

The Administrative Reconsideration Resolution of Disputes Arising from Land Expropriation Compensation Agreements

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Abstract: In the process of land expropriation and demolition, signing a land and house expropriation compensation agreement is one of the most critical steps. It concerns the vital interests of those whose properties are being expropriated and clarifies the government's compensation and resettlement arrangements after land expropriation. This agreement has a distinct administrative nature and falls under the category of administrative agreements. However, the legal framework for administrative agreements in China is still not well developed, and their practical role has not been fully realized. Especially when disputes arise, the administrative reconsideration mechanism for expropriation and compensation agreements cannot fully meet the needs of new laws, and there are issues such as inadequate review during reconsideration and insufficient connection between reconsideration and litigation. These problems not only potentially harm the legitimate rights and interests of the parties involved but also, in certain circumstances, may have negative impacts on public interest. To improve this situation, it is recommended to leverage the main channel role of administrative reconsideration, strengthen the reconsideration review mechanism, and establish a sound connection between reconsideration and litigation, thereby enhancing the role of administrative reconsideration in resolving disputes over land expropriation compensation agreements.

1. Introduction

The revised Administrative Review Law in 2023 for the first time included administrative agreements such as land expropriation compensation agreements into the scope of cases, which is of great significance to the resolution of disputes over land expropriation compensation agreements by administrative review.

2. The current situation of administrative reconsideration to resolve disputes over land expropriation compensation agreements

2.1 The connotation of land expropriation compensation agreement

The land expropriation compensation agreement (hereinafter referred to as the "compensation

agreement") refers to an agreement reached through mutual consultation between the expropriating entity (usually relevant government departments) and the expropriated party regarding matters related to land expropriation compensation, such as the method of compensation, the amount of compensation, and the resettlement method, etc. [1] Its constituent elements include the expropriating entity, the expropriated party, the subject of compensation, the content of compensation, and the rights and obligations of both parties. Regarding the issue of entities, according to the provisions of the Land Management Law, units other than municipal and county governments and their functional departments do not have the qualifications to sign land expropriation compensation agreements. Therefore, only under explicit legal authorization or with the commission from municipal and county governments and their functional departments can other entities carry out the signing of agreements, and the corresponding legal consequences should be borne by the administrative agency that commissioned them [2].

Land and house expropriation compensation agreements come in various categories. By land nature, they are divided into collective land expropriation compensation agreements and state-owned land house expropriation compensation agreements [3]; by the compensation recipient, there are household/personal compensation agreements, collective economic organization compensation agreements, enterprise/unit compensation agreements; and special types of agreements, such as pre-expropriation agreements, individual household compensation agreements, and overall expropriation agreements.

The compensation agreement in land expropriation and demolition has both administrative and civil attributes. Its administrative attribute is reflected in the special signing subject, the purpose of administrative management and the application of administrative legal norms; its civil attribute is reflected in the negotiation nature of the agreement and the determination of the content, which should belong to the administrative agreement.

2.2 The convenience of administrative reconsideration to resolve land acquisition and compensation agreements

Administrative reconsideration refers to the legal system where an administrative counterpart, believing that a specific administrative act of an administrative agency has infringed upon their legitimate rights and interests, legally applies to the administrative reconsideration authority for a review of such specific administrative act. The administrative reconsideration authority then conducts a lawful and appropriate examination of the applied-specific administrative act according to the statutory procedures and makes an administrative reconsideration decision[4].

Compared to administrative litigation, the administrative reconsideration process is relatively simple. It does not require going through complex legal procedures, which allows parties to save a significant amount of time and effort, thereby effectively improving dispute resolution efficiency and demonstrating unique advantages in resolving administrative disputes. The application and acceptance procedures for administrative reconsideration are relatively straightforward; parties only need to submit a written or oral application along with relevant evidence materials. After accepting the case, the reconsideration authority will review it, typically without holding a hearing but making decisions through written reviews. This streamlined procedure helps parties resolve disputes promptly, avoiding delays caused by cumbersome procedures.

Therefore, when the administrative counterpart chooses to resolve disputes over administrative agreements through legal means, they might as well first apply for administrative reconsideration. On one hand, this can help resolve disputes in the most convenient way; on the other hand, even if the dispute cannot be resolved through reconsideration, it may still gather information favorable to administrative litigation, or include the higher-level department of the administrative agency or its

affiliated government as one of the defendants.

2.3 The number of disputes over land expropriation and compensation agreements resolved through administrative review is increasing year by year

The administrative agreement falls within the scope of cases accepted by administrative litigation, as clearly stipulated in the Administrative Litigation Law revised in 2017. The newly revised Administrative Review Law in 2023 officially includes administrative agreements within the scope of cases accepted by administrative review. Article 10 provides that citizens, legal persons, or other organizations may apply for administrative review under this law if an administrative agency fails to legally enter into, perform, or fulfill an agreement, or unlawfully changes or terminates government franchise agreements, land and house expropriation compensation agreements, etc. Article 71 stipulates that if the respondent fails to legally enter into, perform, or fulfill an administrative agreement, or unlawfully changes or terminates such an agreement, the administrative review authority shall decide that the respondent bears responsibility for legally entering into, continuing performance, taking remedial measures, or compensating for losses. If the respondent's change or termination of an administrative agreement is lawful but fails to provide legal compensation or the compensation is unreasonable, the administrative review authority shall decide that the respondent legally provides reasonable compensation.

According to public statistics, since the implementation of the new reconsideration law in 2024, there has been an increase in cases where administrative counterparts apply for administrative reconsideration to resolve disputes over land expropriation and compensation agreements. In July 2011, a city district's house expropriation office in Jilin Province entrusted a township government to sign a "Property Exchange Agreement" with Zhao. Due to project delays, both parties signed a "Monetary Compensation Agreement" in December 2020, changing the pre-sale housing resettlement to monetary compensation. When distributing the compensation, the expropriation office refused to honor the agreement because the recorded area on the property archives did not match the area stated on the property certificate. Zhao then applied for administrative reconsideration. After accepting the case, the reconsideration authority found that the house had been demolished and its actual size could not be determined, making it impossible to ascertain the facts. The reconsideration authority invited grassroots people's mediators from the applicant's place of residence to mediate, pointing out that the respondent had signed the "Monetary Compensation Agreement" without verifying the property registration information, leading to the inability to fulfill the agreement. Ultimately, both parties reached a settlement, compensating according to the area registered on the property certificate and ensuring resettlement expenses, after which Zhao withdrew his application for administrative reconsideration.

In this case, the administrative reconsideration authority, based on the provisions of the new reconsideration law, reviewed and determined that the "Monetary Compensation Agreement" signed by both parties met the characteristics of an administrative agreement. It legally accepted Zhao's application for reconsideration and provided him with a legitimate avenue for redress. Through administrative reconsideration, it pointed out the error in the administrative agency's failure to verify the house registration information during the signing process, prompting them to recognize their issues and make corrections. This standardized the behavior of the administrative agency in the signing and implementation of land expropriation compensation agreements.

3. The inadequacy of administrative reconsideration in resolving disputes over land expropriation compensation agreements

Although administrative review plays an important role in resolving disputes over land

expropriation compensation agreements, a series of shortcomings exposed in its actual operation can not be ignored.

3.1 It cannot fully meet the needs of the new review law

With the establishment of centralized jurisdiction in the newly revised Administrative Review Law, the expansion of case acceptance scope, and the increase in types of cases requiring prior administrative review, the number of administrative review cases will significantly rise. However, some administrative review institutions lack sufficient staff to meet work demands. At the same time, the professional competence of the administrative review team needs improvement, with issues such as reluctance to supervise, unwillingness to supervise, poor supervision skills, overemphasis on procedural supervision at the expense of substantive supervision, and a focus on individual case supervision rather than source regulation. Moreover, years of administrative review practice show that "the number of administrative review cases is related to local economic development levels, public legal awareness, and cultural traditions [5]." In economically developed areas, land expropriation activities are frequent, land values are high, and disputes over land compensation agreements increase accordingly; whereas in less economically developed regions, although the number of cases is relatively lower, due to weaker public legal awareness, the use of administrative review is insufficient, leading to some disputes not being resolved through legal channels in a timely manner.

3.2 Lack of rationality review in the process of reconsideration

Because administrative agreements have the general attributes of contracts, they are easily confused with civil contracts in practice. It is necessary to accurately grasp the essential differences between the two to ensure the accuracy and consistency of the review. The procedural provisions for the review of administrative agreements in some regions are not perfect, which may affect the fairness of the review results.

When reviewing cases related to administrative reconsideration, it is found that many cases only examine procedural legality while choosing to avoid addressing disputes over the reasonableness of compensation. The judicial interpretation on administrative agreements clearly stipulates the rules for reviewing both legality and reasonableness. Given that expropriation compensation agreements have dual attributes of administrative nature and contractual nature, in litigation concerning such agreements, not only must the legality of the agreement be reviewed, but also its reasonableness must be examined. Both legality and reasonableness are crucial for expropriation compensation agreements; they are interdependent and together form a complete review system. Without either aspect, it would be difficult to fully ensure the fairness and legality of the agreement.

3.3 Insufficient connection between administrative review and administrative litigation

As the saying goes, "the judiciary is the last line of defense for maintaining social equity and justice." If administrative reconsideration fails to resolve issues thoroughly, one can still initiate administrative litigation. The connection mechanism between administrative reconsideration and administrative litigation ensures that executive power and judicial power operate on their respective tracks while enabling effective interaction when necessary. In today's context where the new reconsideration law has been implemented, if there can be a scientific connection between administrative reconsideration and administrative litigation, many disputes over administrative agreements could very likely be properly resolved at the reconsideration stage, effectively alleviating the pressure on administrative litigation cases and optimizing the overall landscape of

administrative dispute resolution. However, there are still shortcomings in the current connection process between administrative litigation and administrative reconsideration, which urgently need to be addressed through legislative improvements and practical exploration.

There are many shortcomings in the settlement of disputes over land expropriation compensation agreements through administrative review, from personnel allocation to examination mechanism and litigation connection. We should actively explore ways to optimize the process so that administrative review can really play a practical role in resolving such disputes and safeguarding the legitimate rights and interests of the parties concerned.

4. Suggestions for improving the administrative review to resolve disputes over land expropriation compensation agreements

Administrative review is essentially a self-correcting mechanism of administrative organs. Because it is a self-correcting mechanism, it has natural and inherent limitations. With the increasing number and complexity of disputes over land expropriation and compensation agreements, it is particularly important to improve the review system that fits the land expropriation and compensation agreements.

4.1 Give full play to the main channel role of administrative review in resolving administrative disputes

Nowadays, an increasing number of administrative agencies and their counterparts recognize that administrative reconsideration is a "low-cost, high-efficiency, broad-spectrum" system for resolving administrative disputes[6]. Emphasizing the primary role of administrative reconsideration, it aims to resolve administrative disputes at the reconsideration stage, promptly addressing conflicts and disputes at the grassroots level and within the administrative system. This helps reduce administrative disputes and conserve judicial resources. Enhancing the professional competence of administrative reconsideration personnel, regular training sessions are organized for them, and typical cases of administrative reconsideration are regularly published to the public.

4.2 Strengthen the review mechanism of administrative reconsideration

In administrative litigation, if the party involved falls into the predicament of "officials handling but civilians unable to," due to the relative strength of administrative agencies, courts find it difficult to fully arbitrate and provide substantive solutions for the parties. Administrative reconsideration, based on the review of lower-level relationships, is more authoritative. Some scholars argue that the model of reviewing administrative agreements should primarily be a subjective review model. Given that administrative agreements possess characteristics of administrative consensus and that administrative reconsideration aims to resolve disputes substantively, a new system of review standards can be established, covering legality reviews, reasonableness reviews, and substantive reviews beyond mere legal claims, thereby establishing a system for reviewing the validity and actions of administrative agreements[7].

This review model fully demonstrates the significant advantages of administrative reconsideration in handling disputes over administrative agreements. Compared to administrative litigation, it can more effectively address the issue of unclear claims from administrative counterparts, providing a more practical approach to resolving disputes over administrative agreements. The land expropriation compensation agreement discussed in this article is one of six typical cases of administrative agreements published by the Supreme People's Court in 2021, all of which fall into the category of complex legal relationships with high social risks. In actual case

handling, these agreements must genuinely respond to the true demands of the parties involved, preventing superficial dispute resolution and achieving the goal of truly resolving administrative controversies. There is an urgent need to establish more operational substantive review standards for administrative reconsideration procedures to enhance their effectiveness in handling such complex disputes[8].

4.3 Improve the linkage mechanism between reconsideration and litigation channels

In the diversified dispute resolution mechanism, litigation and non-litigation dispute resolution methods should complement each other and progress step by step. The two forms an effective division of labor and achieve institutional coordination to form institutional synergy.

Information sharing is the basis of connecting reconsideration and administrative litigation. In order to ensure that both sides can timely and accurately understand the progress of the case, avoid duplication of labor and waste of resources, it is necessary to establish an effective information sharing mechanism: clarify the content and scope of information sharing, establish safeguard measures for information sharing.

Case diversion is crucial for bridging the channels of administrative reconsideration and administrative litigation. By establishing clear standards for case diversion, parties can be reasonably guided to choose appropriate dispute resolution methods, thereby enhancing the efficiency and effectiveness of dispute resolution: setting specific standards for case diversion, promoting awareness and trust in administrative reconsideration through publicity and education, and establishing a feedback mechanism for case diversion.

4.4 Encourage the intervention of legal aid

Encourage local legal aid centers to form teams of experienced lawyers who handle administrative cases. Administrative laws and regulations are highly specialized, and for those being relocated without professional backgrounds, correctly interpreting them can be challenging. As third-party intermediaries, legal aid lawyers will help citizens better understand laws and regulations, protecting their legitimate rights and interests. Legal aid teams should promptly intervene during the filing stage of administrative reconsideration to provide legal assistance to eligible applicants. Legal aid lawyers will assist parties in filing applications for administrative reconsideration, offer legal opinions and suggestions, participate in the review process, and actively engage with relevant administrative departments to facilitate the proper resolution of cases.

5. Conclusions

Improving the administrative reconsideration system is a long-term and complex task, as well as an urgent requirement to address the current complex situation of land expropriation and protect the legitimate rights and interests of parties involved. This requires efforts from multiple dimensions, aiming to build a more efficient and fair dispute resolution system. By doing so, administrative reconsideration can better play its primary role in resolving administrative disputes, safeguarding citizens' legitimate rights and interests. It is hoped that in the future, administrative reconsideration will play a greater role in resolving disputes over land expropriation compensation agreements, promoting orderly and law-based land expropriation work.

6. Explanatory note

①Article 11 of the Administrative Review Law of the People's Republic of China

②Article 71 of the Administrative Review Law of the People's Republic of China

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