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Comparative Analysis of Small House System in Hong Kong and Rural Homestead System in Mainland China

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Abstract. From the perspective of jurisprudence and the starting point of land rights, this paper compares the small house system in Hong Kong with the rural homestead system in the mainland, and finds that there are differences in the nature of rights, the dimension of fairness, efficiency and resource allocation between the two; At the same time, there are many aspects of the mainland homestead system that are actually worthy of reference for the Hong Kong small house system, which can provide a reference for the system improvement of the Hong Kong small house system to resolve the gender equality disputes, inefficient and idle land and other problems caused by the exclusive use of men. Based on these understandings, the article tries to put forward some enlightenment of the mainland experience to the small house system, such as learning from the practical path of the reform of "separation of powers", or exploring the method of balancing the relationship between the protection of historical rights and interests and the construction of the rule of law, to provide theoretical support and practical reference for the reform of the small house system in Hong Kong.

Keywords: Hong Kong small house system, rural homestead system in the mainland, jurisprudence, land rights, system comparison

1. Introduction

The research on the land system in Hong Kong and the mainland has certain academic value in the field of contemporary law and public management and has great social practical significance. As the land management system under the two social systems, the small house system in Hong Kong and the homestead system in the mainland belong to different social and legal frameworks, forming differentiated land resource allocation rules, but both of them are set up with the core of protecting the basic housing needs of local rural residents. Although the two serve two different social systems, they both reflect a common demand - that is, how to balance land resources between public management and private rights and interests. Academic circles have launched a series of studies on this. Such studies focus on the following aspects: first, the issue of gender discrimination in the small house system and its derived constitutional disputes, which are the most frequently mentioned issues by scholars. From the perspective of Hong Kong's basic law, scholars can examine the problems of the small house system. Second, the small house system, as a compromise product from

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the colonial period, has a series of contradictions and conflicts with today's social development goals [1]. Third, the low efficiency of land resource allocation caused by the small house system [2].

Some scholars advocate the direct abolition of the small house policy that conflicts with the goals of contemporary equality and intensive development, and some studies have also proposed gradual improvement paths such as the revision of gender clauses and the redemption of the right of the child [3].

At present, there are relatively few comparative studies on the small house system in Hong Kong and the homestead system in the mainland. Although the original intention of the rural homestead system in the mainland and the small house system in Hong Kong is to ensure the interests of indigenous people and provide them with certain survival protection, the two are quite different in terms of the nature of rights. The right to use homestead in the mainland is limited to the internal circulation of the collective economic organization, and it is prohibited to sell it to external urban residents. The distribution is based on "households" (article 362 of the civil code of the people's Republic of China). Small houses in Hong Kong can be bought and sold openly and freely to the whole society after the premium is paid, and they are only distributed to male Aborigines (Article 40 of the basic law of the Hong Kong Special Administrative Region of the people's Republic of China), which leads to the phenomenon of speculative small house development and is also suspected of violating the discriminatory regulations in the Hong Kong constitution. While deviating from the original intention of the "small house policy", it also produces constitutional disputes.

To sum up, the in-depth mining of these two systems not only helps people to understand the similarities and differences of land management modes between the two places but also provides an important perspective for pondering the fairness and efficiency of land resource distribution. This paper attempts to systematically compare the small house system in Hong Kong with the rural homestead system in the mainland. By comparing the differences between the two, it puts forward some suggestions on the reform of the small house system, so as to make the small house system more in line with its original intention and more suitable for the current era.

2. Analysis of the small house system in Hong Kong

2.1. System origin and legal basis

The small house system can be traced back to the colonial governance pattern of the new territories at the end of the 19th century. After the special article on the expansion of Hong Kong boundary in 1898, the land in the new territories was returned to the government, and the permanent title of the original residents was damaged. The British Hong Kong government officially introduced the small house policy in 1972. The essence of policy is the compromise of grass-roots governance in the colonial period, and its evolution process directly reflects the dynamic balance between the supply and demand of land resources and governance objectives in different stages [4].

The small house system has formed a complete written law and administrative rules and regulations system. The core basis is the New Territories Land (exemption Ordinance), which defines the application right of qualified male Aboriginal residents to build houses in the new territories; supporting the new territories Ordinance and the Urban Planning Ordinance, which refine the implementation rules of identity recognition, land use control, building specifications and so on. The complete laws and regulations have built a normative framework for the operation of small houses, but rooted in the historical limitations of the colonial era and traditional clans, they continue to breed various governance contradictions in the contemporary era.

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2.2. Core content of land rights

The subject of the right is limited to the original residents of the new territories and their male lineal descendants before 1898. Applicants are required to submit genealogical materials to verify their clan identity. The strict review mechanism is designed to prevent the fraudulent use of qualifications. The identification rules emphasize the dual identification standards of patriarchal lineage and distinction between men and women, which constitute the core source of social controversy in the small house system [5].

After five years' supplementary payment of land price for small houses built on private land, they can be freely transferred to non-indigenous residents; The government needs to pay the full premium for the transfer of land approved small-scale housing, and the transfer restrictions are stricter to avoid the erosion of rural land resources by foreign capital. However, market demand has spawned various alternative models such as grey private trading and holding trust, which has increased the difficulty of supervision and exacerbated the imbalance of resource allocation. There are differences in academic circles: strict circulation control can stabilize rural native communities, but rigid rules hinder the optimal allocation of land elements; In Hong Kong, where land is scarce and prices are high, how to balance Aboriginal security and land use efficiency is the core problem of system reform.

The government sets rigid constraints in terms of planning, use and construction. Site selection is limited to designated rural plots, and occupation of ecological and infrastructure land is prohibited; The plot is only allowed for self-occupancy and commercial development is strictly prohibited; Unify the floor height and the upper limit of single floor area to maintain the overall style of the countryside. Control measures have effectively curbed speculation, but excessive administrative intervention has triggered controversy. Stringent construction standards have resulted in long-term idleness and inefficient assets of some small houses. Future reforms need to coordinate public control and independent use of property rights [6].

2.3. jurisprudential disputes

Women are totally disqualified from applying for and inheriting small houses, which is easy to marginalize the rights and interests within the family. Policy proponents believe that male restriction can prevent the excessive dilution of Ding rights and protect the historical traditions of rural areas; However, mainstream public opinion and research generally pointed out that the gender exclusivity provisions damaged institutional fairness and intensified social differences, and gender equality adjustment was an unavoidable issue in the small house reform [7].

The identity dependent distribution model brings multi-layer fairness defects. First, due to the lack of archives and the inability of relocated people to verify their clan identity, they lost the same opportunity to apply; Second, the gender barrier widens the intergenerational resource gap and induces family property disputes; Third, the regional approval standards in the new territories are not uniform, and the distribution of resources among regions is unbalanced. The system has both formal fairness and substantive fairness, and the rules of identity recognition need to be optimized.

There are obvious contradictions in the academic field in terms of land use efficiency. The supporter believes that small houses can meet the needs of indigenous people for self-residence and stabilize the rural society; The other side pointed out that the strict land use and circulation constraints caused a large number of idle houses and serious waste of land resources. At the same time, the circulation ban hinders the market-oriented allocation of factors, which does not match the current situation of scarce land in Hong Kong. Moderately liberalizing the compliant circulation and

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revitalizing the stock of small houses have become the mainstream reform ideas to improve land efficiency.

3. Analysis of rural homestead system in mainland China

3.1. Institutional evolution and legal framework

The evolution of the homestead system in the mainland completely shows the development context of rural land policy. At the stage of agricultural cooperation in the early days of the founding of the people's Republic of China, the basic framework of collective ownership and farmers' use was established; During the period of the people's commune, it was further incorporated into the collective unified management and adhered to the livelihood guarantee goal of home ownership. After the reform and opening up, the supporting economic system of homestead has been adjusted, and one house per family has become the core legal rule. In the context of urban-rural integration in the 21st century, the reform continues to deepen, and the innovative mechanism of the separation of powers releases the vitality of rural land elements. All previous policy changes have adapted to the level of economic development at all stages, taking into account the dual goals of fair land distribution and resource utilization efficiency [8].

The homestead system is a complete normative system jointly constructed by the constitution, the land management law and the property law. Article 10 of the Constitution establishes the fundamental attribute of collective ownership of homestead; The land management law refines the rules of distribution, use and supervision, with one household and one house as the core constraint; The property law defines the usufructuary property attribute of the right to use homestead, strengthens the foundation for protecting farmers' rights and interests, and also provides legal support for the subsequent reform of the separation of three rights.

3.2. Core content of land rights

Collective ownership is the fundamental feature of homestead, which aims to stabilize the public ownership of rural land and balance the distribution of residential land. The ownership is implemented by the village collective economic organization and the village committee, covering the whole process of homestead approval and allocation, daily supervision and stock control.

One family, one house is the core criterion of resource allocation. According to the law, a rural family can only own one homestead, and the floor area complies with the provincial delimitation standards, which effectively inhibits the disorderly expansion of homestead and realizes the fair control of land use.

The separation of three rights is a major institutional innovation of homestead in recent years, which divides property rights into ownership, qualification and use rights. Ownership belongs to the collective, and the bottom line of public ownership is maintained; The qualification right is exclusive to the collective members of the village, matching the housing security needs; The right to use can be rented and transferred to the market. Idle rural houses can be revitalized, the gap of construction land can be alleviated, and the channels for farmers' property income can be widened.

3.3. Jurisprudential features

The core orientation of the homestead system is farmers' basic housing security, which has a strong social security attribute. In legal theory, the right to use homestead is defined as a guaranteed

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usufructuary right, which explains the survival needs of rural residents from the legislative level. Although there are some problems in the implementation, the original intention of the system is realized as a whole, and the basic living rights and interests of farmers are continuously guaranteed.

The marketization of the right to use is the key direction of the homestead reform, relying on the market to optimize land allocation and broaden farmers' income. In recent years, the state has launched a number of transfer pilot projects to allow the lease, transfer and equity of idle homestead, revitalize the stock of idle rural housing, and continuously improve the overall utilization efficiency of rural land [9].

4. Comparison of jurisprudence and differences in land rights

4.1. Comparison of the nature of rights

There are great differences in the nature of land rights between the small house system in Hong Kong and the rural homestead system in the mainland, which ultimately stems from the different legal traditions and social structures of the two places. From the perspective of legal theory, the application qualification of small houses belongs to the administrative concession status right at the level of public law. After completion, the houses belong to transferable private real estate, which has the dual attributes of public law restriction and private law property, and shows strong clan cultural characteristics; The core of the rural homestead system in the mainland is "membership", which emphasizes the qualification of farmers as members of collective economic organizations. The distribution of homestead use rights is based on collective membership rather than personal blood relationship.

The reform of "separation of three powers" in the mainland has further enriched the connotation of rights. The separation of three powers in the mainland designs a hierarchical system of rights; Hong Kong small house has a two-tier structure of applying for qualification (Licensing) and building (private property), but it lacks the rules of market-oriented hierarchical circulation of the right to use, which limits its ability to adapt to social and economic development to a certain extent.

4.2. Fairness dimension

In terms of gender equality, the characteristics of the small house system in Hong Kong are quite different from those of the rural homestead system in the mainland. The design of the small house system in Hong Kong obviously has the problem of gender discrimination - its core provision only allows male heirs to apply for and enjoy the right to small house, which naturally attracted widespread controversy; Although Hong Kong society has also reflected on this system in recent years and tried to correct it through judicial channels, the problem of gender inequality is still deeply rooted. In contrast, the rural homestead system in the mainland is fairer in terms of gender equality: according to the current laws and policies, female farmers, as members of collective economic organizations, also enjoy the distribution qualification of homestead use right; By comparison, the mainland system is obviously closer to the principle of gender equality.

Intergenerational equity is also a key dimension to measure whether the land system is reasonable. The small house system in Hong Kong shows a strong inheritance in the intergenerational distribution of land resources. The paternal inheritance mechanism of Ding rights is easy to cause the intergenerational solidification of land rights and interests. Families without male descendants and new generation women are difficult to obtain the same preferential treatment for building houses, which exacerbates intergenerational inequality. In contrast, the rural homestead

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system in the mainland pays more attention to the intergenerational balance: one family, one house, guarantees the intergenerational right of residence on the basis of newborn households. On the other hand, the reform of "separation of three rights" leaves room for the transfer of the rights to use homestead, so that land resources can be dynamically allocated between generations. In this comparison, the mainland system is obviously better in the allocation of land resources.

4.3. Efficiency and resource allocation

The small house system in Hong Kong is also in sharp contrast with the rural homestead system in the mainland in terms of land use mode. Hong Kong is mainly low-density housing, mostly distributed in remote New Territories; Although this model preserves the rural landscape to a certain extent, it also leads to the low utilization efficiency of land resources. The construction of small houses is subject to strict planning restrictions. On the whole, the land utilization efficiency is not high, and it is difficult to meet the housing demand generated in the process of rapid urbanization. In contrast, the rural homestead system is more flexible in terms of land use: in recent years, with the continuous promotion of the reform of "separation of three rights", the circulation of homestead use rights has been gradually liberalized, creating conditions for the optimal allocation of land resources; At the same time, some areas in the mainland are also actively exploring intensive use patterns, such as improving land use efficiency through centralized resettlement or land consolidation. It should be said that these measures provide a certain institutional guarantee for the efficient use of land.

As for the market-oriented transfer of land rights, there are also obvious differences between the small house system in Hong Kong and the rural homestead system in the mainland. After the completion of the small house, it can be transferred to the outside world, but the application qualification is limited to men, and the transfer needs to pay a high premium, raising the market transaction cost, and the overall circulation activity is limited; the government's strict regulation of small house transactions also limits the freedom of the market to some extent. In contrast, in the mainland, the rural homestead system has made a lot of positive progress in the market-oriented reform. The "Three Rights Separation" reform provides an institutional basis for the market-oriented transfer of the right to use homestead. The pilot implementation of the voluntary and paid withdrawal of homestead in the mainland only allows the transfer within the village or short-term rental outside and does not support cross regional permanent trading. This exploration not only helps to improve the efficiency of land resource allocation but also expands the source of property income for farmers [10].

4.4. Legal conflict and institutional alienation

In fact, the two land systems in Hong Kong and the mainland are inseparable from the two major issues of legal conflict and institutional alienation in the implementation process. The long-term practice of the small house system in Hong Kong has exposed many conflicts of laws. For example, the dispute on gender discrimination has been appealed to the court for many times, which reflects the conflict between the existing laws and the needs of social development; On the other hand, due to the special historical background of the small house system itself, the specific implementation situations in different regions are also quite different. If this heterogeneity is not handled well, it is extremely easy to lead to inconsistent implementation of the system.

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5. System reference and reform suggestions

The reform of "separation of powers" in the rural homestead system in mainland China has certain reference significance for the improvement of the small house system in Hong Kong. The "Three Rights Separation" of homestead separates the ownership, qualification and use rights, which not only protects the basic residential rights and interests of farmers, but also promotes the market-oriented allocation of land resources through the transfer of use rights. If this reform experience can be applied to the small house system in Hong Kong, it may alleviate the problem of low efficiency of resource allocation caused by the too single subject of rights. Suppose a right structure similar to the "separation of three rights" is introduced into the small house system, allowing eligible male heirs to transfer the use right to the market, which can not only improve the efficiency of land use, but also reduce the phenomenon of idle land.

The practical experience of the transfer mechanism of the right to use homestead in the mainland also provides some valuable references for the small house system in Hong Kong. The mainland has slowly explored the circulation rules through pilot projects, gradually established a variety of rights circulation systems including leasing and transfer, and made clear the conditions and restrictions of circulation in the legal framework. If this model can learn from Hong Kong, scholars can formulate clear legal norms to allow the market-oriented transaction of the right to use small houses under certain conditions. On the one hand, it can attract social capital to participate in rural construction, on the other hand, it can also provide more economic benefits for aborigines. Learning from the reform can not directly copy the mainland's collective property rights model. It needs to be localized in combination with the new territories' clan history, the constitutional framework of the basic law, and the dual structure of public and private land.

Specifically, at the operational level, the mainland experience needs to be combined with the actual situation of Hong Kong to design the path before it can be smoothly implemented. For example, it is necessary to clarify the scope and conditions of the circulation of the right to the use of small houses through legislation, and the unfair distribution of land resources cannot be caused by excessive marketization; Secondly, a special regulatory body should be set up to review the transfer application to ensure that the transfer process is open and transparent and in line with the public interest; Finally, corresponding social security policies are also needed to prevent vulnerable groups from losing even the most basic survival security due to circulation. Such a combination can not only improve the flexibility of the small house system but also enhance its social acceptance and sustainability.

6. Conclusion

Comparing the small house system in Hong Kong and the homestead system in the mainland from the perspective of jurisprudence and land rights, there are similarities and differences between the two systems in terms of right attribute, fairness, resource efficiency and law enforcement. At the right level, Ding Quan belongs to the right of identity attached to the patriarchal clan. The homestead relies on the collective membership of the village. The mainland clearly divides three types of land rights through the separation of three rights. Cultural differences directly create two sets of distribution and circulation rules. From the perspective of fairness, small houses have long been controversial about gender equality because they are limited to men; There is no gender restriction on homestead, but the rule of "one family, one house" brings the problem of uneven intergenerational distribution. The two places rely on solidified inheritance and dynamic leveling policies to balance intergenerational land supply. In terms of resource allocation, the restrictions on

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small house construction and land use are strict, the market circulation space is narrow, and the land use efficiency is low; The separation of three powers in the mainland has liberalized the circulation of the right to use and continued to improve the efficiency of resource allocation. On the whole, small houses need to resolve the two shortcomings of gender discrimination and inefficient utilization. Homestead should take into account security and market-oriented reform, and there is more room for development.

There are two limitations in this comparative study. This paper only relies on the existing literature to carry out theoretical analysis, lacking the first-hand data support of field research, and the integrity of the conclusion is limited; The research perspective is limited to legal principles and land rights, and the deep background of economy, culture and policy implementation is not deeply integrated. The root causes of institutional differences are not fully explored. The follow-up research can be expanded from four aspects. Carry out empirical research such as questionnaires and interviews, collect first-hand operation data, and analyze the effectiveness of system implementation; Broaden the analytical framework, and comprehensively explain the system division in combination with history, culture and macro-economy; Continuously track the latest reform policies of the two places, dynamically evaluate the implementation effect and give optimization plans; Explore how Hong Kong can learn from foreign mature land system to improve the small house policy.

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