural homestead use with 915 valid questionnaires out of the 1,000 ones sent out. During the survey, we also promoted laws concerning the homestead to the peasants, and more than 2,000 people got to know the knowledge of laws concerning homestead through our publicity.

2.1 Method of the Survey

Before the project was approved, we decided to use the method of the questionnaire to make a field survey concerning the status quo of the right to use the homestead in rural areas. During the field survey, we figured out that some problems of the rural homestead in real life can hardly be revealed through questionnaires, and the settled questionnaire could not satisfy the need for the survey after even being designed, tested and revised. During the field survey, we also adopted interviews concerning the problems we found out on the basis of questionnaires in order to make the information more comprehensive and rigorous.

2.2 Object of the Survey

The survey aims at researching and analyzing the problems of the right to use homestead in Changchun City and its surrounding counties. We finally conducted the survey in selected part of the villages in Chaoyang District, Lüyuan District, Erdao District and Kuancheng District.

The random principle was used during the selection of the objects. Firstly, towns that were not geographically neighboring on the map were randomly picked. Secondly, ordinary villagers were chosen to be surveyed.

2.3 Process of the Survey

Before starting the survey, we decided that the questionnaire was the main approach and the interview served as a supplementary method. Simple random sampling was used to identify the objects of the survey.

After that, we discussed and drew up the first draft of the questionnaire. Several classmates from rural areas were invited to fill it in, and many questions occurred. We handed in the first draft to our tutor for reviewing, and finished the final draft after another test with the tutor's advice for revision.

After the design of the questionnaire, the villages to be surveyed were decided randomly, and brief understanding towards the villages to be surveyed were done.

We also talked about the approaches of the field survey, made assumptions about the difficulties and emergencies we may encounter, and enacted measures that we needed to take concerning all possible conditions.

When the survey was done, the result of the interviews would be listed and summarized. Then, the questionnaires would be numbered, and the questions and the results would be input in the computer via SPSS. The information would be researched and analyzed in order to get the information we need and the final result of the questionnaire.

3. THE STATUS QUO OF THE RIGHT TO USE RURAL HOMESTEAD

3.1 The Area of Rural Homestead Is Relatively Regulated

According to article 35 of *The Regulation on Land Management of Jilin Province*, the residential land of an agricultural household (including a household with only one part holding the agricultural household) is 330 m², while the residential land of the agricultural households in towns governed by the city, the established and planned districts and industrial and mining area is 270 m².

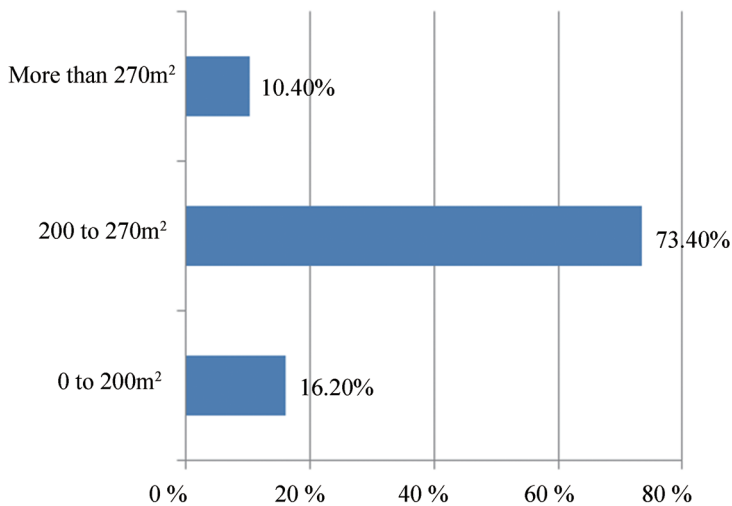


Figure 1
The Area of Homestead

According to the collected data, the area of rural homestead is relatively regulated around Changchun City. Comparatively, the area of rural homestead exceeds the standard greatly in some provinces of China. For example, among 31,193 peasant families in 9 towns being surveyed in Liaoning Province in 2006, 14,134 owned more area than the standard requires, and the exceeding area amounted to 449.8 hm², accounting for 41% of the total family amounts and 39% of the total area of the homestead respectively.

3.2 The “One Family, One House” Policy Was Strictly Carried Out

According to article 62 of the *Law on Land Management*, one peasant family can only own one piece of homestead, the area of which cannot exceed the criteria made by the province, the autonomous region or the municipality.

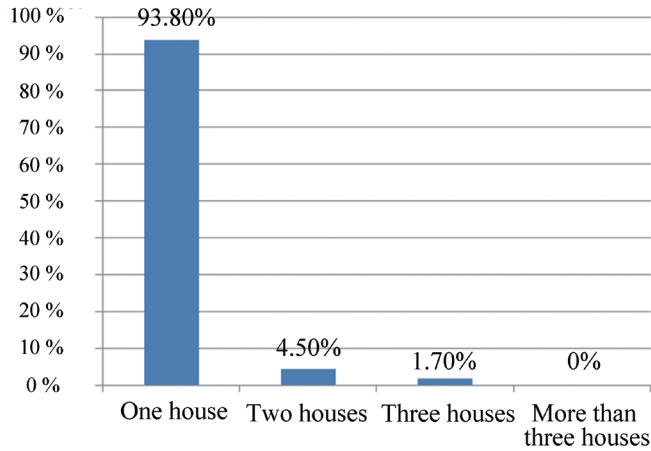


Figure 2
House Amount Owned by Per Family

The survey shows that the “One Family, One House” policy was well carried out (Figure 2). The proportion of families that own only one house reached 93.8%. However, the phenomenon of one family with more than one house still exists in many places in China. Specifically, there are many vacant rural houses in the eastern coastal area where the economy develops very fast. The main reason is that the house owner has two or more houses, or permanently lives in cities where they work (Long, 2006).

3.3 The Right of Using Homestead Was Under Secret Circulation Exchange

The free circulation of rural homestead is banned in China, and rural homestead can only circulate within the members of the village collective. However, the right of using homestead is under secret circulation exchange to a large extent in rural areas surrounding Changchun City according to our survey.

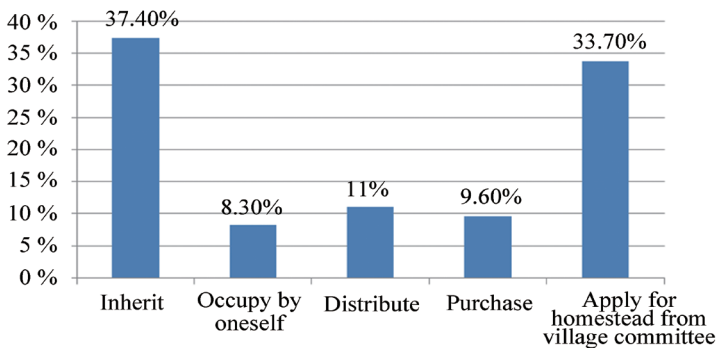


Figure 3
Approaches for Acquiring the Right of Using Homestead

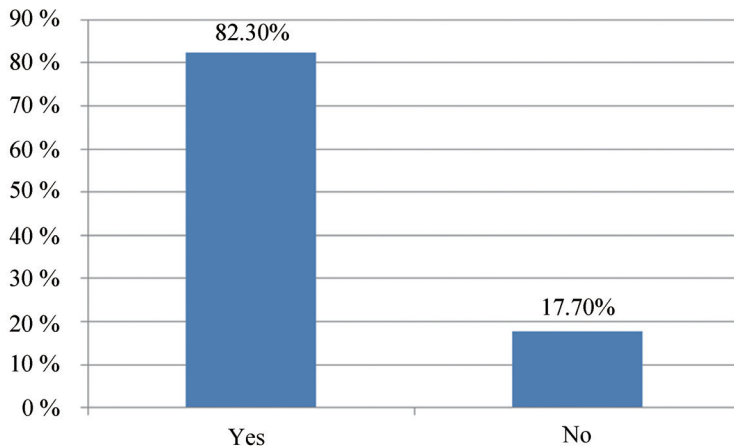


Figure 4
Whether Holding the Residence of the Village or Not

From the data of Figure 3 and Figure 4, what can be seen is that the amount of rural homestead in Changchun City that circulated towards non-local residents accounts for 82.3% of the total amount of the homestead. Phenomenon like this occurs in the vast rural area of China. The more developed the economy is, the free trading of the homestead is more severe. Beijing can be taken as an example: the amount of the homestead circulated in most towns in suburban Beijing accounts for about 10%, and even 40% under specific situation, of the total homestead (Zhang, 2006). According to another survey, there were 3,223 homestead transfer cases in Yiwu, Zhejiang between 1997 and 2000, among which 30% were sold to non-local villagers and 10% were sold to residents in towns. And 85% of the transfer cases did not go through the required procedures (Xiao, 2007). According to the sample survey of Shandong Province in 2006, 68.8% of the 42 counties and 17 cities witnessed actual house selling (Li & Gou, 2007).

3.4 The Distribution System of the Right of Using Rural Homestead Is Implicit, Unplanned and Chaotically Set

The *Law on Land Management* implements strict system of approval for the transfer of homestead in order to strengthen the supervision and management by the government on the protection and utilization of land resources. However, during the actual approval process of the homestead, it is obvious that some cadres of the villages or towns use their power for personal interest, exceed their power to approve homestead, occupy the land for construction as they wish. According to the survey, some of the villages in Changchun City did not have plans of the land for construction, or they have plans but were not implemented strictly. On the term “Whether the government has a plan for the construction of the village” in the survey, 72.8% of the villagers chose no, and 12% chose uncertain(Figure 5).

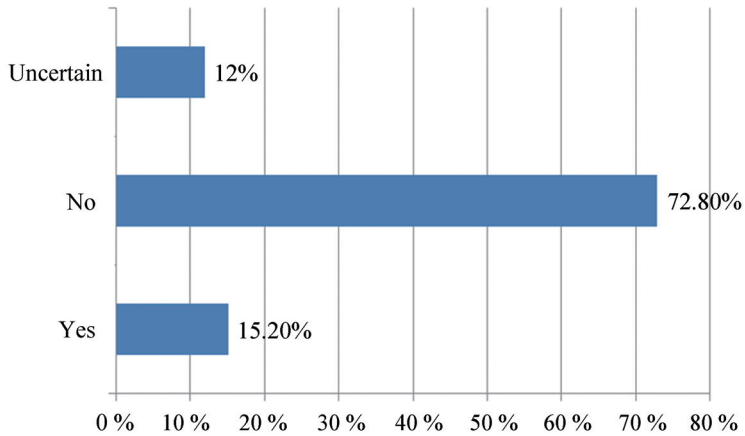


Figure 5
Whether the Construction of the Village Is Planned

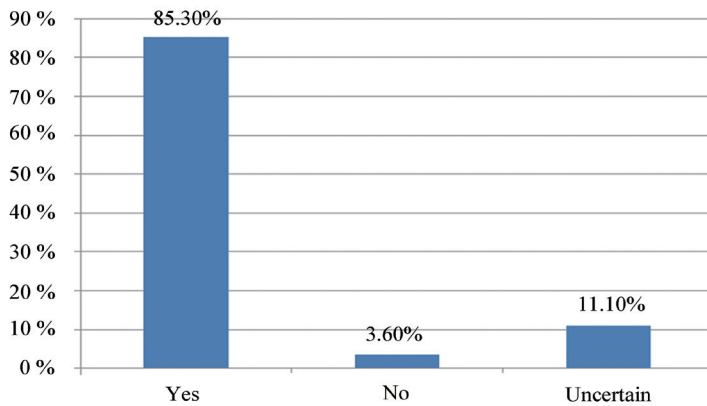


Figure 6
Whether People With More Power and Higher Status Can Get More Homestead

Moreover, the distribution of the right to use the homestead is greatly intervened by administrative power in China nowadays. According to the survey, 85.3% of the peasants noted that people with more power and higher status in their village can get more right of using the homestead (Figure 6).

3.5 Peasants Are Not Clear About the Concept of Homestead, and the Publicity of Relative Laws and Regulations Is Not Enough

According to the survey, peasants think of the homestead ownership as private. Most peasants think the homestead is owned by themselves. During the interview, peasants showed little knowledge of laws and regulations concerning adjusting rural homestead. However, on the other hand, they knew quite well about the clearly banned activities such as “homestead can be traded freely” or “homestead can be freely expanded” (Figure 8 and Figure 9).

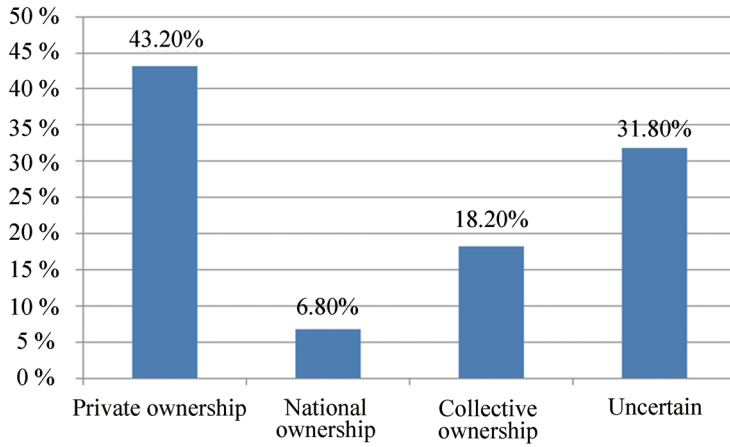


Figure 7
The Ownership of the Homestead

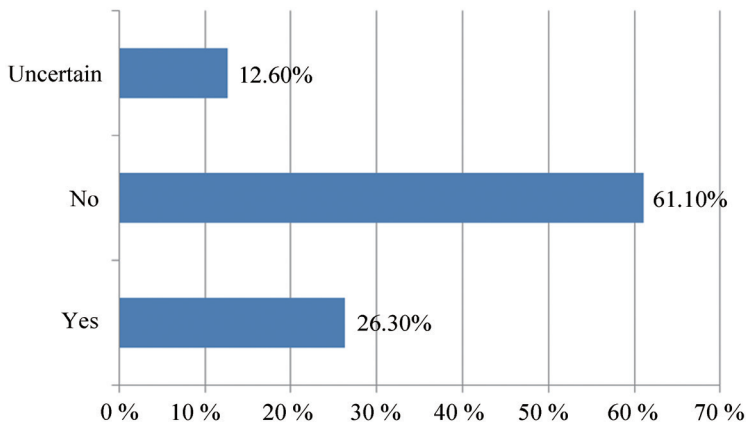


Figure 8
The Homestead Can Be Freely Traded

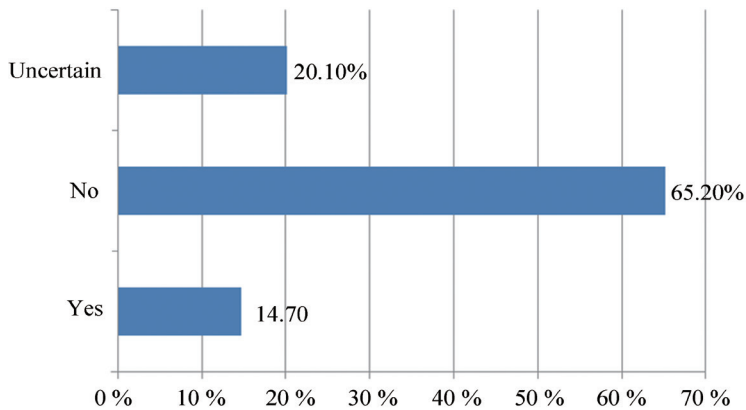


Figure 9
The Homestead Can Be Freely Expanded

CONCLUSION

A. Establish a Circulation System for the Right of Using Homestead under limited conditions

The rural homestead system is an important system concerning the basic living rights of billions of peasants, but the current laws in China forbid the circulation of the right to use rural homestead. Some people even predict that the day when the rural homestead circulation opens is the last mass exploration towards peasants in China (Meng, 2005).

There is no doubt that it will be a profound choice whether the rural homestead could be circulated and whether citizens are allowed to buy house property of the peasants. Currently, the circulation of the right to use rural homestead is limited within the collective economic organizations in the village, which goes against realizing the coordinated development of urban and rural area, and the reasonable circulation of urban and rural resources. The urbanization rate of permanent residents will reach 60%, while that of registered population will reach 45% within the next 6 years. The gap between the two figures will be narrowed by about 2 percentage points¹. This trend will trigger the increasing land demand for non-agricultural construction and the empty houses will increase due to peasants' hunting jobs in cities. The academia holds two different opinions: One is "Free Circulation Theory", the other is "Conditional Circulation Theory". The "Conditional Circulation Theory" thinks that: a) The initial homestead can be gained only once. b) The seller of the right to use homestead must provide the ownership certificate of other houses, while the buyer can buy the right of using only one piece of homestead. c) The object of the circulation, namely the right of using homestead, must have buildings adhering to the land.²

Though field survey, we believe that the "Conditional Circulation Theory" fits better in the status quo in China. On one hand, the condition for opening the circulation of the right to use homestead is not mature yet. The social welfare system in the rural area of China is not established due to the long-term dual economic system, thus the homestead still plays an important role in the safeguard and welfare for peasants. "The direction for the reform of rural homestead does not go to free trade."³ It gives peasants more property and more rights rather than make homestead a freely traded stock (Cheng, 2013). On the other hand, the circulation of the right to use homestead is limited in a rather small scope, which is not coherent with the demand for the economic development and urbanization process in China.

¹*The State Plane for New-Type Urbanization (2014-2020)*.

² *Interpretation of Policy on Land Circulation*. Retrieved from <http://ql.fjagri.gov.cn/onews.asp?id=2793>. Visited on October 30th, 2014.

³ Exclusive Interview With Hu Cunzhi. *The direction for the reform of rural homestead does not go to free trade*. Xinhua News Agency, 12/12/2013. Retrieved from http://www.gov.cn/jrzq/2013-12/12/content_2546939.htm. Visited on October 30th, 2014.

B. Improve the Construction of Law System, Plan for Rural Construction, Publicity and Education

Firstly, the demand for legal resources concerning the right to use rural homestead is more urgent compared with that of urban homestead and other regulations concerning rural homestead. On the one hand, there is blank space in legislation concerning the regulations on the right of using rural homestead in China. On the other hand, the legal system of the right of using rural homestead is not systematic and has low level of effect, which causes chaos in execution.

Secondly, the regulation that urban residents are forbidden to buy houses in rural area is worth discussion from the view of legislation theory. The reasons are as follows: a) Houses are legal private properties of peasants and they are entitled to distribute them in principle. b) The practice that peasants are limited to the united market and limit the property freedom according to the identity should be improved. c) The legislators may not necessarily protect the interest of the peasants by defining themselves as the “guardian” and the peasants “the weak”. d) The crux of protecting the peasants’ interest does not lie in the prevention of urban residents’ “invasion” towards collective land, but in the prevention of the state and administrative machinery’s “invasion” and plunder towards the collective land. e) The real value of the house cannot be fully embodied and the interest of the seller will be damaged if the homestead is only circulated within the collective that meets the distribution requirement (Han, 2005). Under the market condition, peasants have the capability to make the choice for the greatest benefit for their own in accordance with the market confidence (Ma, 2003).

Thirdly, the plan for the homestead, and publicity and education work need to be improved. The criteria for the land use of the homestead and spatial arrangement need to be scientifically planned. The plan should be strictly implemented, and any land use application that fails to meet the plan should not be approved. After the to-be-used homestead is approved according to the law, the actual area needs to be measured. When the house is built, field investigation needs to be carried out in order to make sure that the homestead must be arranged as planned. The government also needs to offer the villagers education on legal system concerning homestead. As long as peasants themselves grasp the key point of homestead system can they obey laws concerning homestead construction and protect their legal rights and interests.

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