

Judicial empirical study on the transfer of residential land use rights - based on 110 judgement documents

Yaqi Zhu*

School of Anhui University of Finance and Economics Law School, Bengbu 233000, China.

* Corresponding Author

Abstract

The right to use a residential base has a dependent character and is dependent on the transfer of premises and national policy objectives, so whether it is the transfer of a rural residential base alone or the transfer of a rural house, it involves the transfer of the right to use a residential base. With the rapid development of urbanization in recent years, disputes over the right to use residential bases have emerged, and in judicial practice, conflicts in judicial decisions are common due to different interpretations of the basis of judicial decisions. In this paper, we have analyzed 110 first-instance adjudication documents of disputes over the transfer of residential land use rights in 2021, and found that there are differences in the judicial determination of the validity of the transfer by the courts, thus presenting some shortcomings and conflicts in judicial decisions, and some emerging controversies and focal points in judicial practice. In order to improve the judicial adjudication of disputes over the transfer of the right to use residential land, this paper will sort out and discuss these issues.

Keywords

Right to use residential land; validity of transfer; collective economic organization; mandatory provisions.

1. Introduction

Under the existing rules, the right to use a residential base is almost exclusively allowed to be transferred internally, but in practice, hidden transactions are forbidden, disputes over transfer are numerous, and the judicial position of the courts on such cases varies from case to case. Therefore, the reality of the external transfer of the right to use a residential base requires us to rethink the construction of the system of transferring the right to use a residential base. The author has searched the Judicial Documents website for "residential land use rights" and found 110 first instance judgments in disputes over the transfer of residential land use rights with trial dates between January and June 2021. The courts followed the principle of "housing and land as one" when deciding on these cases, and regarded them as cases of transfer of the right to use a residential base. In this article, we analyse 110 cases and discuss the different positions of judicial decisions on validity, the conflicts and shortcomings between the positions, as well as the controversies and focal points that have gradually emerged in judicial practice. It is found that, in terms of the validity of the assignment, 45 cases were ruled valid, 53 cases were ruled invalid, and 12 cases were dismissed without a ruling on the validity of the assignment.

2. Judicial opinion on the validity of the transfer of the right to use a residential

2.1. The circumstances in which an assignment is deemed valid

2.1.1. The assignor and the assignee are members of the same collective economic organization

A considerable number of cases held that the assignor and the assignee of the right to use a residential base belonged to the same collective economic organization, and that the transfer of premises between the two parties would not lead to the loss of the right to use a rural residential base and would not harm the interests of the village collective economic organization, and that the transfer relationship between the buyer and seller should be deemed to be established and the transfer contract valid if the parties' intention was true.

2.1.2. Not a member of the same collective economic organization, the assignee is a rural household

In some cases, the assignor and the assignee were not the same collective economic organization, and the assignor had changed to an urban resident, while the assignee was a rural household, and the court ruled that the transfer contract was valid. For example, in the civil judgment of the first instance of the dispute between Wu Runrong and Su Jianguo over the confirmation of ownership, the court based its decision on the fact that Wu Runrong was an agricultural household in Zhengjiazhuang Village, Beifang Town, Huairou District, Beijing. The Court confirmed the validity of the contract for the sale and purchase of the rural house between the two parties in relation to the mansion in question in accordance with the law.

2.1.3. Cross-collective transfers allowed in pilot reform areas

In 2015, China carried out pilot projects to reform the residential base management system in Yiwu City, Zhejiang Province and Nanhai District, Guangdong Province, exploring the separation of the three rights of residential bases and appropriately liberalising the right to use residential bases. The Interim Measures for the Transfer of the Right to Use Rural Residential Bases in Yiwu City proposes that the right to use residential bases is allowed to be transferred across collectives, provided that the pilot areas meet the land policy. If the transfer took place in Yiwu City, Zhejiang Province, in the civil judgment of the first instance in the contract dispute between Jin Jianying and Changde Community Resident Committee of Choujiang Street, Yiwu City, with the case number of "(2021) Zhejiang 0782 Minchu 8856", the court based its decision on the following The transfer was in accordance with Article 16 of the "Rules for the Transfer of the Right to Use Rural House Bases in Yiwu City (for Trial Implementation)", which states that "in the case of transfer across collective economic organizations, the assignee shall sign a contract for the paid use of the house base with the village organization and pay a one-time payment of land use right proceeds at no less than 20% of the benchmark land value of the rural house base". The content does not violate the mandatory provisions of laws and administrative regulations, nor does it violate the principle of public order and morality, and shall be deemed legal and valid.

2.1.4. The assignee was not originally a member of the Collective and subsequently became a member of the Collective

In individual cases, the assignee was a member of another economic organization or an urban resident at the time of the transfer of the residential site, but later transferred to the collective economic organization where the residential site was located and became a member of the collective, the court held that the transfer was a true expression of the intention of both parties and the contract should be valid.

2.1.5. After the second transfer, the land is returned to the collective

Some of the residential land was transferred twice or more, the first time to a non-member of the collective economic organization and the second time back to a member of the collective economic organization. The court held that the transfer was within the same rural collective economic organization and did not violate the relevant provisions of laws and regulations, nor was it detrimental to the public interest.

2.1.6. Acquisition by a third party in good faith and long-term possession

In this case, the court considered that the two transfers were the true intention of the parties, although the second sale, but the third person has occupied and used the house for many years, in line with the principle of respecting the status quo and maintaining stability, the third person as the actual user can still enjoy the right to continue to occupy, live and use, so the request to confirm the sale contract of the house is not supported, the residential base is still owned and used by the third person.

2.2. Circumstances in which an assignment is found to be invalid

The legal bases on which the courts have ruled that the transfer of the right to use a residential base is invalid mainly include Article 52 (4) and (5) of the Contract Law; Article 363 of the Civil Code; Article 6 of the General Principles of the Civil Law; Article 153 of the Property Law; Articles 43, 62 and 63 of the Land Administration Law, etc. In the empirical cases studied in this article, the circumstances and bases on which the courts ruled that the transfer was invalid were mainly as follows.

2.2.1. Transfers not between the same collective economic organization

Persons other than members of rural collective economic organizations cannot acquire the right to use residential bases, and except for individual pilot reform areas where the right to use residential bases is specifically allowed to be transferred across collective economic organizations, members of other economic organizations or urban residents are not allowed to be transferred to acquire the right to use residential bases in accordance with the law.

2.2.2. Without the consent of the collective economic organization or the approval of government departments

The right to use a residential base is a right enjoyed by members of a collective economic organization and is linked to a specific identity relationship; it cannot be transferred privately without the consent of the village collective economic organization, and is only valid if the collective economic organization agrees to approve the transfer and goes through legal registration procedures; and the transfer of a residential base should be examined and approved by government departments. In some cases, the transfer without the consent of the collective economic organization and without the approval of the government department was ruled invalid because it violated the mandatory validity provisions of the law.

2.2.3. Separate transfer of the homestead

The right to dispose of a residential base is limited in that it cannot be transferred separately and can only be transferred with a legally constructed residence through sale, gift, inheritance, bequest, etc. Therefore, a transfer of a residential base alone is invalid.

2.2.4. The assignor is unable to prove that he or she has the right to use the residential land

The residential base should have the real estate registration records of the land department, for the land use title certificate, approved by the relevant people's government as a rural villager residential base. And with file information registration to confirm that the assignor enjoys the right to use the residential base in question, otherwise the transfer is deemed invalid.

2.2.5. Violation of the "one family, one place" rule

The Land Management Law of the People's Republic of China stipulates that a rural villager may only own one residential base per household, and the area of his residential base may not exceed the standard set by the province, autonomous region or municipality directly under the Central Government. If a villager owns more than one residential base after the transfer of a residential base or if the area exceeds the limit, the transfer will be ruled invalid.

2.2.6. Disguising the purpose of the offence in a lawful form

In judicial practice, the transfer of the right to use residential bases has given rise to a variety of special forms, including cooperative investment in building houses, transfer by mortgage on IOUs, transfer by division of family, transfer by marital division, transfer by tender, etc. Some of these forms of transfer have been ruled invalid because they disguise illegal purposes in legal form. For example, in the case number "(2021) Lu 0211 Min Chu 14103", "Yu Fengju and Ma Linshan Civil Judgment of the First Instance of the Dispute over the Contract of Sale and Purchase of Rural Houses", the two parties to the transfer, in order to realise the transfer, pre-married the assignee's household registration to The parties divorced after failing to achieve the transfer, and the assignor gave the house to the assignee in the divorce agreement. The transfer was held to be invalid because it violated the public interest and "public order and morality". Some cases of co-operative investment in housing construction were also invalidated for the purpose of obtaining unlawful disguised demolition benefits several times the cost of the investment, in violation of the mandatory provisions of the Land Administration Law.

2.2.7. Disposal without authority or agency

Among the 110 cases collated in this article, there are 12 cases involving the validity of disposition and agency, of which 10 cases did not affect the determination of the validity of the assignment, while 2 cases were ruled invalid due to the defect of disposition without authority or agency rights. For example, in the civil judgment of the first instance of Zhang Lanying and Zhang Deliang in a dispute over the removal of nuisance, the court ruled that the assignor had not consulted with the co-owners of the residential land use right and had disposed of the residential land in question. The agreement had no legal effect. Article 89 of the Opinions of the Supreme People's Court on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China stipulates that if, during the existence of a joint tenancy, some of the co-owners dispose of the joint property without authorization, it is generally considered invalid.

2.3. Circumstances in which an assignment is not determined to be effective

In 12 of the 110 cases of transfer of the right to use a residential land, the court dismissed the case without deciding on the validity of the transfer. The decisions were based on, inter alia.

2.3.1. Insufficient evidence

Article 90 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China stipulates that the parties shall provide evidence to prove the facts on which their claims are based or to refute the facts on which the other party's claims are based. If a party fails to provide evidence or the evidence is insufficient to prove its factual claims, the party who has the burden of proof shall bear the adverse consequences. In some cases, the court did not decide on the validity of the case due to the lack of evidence to prove that the land in question belonged to the collective economic organization to which the plaintiff belonged, the inability to prove the nature of the land as a residential base or contracted land, the inability to prove the fact of transfer, the failure to provide solid evidence to prove the registration of the ownership of the residential base, the inability to prove that the house on the ground had been legally reported for construction or planning acceptance, etc. The court rejected the case in accordance with the law.

2.3.2. Beyond the scope of civil litigation of the People's Court

A small number of cases were dismissed in accordance with the law because the plaintiff's claim for relocation or relocation-related claims were now unrealized through civil litigation, and the suits were not within the scope of civil litigation before the people's courts, and the courts did not rule on the validity of the assignment.

2.3.3. Lack of need to confirm the validity of the assignment

In individual cases, the house in question has been demolished and the subject matter of the Housing Transfer Agreement has been lost. When the agreement had been fulfilled and the contractual rights and interests of both parties had been realised, it was not necessary to sue the People's Court for confirmation of the validity of the contract and the state of performance and lacked the interest of rights protection. The court immediately dismissed the case without further determination of the validity of the transfer of the house and the residential land.

3. Conflicts and shortcomings in judicial decisions on the transfer of residential land use rights

3.1. Conflict between bases of validity

On similar grounds, there is a conflict between valid and invalid decisions. For one, there are cases where the transfer of the right of use is valid only with the consent and approval of the collective economic organization and with legal registration of the transfer, based on the provision that "individuals may acquire the right of use in accordance with the law. There are also cases based on the "registration of changes to the residential base is not mandatory", that the assignee in the acquisition of the right to use the residential base, although not registered for change, but does not affect the effectiveness of the contract of sale of houses, the transfer is still valid. Secondly, in the case of the second transfer of residential land, the court has made both effective and invalid judgments when the first transfer is not a member of the collective economic organization, resulting in different judgments in the same case.

3.2. Wide variation in decisions on subsequent treatment after a finding of invalidity

Article 58 of the Contract Law provides that property acquired as a result of a contract that is invalid or rescinded shall be returned; if it cannot be returned or is not necessary to be returned, it shall be compensated at a discount. According to this provision, the transfer of a residential base and a house on the ground shall be mutually returned to the transfer money and the premises after the transfer is found to be invalid, but in the sample cases, there are different forms of decisions on the subsequent treatment. In addition to the regular judgments of mutual return of property, there are also: the transfer is found to be invalid but the contract should continue to be performed; the transfer is found to be invalid but the premises are not returned; the transfer is found to be invalid but the transfer money is not returned; the transfer is found to be ineffective and damages are awarded according to the fault of both parties but the case is not dealt with.

3.3. Different determination of damages for invalidity

There is a wide variation in the determination of loss following the invalidation of a transfer of a house and a house on the land. There are cases where both the occupancy fee and the interest accrued on the transfer of the premises are considered as losses, while there are cases where only the interest accrued on the transfer of the premises is considered as a loss; the value added to the homestead or the house should be denied as a loss also varies.

3.4. Disparity in the percentage of fault found to be invalid

In nearly half of the judicial cases in which the transfer of residential land and houses on the ground was ruled invalid, the assignor and the assignee were each found to bear 50% of the fault, while some cases found both parties to bear 60% and 40%, 70% and 30% of the fault. In judicial cases with different facts, the lack of uniform standards for the determination of the percentage of fault can lead to differences or even huge differences in the determination of the percentage of fault by the courts.

3.5. Differences in the distribution of resettlement benefits in the acquisition of premises

During the period of accelerated urban and rural transformation process, the government expropriates a large amount of rural land for re-settlement. Based on the principle of housing and land as one, there are usually three modes of compensation when rural housing and land are expropriated for resettlement: firstly, compensation for housing only; secondly, compensation for housing and land separately; thirdly, compensation for housing and land without differentiating between them and determining a certain scheme. In the sample cases in this paper, a number of cases in which the house base and the house on the land were transferred as one involved the expropriation of the house and land and the redistribution of resettlement benefits. Some of these cases ruled that the right to use the residential land had identity attributes and that the resettlement benefits arising from the right to use the residential land went to the registrant of the right to use the residential land, while the assignee of the house did not enjoy the rights and interests of the right to use the residential land, but enjoyed the rights and interests of the house and the land on the residential land. There are also cases ruling that the compensation price of the residential base zone is the compensation related to the area of the residential base, which is allocated in proportion to the fault of both the assignor and the assignee. The compensation for the value of the demolished house shall be enjoyed by the assignee, while other compensation and various incentives and subsidies shall be allocated in accordance with the actual rights and actual situation. In judicial practice, there are certain differences in the distribution of resettlement benefits for the expropriation of premises.

4. The controversy and focus on the concentration of the transfer of residential land use rights

4.1. Registration issues

The law stipulates that the registration of the transfer of the right to use a residential base and the ownership of a house should be applied for by both parties, therefore, in disputes over the transfer of the right to use a residential base, there are a large number of cases in which one party does not cooperate in the registration of the transfer of the right to use and sues the court. Among the 110 sample cases in this paper, there are 17 cases in which one party does not cooperate with the registration of the transfer, and the plaintiff requests the defendant to assist in the registration in the litigation request, or the court expresses in the decision result that one party should assist in the registration of the transfer of the right to use the residential land. There were also some cases where the issue of registration was not mentioned, but there was still a demand for registration and practical obstacles. In principle, the right to use the residential land can only be acquired and registered by members of the Collective Economic organization, so how can non-members of the Collective Economic organization be registered after they have been judged by the court to have legally acquired the right to use the land or by the heirs of the Non-Collective due to succession? How can a clear distinction be made between

the registration of such heirs and the registration of members of the collective, and how can reasonably different rules be devised to support this? This is debatable.

4.2. Effect of dispositions by co-owners

The application and registration of the right to use a residential base and the ownership of a house are made on a household basis, with the head of the household or a registrant jointly determined by the members of the household applying for registration, usually for the joint ownership of all family members. In judicial practice, there are cases where the co-owners dispose of the right to use the house base individually and without authorization. Of the 110 sample cases in this article, 12 cases of partial, full or sole disposition by the co-owner, which are often used by the parties to challenge the validity of the transfer, and the courts usually need to decide and explain the validity of such dispositions.

4.3. Distribution of resettlement benefits

In the sample cases, the time between the time when the transfer of the right to use the residential land occurred and the time when the parties initiated litigation spanned a wide range of time, but the vast majority of the interval was long. There were many cases where the assignor was motivated to break the contract due to the huge gap between the benefits of expropriation and the initial transfer price. In such cases, apart from determining the validity of the transfer, the court must also reasonably allocate the resettlement benefits after the validity has been determined, but as the resettlement benefits involve a huge amount of money, the allocation by the court will have a great impact on the interests of both parties. The court should be particularly cautious about the allocation of settlement benefits.

4.4. Changes in land policy in the pilot reform areas

As of 2021, 104 counties (cities and districts) and three prefecture-level cities across the country have fully launched a new round of pilot projects to reform the rural residential base system. However, in the process of studying and formulating specific pilot policies, the pilot localities are faced with a wide variety of perceptions, opinions and demands, and difficulties in forging consensus, with the grasp of the pilot often being inaccurate in terms of progress and retreat and poor common initiatives. This also affects judicial practice, and the courts need to be precise in their application of land policies in order to avoid touching the red line of the law. The sample cases include individual cases involving pilot policies, adding to the test of the courts' decisions and interpretations. As the reform moves from pilot to universal in the future, the courts should be even more responsive to this focal issue.

5. Conclusion

After compiling and analyzing judicial cases, it is found that there are differences in the courts' positions on the validity of the transfer, and new controversies and issues have gradually emerged to be resolved. The improvement of the system of transferring the right to use residential bases is related to the revitalization of residential resources and the effectiveness of the implementation of the rural revitalization strategy, as well as to the governance of residential bases in China, the construction of a new countryside, and the long-term significance for individuals and society.

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