

Empirical Analysis on Transfer and Limitation of Land Contractual Management Right

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Abstract Existing laws have three limitations on transfer of land contractual management right. The survey of 506 farmer households in Zhejiang, Jiangxi and Guangxi provinces indicates that most farmers have the consistent knowledge of limitation on "transfer being approved by the party giving out the contract in advance" with legislative requirements, but it is not effectively implemented in actual operation. As to limitation on transferee, no matter in cognition of farmers, or in real transfer process, the transferee is not totally limited to farmers engaged in agricultural production and management. For the constraint that the transferor should have stable non-agricultural occupation or stable income source, most farmers agree, but more than half of the farmers have not confirmed the transfer action in practice.

Key words Farmland contractual management right, Transfer, Limitation

1 Introduction

Article 41 of *Law of the Peoples Republic of China on Land Contract in Rural Areas* stipulates that "Where a contractor has a stable non-agricultural occupation or a stable source of income, he may, with the consent of the party giving out the contract, transfer the whole or part of his right of land contractual management to another farmer household engaged in agricultural production and management, and this farmer household shall establish a new contractual relationship with the party giving out the contract, thereupon the contractual relationship on this land between the former contractor and the party giving out the contract is terminated." From the perspective of right, the transfer of land contractual management right is to transfer the whole of part of land contractual management right legally obtained to the transferee (new contractor). As a result, the owner of land contractual management right is changed. Laws have imposed three limitations on transfer of land contractual management right. (1) The transferor (original owner of land contractual management right) should have stable non-agricultural occupation or stable income source. (2) The transfer shall be approved by the party giving out the contract. (3) The transferee is limited to other farmer households engaged in agricultural production and management. If these limitations are reasonable?

People who agree with these limitations believe that these limitations are intended to prevent transferor from having the difficulty in living after transferring land^[1], because land contractual management right is the most fundamental living guarantee of farmers. If original contractor has no stable non-agricultural occupation or stable income source, the transfer will lead to social chaos. Thus, it is essential to obtain consent of the party giving out

the contract before transferring land contractual management right. Whether the transferee satisfies subject qualification specified by laws and has the capacity of contractual management directly concerns the performance of contractual obligation. Therefore, transferor should make careful examination. Otherwise, it may infringe upon lawful rights and interests of the party giving out the contract^[2].

People who object to these limitations contend that limiting transfer of land contractual management right is tantamount to binding owners of land contractual management right to agricultural land. Accordingly, it fails to ensure free job selection and occupation change of owners of land contractual management right^[3]. (1) For the nonce, functions of land contractual system have changed from safeguarding survival and solving food and clothing at initial stage to increasing yield and income and promoting economic benefits of land. At this background, it is not proper to overstate survival guarantee functions. (2) It is difficult to determine people who have stable non-agricultural occupation or stable income source, so it lacks operability. (3) As a type of usufructuary right, land contractual management right is independent of the ownership. Thus, to stress "with the consent of the party giving out the contract" is contrary to legal principle. In fact, it leaves much space for allocation of land resource by administrative or quasi-administrative means, but limits free transfer of land contractual management right. (4) No matter industrial and commercial enterprises or urban residents and foreign merchants, as long as they are engaged in agricultural production and subject to control of agricultural land use, land contractual management right also can be transferred to them. Therefore, limiting the scope of transferee will lead to closeness of agricultural land circulation, not be favorable for formation of market price and circulation market of land contractual management right, and not favorable for optimum allocation of land resource.

On the basis of 506 farmer household survey samples in Zhejiang, Jiangxi and Guangxi provinces, I introduced current situations of transfer of land contractual management right, farmers' at-

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titude and willingness. Finally, I came up with some policy recommendations.

2 Survey method and data source

On the basis of considering geographical location, socio-economic development, human and land factor, location condition, and resource endowment factors, our research team conducted questionnaire survey in Xinchang County and Shengzhou City of Zhejiang Province in the eastern region, Xingzi County and Shangrao County of Jiangxi Province in the middle region, Teng County and Lüzhu City of Guangxi Province in the western region.

During summer vacation of 2010, our research team and local university students went to the above 6 counties (cities). With the help of township government, we randomly selected about 50 farmer households, and surveyed them face by face. Finally, we received 576 copies of questionnaire. In the process of data cleansing, review, coding and input, 506 valid copies of questionnaire were confirmed.

3 Empirical analysis of transfer of land contractual management right and its limitations

In these 506 valid copies of questionnaire, 90.7% farmer households haven't done transfer action, 3.2% have once transferred in agricultural land, 5.9% have transferred out agricultural land, and 1 household have both transfer-in and transfer-out actions. There is a huge difference in agricultural land transfer of 3 provinces. Among 177 valid copies of Jiangxi Province, only 1 farmer household has agricultural land transfer-out action; among 167 copies of Zhejiang Province, 17.8% farmer households have transfer action; among 162 valid copies of Guangxi Province, -11.1% households have transfer action, as shown in Table 1.

Table 1 Survey on transfer of agricultural land

Province		Have you transferred in or out agricultural land?				Total
		Yes	No	Both	Neither	
Jiangxi	Frequency	0	1	0	176	177
	%	0	0.6	0	99.4	100
Zhejiang	Frequency	11	17	0	139	167
	%	6.6	10.2	0	83.2	100
Guangxi	Frequency	5	12	1	144	162
	%	3.1	7.4	0.6	88.9	100
Total	Frequency	16	30	1	459	506
	%	3.2	5.9	0.2	90.7	100

3.1 Willingness and attitude of farmer households without land transfer action

According to the first limitation of "with consent of the party giving out the contract", we set the question "Is it necessary to get approval of village committee (village collective or the party giving out the contract) before transferring agricultural land?". Statistical analysis (Table 2) shows that among 459 farmer households who have not conducted land transfer, 29.4% believe that it is not necessary, and 70.6% think it is necessary to get approval of village collective. Among 144 farmer households who have not conducted land transfer in Guangxi Prov-

ince, as high as 35.4% households say it is not necessary to get approval of village collective. Therefore, it proves that the understanding of most farmers about the requirement of "with consent of the party giving out the contract" is basically consistent with legislative regulation.

Table 2 Attitude of farmers who have no land transfer action to the limitation of "with consent of the party giving out the contract"

Province		Is it necessary to get approval of village committee (village collective or the party giving out the contract) before transferring agricultural land?		Total
		Not necessary	Necessary	
Jiangxi	Frequency	45	131	176
	%	25.6	74.4	100
Zhejiang	Frequency	39	100	139
	%	28.1	71.9	100
Guangxi	Frequency	51	93	144
	%	35.4	64.6	100
Total	Frequency	135	324	459
	%	29.4	70.6	100

According to the limitation of "transferee being other farmer households engaged in agricultural production and management", we set the question "when transferring agricultural land, the transferee can be (multiple choice)?" . There are options of "local village farmer households engaged in agricultural production", "other village farmer households engaged in agricultural production", "urban residents" and "industrial and commercial enterprises". Statistical analysis (Table 3) indicates that among 459 farmer households who have not conducted land transfer, 87% farmer households choose "local village farmer households engaged in agricultural production", 46% select "other village farmer households engaged in agricultural production", 33% and 39% select "urban residents" and "industrial and commercial enterprises" separately. Jiangxi Province has the highest proportion of households selecting "local village farmer households engaged in agricultural production", up to 95%; Guangxi Province has the highest proportion of households selecting "urban residents" and "industrial and commercial enterprises", up to 56% and 60% respectively. It seems that although transferees are legally limited to farmers engaged in agricultural production, a lot of farmers do not fully realize necessity and importance of such limitation.

According to limitation that "transferor (original owner of land contractual management right) should have stable non-agricultural occupation or stable income source", we set the question "Is it necessary to confirm that transferor has stable non-agricultural occupation or stable income source?". Statistical analysis (Table 4) indicates that among 459 farmer households who have not conducted land transfer, 72% think it is necessary, and 28% think it is not necessary. This shows that most farmers are still very cautious of completely giving up land contractual management right, and the stability of income source influences farmers' decision-making of land transfer.

Table 3 Attitude of farmer households without land transfer action towards transferee subject

		When transferring agricultural land, the transferee can be (multiple choice)?				
Province		Local village farmer households engaged in agricultural production	Other village farmer households engaged in agricultural production	Urban residents	Industrial and commercial enterprises	Total
Jiangxi	Frequency	162	67	46	50	171
	%	95	39	27	29	100
Zhejiang	Frequency	116	51	24	42	136
	%	85	38	18	31	100
Guangxi	Frequency	110	87	78	83	139
	%	79	63	56	60	100
Total	Frequency	388	205	148	175	446
	%	87	46	33	39	100

Table 4 Attitude of farmer households without land transfer action towards limitation of transferor's income

Province		Is it necessary to confirm that transferor has stable non-agricultural occupation or stable income source?		Total
		Not necessary	Necessary	
		Frequency	53	
%	30.1	69.9	100	
Zhejiang	Frequency	28	111	139
	%	20.1	79.9	100
Guangxi	Frequency	49	95	144
	%	34.0	66.0	100
Total	Frequency	130	329	459
	%	28.3	71.7	100

3.2 Actual situations of limitation on agricultural land transfer of farmers with land transfer action

As for farmer households with land transfer action, we firstly found out if they obtained consent of village committee (village collective or the party giving out the contract). Statistical analysis (Table 5) shows that among 47 farmer households who have land transfer action, 51% have obtained the approval and 49% didn't gain the approval of village committee. Thus, although it is legally required to gain consent of the party giving out the contract, near half farmers didn't perform this procedure in the real operation, and the reason is to be further surveyed.

Table 5 Whether approval is obtained before transferring agricultural land or not

Province		Have you obtained the approval of village committee (village collective or the party giving out the contract) before transferring agricultural land?		Total
		No	Yes	
		Frequency	1	
%	100	0	100	
Zhejiang	Frequency	13	15	28
	%	46.4	53.6	100
Guangxi	Frequency	10	8	18
	%	55.6	44.4	100
Total	Frequency	24	23	47
	%	51.1	48.9	100

As to whether all transferees are farmer households engaged in agricultural production, our survey results indicate that among 47 farmer households who have land transfer action, 43 households

select "local village farmer households engaged in agricultural production", 4 households select "other village farmer households engaged in agricultural production", no household choose "urban residents" and "industrial and commercial enterprises". It proves that all transferees of agricultural land transfer are farmer households engaged in agricultural production, but they are not totally limited to local villages. As for the question that "is it necessary to confirm that transferor has stable non-agricultural occupation or stable income source", among 47 farmer households who have land transfer action, 56.2% farmer households think it is not necessary, and 43.8% think it is necessary. It shows that more than half transfer action hasn't confirmed "if the transferor has stable income source" in actual practice.

4 Conclusions and policy recommendations

4.1 Conclusions Existing laws clearly stated that contractual management right of agricultural land can be transferred. Nevertheless, agricultural land transfer means total abandoning their contractual land, laws set forth three limitations to transfer of agricultural land. Most farmers have the consistent knowledge of limitation on "transfer being approved by the party giving out the contract in advance" with legislative requirements, but it is not effectively implemented in actual operation. As to limitation on transferee, no matter in cognition of farmers, or in real transfer process, the transferee is not totally limited to farmers engaged in agricultural production and management. For the constraint that the transferor should have stable non-agricultural occupation or stable income source, most farmers agree, but more than half farmers have not confirmed the transfer action in practice.

4.2 Policy recommendations (1) Allowing transfer of land contractual management right is the necessity of realizing real right and inner necessity of large-scale land operation. However, before perfect establishment of rural social security system, it is necessary to impose certain limitations on transfer of land contractual management right. Yet, such limitation should be constantly changed and should be periodic and show regional difference. For regions with low agricultural land security function, it should allow local legislation to relax limitations in accordance with actual situation, so as to provide farmers with more freedom of independent

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decision-making; for regions with effective agricultural land security function, it should execute the legal provisions in principle. (2) It is necessary to make clear legislative definition of how the transferor exercises the consent right. The consent right of the transferor is a type of right to know or right to supervise, rather than power to make decision. Thus, in exercising the consent right, the party giving out the contract should firstly respect willingness of the owner of land contractual management right. The definition of consent right should follow the principle of allowing transfer, instead of restricting transfer^[4]. Except following cases, it should approve the contractor' requirement for transferring his land contractual management right: (i) the contractor does not have stable non-agricultural occupation or stable income source, and transfer of agricultural land will lead to difficulty in living; (ii) if the contract of transfer is signed by force; (iii)

the purpose of agricultural land use is changed; (iv) the transferee does not have agricultural production capacity; (v) the period of transfer exceeds remaining term of land contractual period.

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