

Enhancing compensation, support, and resettlement provisions in the Draft Law on Land amendments

Hoàn thiện chế định bồi thường, hỗ trợ, tái định cư khi Nhà nước thu hồi đất trong Dự thảo Luật Đất đai sửa đổi

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Abstract: The provisions related to compensation, support, and resettlement when the state reclaims land in the draft amended Law on Land have been comprehensively revised, updated, and made more suitable. However, after nearly 10 years of implementing the 2013 Law on Land, the provisions related to this issue have revealed many shortcomings, resulting in prolonged and contentious land disputes between land users and state authorities, causing significant concerns. This article provides insights from practical perspectives, ensuring a fair balance between public interests (represented by the state) and private interests (land users). It offers recommendations to improve the draft further amended Law on Land - a legislation with far-reaching societal implications.

Keywords: *Amended Law on Land; land compensation; land reclamation; resettlement*

Tóm tắt: Bồi thường, hỗ trợ, tái định cư khi Nhà nước thu hồi đất được Dự thảo Luật Đất đai sửa đổi điều chỉnh, bổ sung lần thứ 4 đã khá toàn diện, cập nhật và phù hợp. Tuy nhiên, sau gần 10 năm thi hành Luật Đất đai 2013, những quy định liên quan đến vấn đề này đã bộc lộ nhiều bất cập, những tranh chấp đất đai giữa người sử dụng đất với cơ quan Nhà nước kéo dài, âm ỉ, gây nhiều bức xúc. Nghiên cứu dưới góc nhìn từ thực tiễn trên cơ sở đảm bảo tương xứng giữa lợi ích công (mà đại diện là Nhà nước) và lợi ích tư (người sử dụng đất), bài viết đưa ra một số góp ý nhằm hoàn thiện Dự thảo Luật đất đai sửa đổi – một đạo luật có giá trị tác động đến toàn xã hội.

Từ khóa: *Bồi thường về đất; luật đất đai sửa đổi; tái định cư; thu hồi đất*

1. Overview and Concepts

Compensation, support, and resettlement when the State reclaims land have been contentious topics discussing amending the Law on Land [1]. This is a central issue of concern for land users, especially when the land being reclaimed is their livelihood. In the draft law, the provisions related to compensation, support, and resettlement when the State reclaims land have been realistically amended and updated to alleviate the concerns of

the population regarding compensation, support, and resettlement issues, as per the current Law on Land's regulations [2], which have been in operation for nearly a decade.

- Regarding the concept of "compensation": In Article 3, Clause 4 of the draft law, the term is defined as follows: "Compensation for land use rights when the State reclaims land (hereinafter referred to as land compensation) means the state reimbursing land users with money,

land, or other corresponding material benefits equal to the value of land use rights for the reclaimed land area as stipulated by this law. Meanwhile, the current law stipulates in Article 3, Clause 12 that land compensation is the state's return of the value of land use rights for the reclaimed land area to land users.

Therefore, compared to the current Law on Land, the concept of land compensation has been clarified regarding its scope and is reflected in the following two aspects: (i) The State returning the "value of land use rights" to land users is understood to be specific compensation in the form of money, land, or other corresponding material benefits. The current law has set out the compensation principle in Article 74 (2) but does not mention "other corresponding material benefits." It is a noteworthy and updated provision suitable in the context where land is a non-renewable asset that has been shrinking due to population growth and increasing human needs. Meanwhile, compensating with "money" is not always an adequate solution. The experience of other countries shows that compensating the entire amount in cash is not a good practice because, in most cases, the recipients lack the habit and experience of managing such a large sum of money. They often spend it on unnecessary or dangerous things, quickly fall into hardship due to running out of money, losing their assets and livelihoods, becoming a burden, or even a social problem [3]. (ii) It must be in accordance with the provisions of this law (meaning the method of

determining the compensation value is stipulated in the law). Furthermore, in a broader sense, the phrase "in accordance with the provisions of this Law" implies that not all land users whose land is reclaimed by the state or entities currently using the land subject to reclamation are automatically entitled to compensation. For instance, there are cases not eligible for compensation as stipulated in Article 82 of the current Law: land reclaimed for national defense and security purposes; socio-economic development for the national and public interest (but the cost of investment in the remaining land is compensated); land assigned by the state for management; land reclaimed for violations of land laws or reclaimed due to the termination of land use in accordance with the law, voluntary land return, or situations that pose a threat to human life; Cases that do not meet the conditions for granting land use rights certificates, ownership of residential houses, and other assets attached to land as stipulated by the law.

- Regarding the concept of "Support," Article 25 of Article 3 of the Draft Law stipulates: Support when the state reclaims land is a state policy aimed at assisting individuals whose land is reclaimed to stabilize their lives, production, and development beyond the compensation provided for by this law. Meanwhile, Article 3 (14) of the current law stipulates: Support when the state reclaims land is the state's assistance to individuals whose land is reclaimed to stabilize their lives, production, and development.

Thus, in the Draft Law, support when the state reclaims land is explicitly defined as "beyond compensation." This means that compensation and support are two different categories.

- Regarding the concept of "Resettlement": No specific definition of resettlement is provided. However, according to the guidance in Article 79 of the current Law on Land and subsequent amendments and supplements [5], it is clear that resettlement is a concept applied in the context of land compensation when the state reclaims land. It applies when land reclamation leads to households or individuals losing their residential land or homes in the area of a commune, ward, or town where the reclaimed land is located. Resettlement is also mentioned in cases where land users whose land is reclaimed are entitled to resettlement when they do not meet the conditions for compensation.

Article 94 (2) of the Draft Law specifies "resettlement" indirectly through the conditions and forms of resettlement arrangements. It states that households or individuals whose land is closely associated with their residence must relocate if they are not eligible for compensation for residential land. If no other housing is available, the state will arrange resettlement through the sale, lease, rent-to-own, or land allocation with land use fees waived or reduced or home purchase fees according to legal regulations.

2. Specific Provisions on Compensation, Support, and Resettlement When the State Reclaims Land

The provisions for compensation, support, and resettlement when the State reclaims land are stipulated in Chapter 7 of the Draft Law (from Article 89 to Article 110), which is divided into four sections: Section 1: Compensation for land and remaining investment costs in the land; Section 2: Compensation for property damage, production, and business losses; Section 3: Support; Section 4: Resettlement. Compared to the current law, these provisions were originally included in the content related to land recovery, land acquisition, compensation, support, and resettlement in Chapter 6.

Section 1: Compensation for land and remaining investment costs in the land: It is evident that while these provisions are more detailed and specific in the Draft Law compared to the current law, the Draft Law is cautious in delegating certain critical matters to the Government for detailed regulations. This caution is understandable because these regulations involve complex and nuanced aspects, and the Draft Law alone cannot address all the details comprehensively. Furthermore, the provision "the Government shall provide detailed regulations" is a legislative technique, despite certain debates, that still leaves room for flexibility and adaptation to future arising relationships that cannot be fully predicted at the current moment. In addition, some provisions in the Draft Law have removed the "Government shall provide detailed regulations" clause, as seen in Article 94: Compensation for land when the state

reclaims non-agricultural land and Article 95: Compensation for land and remaining investment costs in non-residential land when the State reclaims land (as the Draft Law has defined the priority principle in Article 89(3): compensating land for the designated land use purpose of the reclaimed land, or in cash, or with land designated for other purposes if the landowner whose land is reclaimed has the need and the locality has available land reserves).

Regarding the provisions in Article 91 of the Draft Law concerning compensation for remaining investment costs in land when the state reclaims land for national defense, security, and economic and social development for national and public interests, the Draft Law has introduced a new and noteworthy element by specifying the determination of the investment costs related to the remaining land. This is a significant and appropriate addition to the law.

Section 2: Compensation for property damage, production, and business losses: The Draft Law demonstrates a clear improvement by explicitly introducing the first principle in Article 98(1) regarding the compensation principle for property damage, cessation of production, and business activities when the state reclaims land. It states that when the state reclaims land and causes damage to legally attached property, compensation shall be provided.

It is worth noting that for provisions related to compensation for damage to houses and construction works on the land when the state reclaims land in

Article 99, as well as compensation for crops and livestock in Article 100, the Draft Law has introduced a provision delegating the provincial People's Committees to issue a price list for actual compensation calculation when land is reclaimed. Delegating this authority to local authorities in this context is necessary, as it not only enhances their management responsibilities but also ensures the accuracy of determining the actual compensation prices based on verified grounds.

Section 3: Support: The Draft Law has introduced several progressive and policy-aligned provisions, reflecting international commitments. In principle, the Draft Law has added the principle of "creating conditions for landowners whose land is reclaimed to have stable employment and income to ensure their livelihoods," in addition to the principles of "objectivity, fairness, timeliness, transparency, and compliance with the law." Furthermore, the Draft Law has added support for "children who are not yet of working age, persons with disabilities, and elderly persons as provided by law" and entrusted provincial People's Committees with establishing support funds for such cases.

Section 4: Resettlement. The specific conditions for establishing resettlement areas and the principles for selecting resettlement locations are regulated in Article 106 of the Draft Law. As a result, the provision "Detailed regulations by the Government" as stipulated in the existing law has been removed. The Draft Law has also

reasonably amended and supplemented cases as follows: In cases where landowners whose land is reclaimed are allocated resettlement but the compensation for residential land (excluding support funds) is insufficient to purchase a minimum resettlement unit, the state shall provide financial support to cover the cost of acquiring a minimum resettlement unit.

In cases where owners of apartment buildings subject to land reclamation are allocated resettlement but the compensation for the apartment unit is insufficient to purchase a minimum resettlement unit, the state shall provide financial support to cover the cost of acquiring a minimum resettlement unit. Section 4 of the Draft Law also includes Article 109 concerning the payment of compensation, support, and resettlement funds, and Article 110 regarding the separation of compensation, support, and resettlement content into separate sub-projects and the responsibilities for land reclamation, compensation, support, and resettlement for investment projects. However, from a personal perspective, these two articles fall under the category of general management and technical issues related to the entire compensation, support, and resettlement process. Therefore, separating them into distinct sections rather than integrating them into the resettlement section is advisable.

3. Fundamental Principles for Compensation, Support, and Resettlement Regulations When the State Reclaims Land - Some Practical Limitations and Recommendations

3.1. Theoretical Foundation

The theory of proportionality originates from efforts to establish the philosophical foundation of the legal system, serving as a tool to mitigate and resolve conflicts of interest. This theory has ancient roots and has been continuously refined throughout the development of democratic societies [6]. According to this theory, it requires that (i) the objectives pursued by the measures are reasonable when implemented; (ii) the restrictive measures are suitable to achieve the stated objectives; (iii) the restrictive measures are necessary to achieve the objectives, and no less burdensome alternatives are available to reach those objectives. In the context of land reclamation and compensation issues, the relevance of this theory becomes evident, and its application is imperative.

Author Nguyễn Ngọc Điện also points out that obstacles in land compensation during reclamation are frequently observed across the country. As a result, many construction projects serving public interests or contributing to socio-economic development are delayed. In various instances, social conflicts arise, leading to disorder and unrest among the people. In cases where issues with land compensation during reclamation exist, one of the main reasons cited is that landowners whose land is reclaimed do not accept a land transfer in exchange for compensation, deeming it inadequate and, more importantly, significantly below the actual value of the reclaimed land, thus

failing to uphold the principle of proportionality [7].

3.2. Practical Foundation, Some Limitations, and Recommendations

To ensure the enforcement of regulations concerning compensation, support, and resettlement when the state reclaims the land, it is crucial to uphold the principle of proportionality, which aims to balance the interests of the state and the individuals whose land is being reclaimed.

The elements ensuring the principle of proportionality and balancing the interests of the state and individuals whose land is being reclaimed may include:

Firstly, the issue of land valuation and valuation methods: Article 153 of the Draft Law has supplemented the principle that land valuation must be "in line with the prevailing land prices on the land use rights market under normal conditions"; "Comply with the correct methods, procedures, and land valuation procedures as prescribed by law"; "Ensure the professional, honest, objective independence of the results of land valuation between the valuation authority, the appraisal authority, and the decision-making authority." In this regard, the Draft Law also defines that "The prevailing land prices on the market under normal conditions stipulated in Clause c of this Article are determined by the average actual transaction prices of the land of the same land use purpose transferred on the market with the highest frequency through statistics in a specific area and within a certain period, not influenced

by factors causing sudden increases or decreases in prices, transactions related by blood or other preferential conditions." However, in practice, we encounter the challenge that there is no complete legal framework for citizens to declare the transfer prices of land use rights truthfully.

The Department of Natural Resources and Environment is the agency responsible for assisting the Provincial People's Committee in constructing land price lists, contracting an organization with the function of advising on land valuation to construct land price lists, submitting them to the Council for valuation of land price lists; based on the results of the Council for valuation of land price lists, the Provincial People's Committee submits them to the Provincial People's Council for approval before the Provincial People's Committee decides to issue them. Indirect land prices affect the calculation of compensation when the state reclaims land. When determining land prices, we can observe the significant role of organizations with valuation advisory functions. The Draft Law has determined that the Government shall regulate the conditions for the operation of land valuation advisory organizations, the land valuation advisory profession.

Furthermore, regarding land valuation, the current regulations in the Draft Law are still administrative. This can be justified by the fact that land is considered the collective ownership of the people, managed uniformly by the state. Land users whose land is reclaimed have only the right to use it

and not the full ownership rights stipulated by civil law. However, we can expect specific land valuation methods with a market-oriented approach as detailed by the Government (Clause 4 of Article 155), as well as regulations on transparent calculation methods and reasonable responsiveness to the requirement for explanations, especially when exercising the rights of landowners whose land is being reclaimed.

Regarding the Valuation Council's role, according to Article 156 of the Draft Law, the Council is responsible for the valuation results according to the law's provisions. While the results of the Valuation Council's land valuation serve as the basis for the competent authority to decide on the land price list and specific land prices, it is necessary to clarify the extent of responsibility of the Valuation Council for the results of their valuation. Is there any liability, and if so, what are the limitations?

Secondly, the reclaimed land must be used for its intended purpose. This practical issue arises after land reclamation, where the state reclaims land for national defense, security, or socio-economic development to benefit the nation and the public. However, it is later allocated to economic organizations for profit-making purposes, leading to dissatisfaction due to significant discrepancies in land prices. This can result in public grievances, prolonged complaints, and legal disputes. Therefore, the Draft Law needs to explore and supplement the procedures for handling cases where land is reclaimed but not used for its

original purpose and instead used for different purposes. How should issues related to explanations, compensation, and support be resolved for individuals whose land is reclaimed? It is not feasible to push every post-reclamation issue and dispute of each individual or household to the courts for resolution.

Thirdly, ensuring the right to complain and resolving disputes fairly and on time. This is a challenging problem when land disputes and complaints have persisted for many years and are difficult to resolve definitively. Perhaps the most feasible solution is to improve the overall legal framework for land in general and compensation, support, and resettlement regulations specifically to make them coherent and transparent from the outset.

4. Conclusion

From the practical application of the regulations on compensation, support, and resettlement when the state reclaims land in the 2013 Law on Land, it is evident that several aspects need careful consideration and appropriate regulations, including land price determination and valuation methods; ensuring that reclaimed land serves its intended purpose; and ensuring timely and equitable mechanisms for grievance redress and dispute resolution. From the perspective of state policy and legal management, any actions that prioritize and balance public interests with private interests will contribute to the improvement of these regulations.

References

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