



THE HISTORY OF REGULATION OF LAND RELATION IN CHINA ACCORDING TO DIAN CUSTOM

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Summary

This article is devoted to the research of the historical features about formation processes of the land matters in the People's Republic of China. The main characteristics of the Chinese land-use system are determined. The article is also concerned with the analysis of the ancient Dian's custom impact on the development of land-use matters in China. It also establishes and defines the characteristic features of Dian's custom.

Key words: land use, tradition, Dian custom, sale of land, ownership of land.

Аннотация

Статья посвящена исследованию исторических особенностей земельных отношений в Народной Республике Китай, а также процессу их формирования. Раскрываются характерные свойства китайской системы землепользования. Исследуется правовая природа древнего обычая Диань и осуществляется анализ его воздействия на развитие земельных отношений Китая. В статье также производится исследование и определение характерных особенностей указанного обычая Диань.

Ключевые слова: права землепользования, традиция, обычай Диань, продажа земли, собственность на землю.

Introduction. Problem statement.

Land has always been a fundamental national wealth and a special natural resource without which existence of any state is practically impossible. National development and prosperity of most countries in the world, especially of such as China, depend on the nature and level of state policy on effective use of land.

Actuality of research. Functioning land turnover and its compliance with current realities, requires an analysis of foreign law. Experience of other countries reveals the most successful models of legal regulation of land relations. In addition, it allows you to find the basic ways to create an effective land turnover that exist in the advanced countries of the world. Achievements and gaps in the legislative regulation of land relations of the People's Republic of important and useful in the context of improving the law and practice of international experience.

Analysis of recent researches.

Among Ukrainian and Russian scientists, who have worked with investigation of land relations in People's Republic of China, we can note the following people: A.M. Miroshnichenko, A.S. Pasechnyk, G.P. Bilohlazova, M.S. Koshelova and others.

The analysis of the studied literature showed that more detailed investigation of land law issues of China had been

conducted by American scientists such as Robert C. Ellickson, Philip C. Huang and others.

The analysis of these authors' works as well as works of modern scholars, allows us to state that the study of the process of formation of land relations in China is rather difficult because PRC is a country with a long history and centuries-old traditions. The historical specificity of development of China, of course, has affected all aspects of contemporary Chinese society, including land issues. Thus the study of the history of legal regulation of land relations in China is very important.

The *aim of the article* is to determine the historical features of the ancient custom of Dian and its impact on the development of land use in the People's Republic of China; the *objective* is an investigation of main distinguishing features of Dian custom in the context of the regulation of land relations.

The basic material of the article.

Mao Zedong, who was a prominent political figure in China, once said that "China's problems are the problems of rural and rural issues are land issues" [1, p. 1]. This expression is important for this country today, because the issue of land turnover in China is very important.

Throughout the history of ancient China in the era of the Shan, Zhou, Qin

and Han dynasties, the land is almost always considered to be state property, but the owner was a community. Communal ownership of land for many centuries was the basis of the economic life of society.

Therefore, the research of the process of land matters formation in China is rather complicated. The task is complicated due to the fact that China is a country known with its long history and tradition. Obviously, that historical specificity of China affected on all spheres of modern Chinese society, including land matters. For this reason, the analysis of the history of the land matters legal regulation in China is very important step for understanding of land matters in China and the characteristics of its land turnover.

It is believed that in 20 years it is impossible to achieve success in such a complex area as land relations. However, the example of China leads to a different conclusion. In 1985, China's economy was in ninth place among other states [2, p. 67]. Now China's economy is the second largest in the world and China has a leading position [3, p. 1].

An additional point is that from V. Helbras perspective, the phenomenon of Chinese success is that in China, the government "acts as the land and natural resources supreme owner, as the owner of the most important industries and services branches" [4, p. 76].

Since the 1980s, when China began to lose most features of collectivist policies of Mao Zedong era, the government had allowed individuals and corporations to acquire land use rights. At the same time,

¹ According to the articles 8, 10 of the Law of Land Administration of the People's Republic of China, the rural collective is a subject of property rights and land administration. The law provides that land, which is located in rural and suburban areas, is owned by rural collectives and is managed by rural collectives of village, collective economic organizations of village or committees of rural residents.



according to the Chinese legislation it was prohibited for the national government and the rural collective¹ to transfer the right of ownership in perpetuity to third parties. The right to the land use in China was limited by terms established by the law.

It was due to the fact that the current Chinese legislation did not recognize private land ownership and prohibited the sale of land.

The main provisions of the modern land rights of China were established in the Constitution of the People's Republic adopted in 1982. Thus, the main law of the PRC stipulates that all raw land is owned by the state, is in public property (urban lands), with the exception of land, which is collectively owned (rural land). In this case, the right for the land use may be transferred from one entity to another only in the manner prescribed by the Chinese law.

Thus, urban land in China is now owned by the national government and rural land – by the collective ownership. Due to the lack of private land ownership and in accordance with economic and legal system, land in China is not a commodity, and therefore cannot be officially sold. However, property rights to land may be the object of turnover and when it comes to the sale of land in China it mainly refers to the transfer of land; and because of certain legal procedures and mechanisms land in China may be the subject of a land turnover. The term “sale of land” is frequently used for indication of such the cases. According to the above mentioned, when it comes to the sale of land in China, it means the transfer of land use rights from one entity to another.

It should be mentioned that this Chinese system, the system of buying and selling of land rights is quite specific and interesting; studying of it may be useful in the process of land relations reforming in our country because a similarity of

processes in the field of land relations in Ukraine and the People's Republic is evident.

At the same time, we should pay attention to the fact that over the past three decades, China has made a breakthrough in land reform and has moved from collective farming system to a system that provides more extensive land use rights to individual households that without a doubt supports the development of the PRC and powerful growth of its economy.

It is important to emphasize that the historical feature of the Chinese system of land use is that for thousands of years Chinese customs and laws were aimed at regulating the transfer of land ownership so as to preserve this right and ensure its return in the future to the original owner [5, p. 1]. That is, now the current approach for regulation of the issue about changing of land users in China in general coincides with the historically developed traditions of the Chinese people.

Before the Communist Revolution in 1949 the rules of changing of land by a user in China were supplied with the custom of Dian, which appeared in ancient China and was officially recognized in the consolidated customary codes at the beginning of reign of the Ming Dynasty in the period from 1368 to 1644.

Although some American scientists argue that until the middle of the Ming period (1500 BC) there was no information about the custom of Dian, we cannot agree with this, because there are reasons to believe that Dian custom have appeared in the days of reign of the Shan Dynasty (1600–1046 BC) [5, p. 8]. Its application before the reign of the Ming Dynasty is supported by the fact that the official collection of songs of the Dynasty (960–1127 AD) includes an informal reference to the tradition of Dian; in the Ming Code there are only official references to it. According to historians, the vast majority of contracts

on transfer of land during the reign of Qin Dynasty and Republican era were made exactly after the Dian custom.

The basic principle of the Dian custom was to provide a seller of land with the opportunity to buy it back at the original sale price after many years. It is necessary to bear in mind that those who currently own (uses) the land on the basis of any agreement obey the so-called “future property right”.

According to the Dian custom, the future property right is a former right of seller to buy back. Accordingly, in cases with established fixed-term future of land use the right of property is a reverse process that allows the seller to return his property after the expiration date.

In case of seller's death, this right of back buying was passed to his heirs. The essence of the Dian custom provides that the person who buys the land back is not obliged to compensate works of improvement made by the previous owner.

Besides, according to the custom, the buyer had to return only the amount that the initial buyer had paid to the initial seller.

This price of back buying could not be increased because of the general rise of prices for the land, or perhaps, because of inflation [5, p. 9]. The seller was protected from the risks and received benefits. At the same time, the tradition of Dian had negative consequences for the buyer of land, who was not interested to invest in improving the land and maintain fertility of a soil, because he knew that his contributions would not be repaid.

That is why, the Dian custom and its features on the regulation of land relations are considered by some scholars as the reason for China's retardation from Europe in this area [5, p. 6]. So, American scholar Kenneth Pomeranz argues that “the vast majority of land in all parts of China was a subject of more or less unlimited alienation” during the reign of Qin Dynasty, when China, for example, significantly lagged behind in economic development of England. K. Pomeranz argues that in Western Europe in that era a right to dispose of land ownership was a subject to restrictions or other encumbrances affecting the slowdown in the process of land turnover. In England, the land ownership as a whole had become

² Majorat is a French term for an arrangement giving the right of succession to a specific parcel of property associated with a title of nobility to a single heir, based on male primogeniture. A majorat would be inherited by the oldest son, or if there was no son, the nearest relative. This law existed in some European countries and was designed to prevent the distribution of wealthy estates between many members of the family, thus weakening their position [6].

³ The open-field system was the prevalent agricultural system in much of Europe during the Middle Ages and lasted into the 20th century in parts of western Europe, Russia, and Iran. Under the open-field system, each manor or village had two or three large fields, usually several hundred acres each, which were divided into many narrow strips of land. The strips or selions were cultivated by individuals or peasant families, often called tenants or serfs. The holdings of a manor also included woodland and pasture areas for common usage and fields belonging to the lord of the manor and the church. The farmers customarily lived in individual houses in a nucleated village with a much larger manor house and church nearby. The open-field system necessitated cooperation among the inhabitants of the manor [7].



simpler and allowed to dispossess it after 1600 due to the declination of entail² and a system of the “open fields”³. In China after 1600, in contrast to England it was not found a strong tendency towards simplification of land ownership [5, p. 7]. That is why, according to scholar Huang, Dian is an example of “pre-market ideal of sustainability of land ownership” [8, p. 71].

At the same time, the obvious fact is that private land ownership was a feature of Chinese culture for thousands of years. This was confirmed by the presence of the first documents about the sale of land by private landowners that had been discovered in the Han Dynasty (206 BC. BC-220 AD.). In addition, the first land reforms of Shan Yan (356 BC) had contributed to the alienation of land [5, p. 4].

However, this ownership right had certain characteristics, which are quite evident in the customs of Dian. This specificity is primarily associated with the restrictions that it imposes on private landowners who usually have the right to sell or otherwise dispossess their land.

Governments of the Ming and Qin dynasties and the Republican period, each at their own time created legislation acts aimed at easing the use of Dian custom to enhance economic development and reduce the violence generated by controversies over Dian. In 1929 the Republican Code, for example, established a guaranteed period of use – 30 years from the date of the initial sale [5, p. 13].

During the eighteenth century influence of Dian custom in China was reduced, but still was in use till 1949 – coming of Communists to the power in China. It is interesting that during the first half of the twentieth century particularly Kuomintang authorities noted the positive aspects of the ancient Dian custom and, therefore, approved its use.

As a result of reorganization of land relations in 1986 important legislative act was created – the law of the PRC “On Land Management”. This law was created in accordance with the Constitution of the People’s Republic of China, and as it is set out in Article 1, with the purpose of enhanced regulation of the land and maintenance of socialist state property right to land. It was the

beginning of new development of land relations and the most important factor of effective land policy in China.

At the same time, scientists point out that land management in China is conducted in accordance with tradition of Chinese land use, land policy of the state at the present stage of economic development, the set land system, form of land ownership and land fund structure [9, p. 56].

Conclusions. It should be mentioned that the current land law of the People’s Republic of China, despite some peculiarities in general, develops in a spirit of historical tradition, which is peculiar for Chinese civilization. In fact, it follows a certain modification of one of the fundamental principles of Dian custom, which provides that somebody, who owns the land under the agreement, obeys the so-called future property right according to which the initial owner has the right to “withdraw” his land and to restore his right for the land use.

Although it should be kept in mind that still today’s realities make Chinese society refuse perennial traditions in the field of land relations, because they are not qualitative means of their regulation.

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