

Research on Public Interest in House Demolition

Zhecheng Jiang

Jiangsu University, Zhenjiang, China

Abstract: Many laws and regulations in China have stipulated that housing demolition and land expropriation can be carried out based on the needs of public interests, but there is no clear explanation of the meaning of public interest. Demolition occurs with the development of the city, and many demolition behaviors need specific guidance. From the perspective of historical evolution, public interest and national construction are inseparable. From the perspective of text, public interest can be divided into public interest and interest. The judgment of public interest also needs to be supervised and restricted by other organs when it is handed over to administrative organs. By dividing the construction purpose into different categories, it is convenient to define the public interest with different strictness and judge the public interest with certain procedural principles with the hope to achieve the effect of improving the evaluation mode of public interest.

Keywords: Administrative expropriation; House demolition; Public interest

1. Introduction

Firstly, Article 2 of the Regulations on the Acquisition and Compensation of State-owned Land and Houses stipulates that the only condition for house demolition is "public interest", and Article 8 of the Law attempts to explain by way of enumeration that "public interest" is "for the purpose of safeguarding national security and promoting national economic and social development". Although we can see a certain standard of "public interest" in housing demolition, Article 8 is not very specific. For example, the traffic infrastructure construction needs specified in the second paragraph. In China, there are national roads, provincial roads, county roads and township roads, and some local governments have also built expressways. And different roads have different levels of government participation. The sixth paragraph also contains a comprehensive clause "the need of other public interests". Moreover, the Regulations on the Collection and Compensation of State-owned Land and Housing does not clearly define the extension and connotation of public interest in housing demolition. This will lead to difficulties in the practical application of the law, which cannot be applied without interpretation. Compared with procedural issues, the boundary of public interest is not so clear. In addition, the judgment standard of public interest is also vague. It left room for the exercise of national expropriation power to be "capricious".

2. The Historical Evolution of Public Interest in Housing Expropriation

2.1 Before the 21st Century

In 1953, the State Council issued the Measures for Land Requisition for National Construction. It can be seen from the title that the reason for land requisition is to be used for "national construction". Article 1 also states that land requisition is "to meet the needs of national construction". Article 2 lists the construction of a series of projects such as "transportation, water conservancy and national defense", Land can be expropriated for a series of construction such as "culture, education, health and municipal administration". The term "construction" dominates. At this time, the country had just emerged from the war, and a hundred pieces of waste were waiting to be revived. Therefore, "national construction" became the most concerned interests of the public at this time. At the same time, Article 13 of the 1954 Constitution stipulates that land can be expropriated for the "public interest". It can be seen that "public interest" here is about equal to "national construction"^[1]. Later, with the development of the times, the connotation of "national construction" was constantly expanded. "State owned enterprise construction" became the content of "national construction" in 1955. In 1959, "national construction" was replaced by "capital construction", but "construction" is still closely related to "public interest".

After the Reform and Opening-up, the "public interest" was reaffirmed in Articles 10 and 13 of the 1982 Constitution. The Land Administration Law of 1986 listed "public interests" as "economic, cultural,

national defense construction and the establishment of social public undertakings" in the way of enumeration. It can be seen from the above context that "public interest" has always been inseparable from public "construction", that is, the purpose of demolition of real estate construction must be highly constructive, whether for economic development or national defense development, it must be for public construction, not for private, or not just for private. In the new era, there is a new interpretation of public interest in the Constitution and the Civil Code.

2.2 "Public Interest" in the Constitution

Article 10, paragraph 3, and Article 13, paragraph 3 of the Constitution stipulate that the precondition for the state to expropriate land and houses is "for the needs of public interests". Like Article 234 of the Civil Code, the Constitution does not specify the scope of public interests, which is highly uncertain. From the perspective of legislative science, as the fundamental law of the country, it is not necessary to specify the category of "public interest" in the Constitution. What content does public interest contain still need to be found from the laws outside the Constitution, even from the real cases of administrative expropriation, and from the judgments of the people's courts. Although there is no effective content of "public interest" in the Constitution, its position in the articles shows that China pays attention to the rational development and utilization of land when fully respecting and protecting private rights. Because it is also the fifth paragraph of Article 10 of the Constitution, which stipulates that "land must be used rationally". This also brings a possible standard to judge the "public interest", that is, if the land is not reasonably and fully used after house demolition and land expropriation, it is not an administrative expropriation "based on the public interest".

2.3 "Public interest" in Early Recovery

Article 358 of the Civil Code refers to the "early recovery of the right to use construction land and its compensation". Because there is no problem of private ownership of the land in China, it is the recovery of the right to use construction land, but the ownership of the houses on the land may belong to individuals. Due to the influence of real estate integration, the houses involved involve demolition and expropriation. As it is collected in advance, the "public interest" should be interpreted more strictly, which should be narrower than the "public interest" in Article 243. In general, Article 358 of the Civil Code will undoubtedly bring significant impact on the private rights of the parties and affect the reasonable trust interests of the parties because it is recovered in advance before the expiration of the service life. Therefore, it is difficult to be the cause of demolition only for commercial reasons. In terms of economy, it may be unnecessary to demolish a commercial center and then build another one, because the latter cannot bring more welfare growth to the society than the former^[2]. On the contrary, it will not only damage the interests of the original construction land user, but also consume social resources in the demolition process. Secondly, because the right has been determined, simply because of the ordinary public interest and then the government exercises the right to levy will undoubtedly damage the legitimate property rights of individuals. For example, just because it is necessary to build a parking lot, based on the consideration of "public interest", the intention to reclaim the construction land use right of a building in advance is likely to be an unnecessary abuse of public power. Because the public interest here is not big enough to shake citizens' personal property rights. If it is to meet the requirements of national defense or extremely important public interests, it is possible to apply it.

Therefore, although it is also the expropriation and demolition of houses, the "public interest" that needs to be recovered in advance in Article 358 of the Civil Code and the "public interest" in Article 243 of the Civil Code are different because of different specific circumstances. First, the former excludes commercial interests and has a smaller scope, while the latter may coexist with commercial interests. Second, the former involves more "public interests" than the latter.

3. Scope of Public and Interest

3.1 From the Scope of "Public" of Public Interest

First of all, the "public interest" should be the interest of the unspecified majority of people in the region, but it brings about a problem: how much scope and breadth of the regional circle should be set. The completion of the Three Gorges Dam not only brings abundant power to Chongqing, but also greatly alleviates the problem of power consumption in the whole country, especially in the central and eastern regions. At this time, the public interest is about equal to the interests of the national electricity users.

Therefore, the scope of this area can be determined according to the expected future impact of different construction projects. For example, when building military facilities to ensure national security, public means all citizens. Furthermore, to what extent "interests" should be considered. If only the traffic engineering is constructed, it is bound to bring travel convenience to all those who are entitled with opportunity to apply the trunk road. However, at this time, all people should not be evaluated as the beneficiaries, but the public scope should be determined according to the people who can be radiated by different levels of the road.

Secondly, the public should consider whether all or most of the people in the above circle. Since the general understanding of "social public" in the context is that there is no specific majority, in principle, the interests of the majority should be considered. However, when considering the majority, "public" should not exclude the relative minority groups, and sometimes the interests of minorities fall within the "social welfare" standard specified in paragraph 3 of Article 8, such as the construction of facilities for the disabled. If all blind roads are replaced with ordinary roads, the construction efficiency will be improved during construction. The space reserved for disabled facilities can also be provided for other equipment. However, it is difficult to say "public" without considering the special interests of minorities.

3.2 From the "Interest" Scope of Public Interest

There are always some shortcomings in considering "interests" from a single perspective. First of all, there are some problems in evaluating the "public interest" with the overall social welfare level. Although the increase of the overall welfare index can be used as an aspect of evaluating whether the public interest has been increased, it is biased to use it only as a single evaluation index. Because the economic benefits brought by the overall appreciation may not be enjoyed by all citizens, or even residents in a certain region. For the relocated party, they are likely to express their interest demands in various ways, and they are not passive recipients of the rules formulated by the government. If many people make the transfer of rights, and the results they get do not make their lives better, but at the same time let a small number of people grab more social wealth because of the sacrifice of most people, the dissatisfaction of the former is bound to increase, and the social stability and balance may be broken due to an event.

Secondly, it is unscientific to completely regard commercial interests as the premise of public interest transformation. Especially when economic development is recognized as the scope of public interests, we should be particularly cautious. The free development of the municipal economy will not only lead to low efficiency of the market, but also be accompanied by various forms of interest impairment. Sometimes the market reduces certain interests for the sake of greater economic benefits, but if the former is replaced by the public interest, it will not work, because obviously the public interest should not be the party to be reduced.

Finally, the appreciation of housing and land cannot be used as the main standard to measure the public interest. Moreover, after the redevelopment by the government and developers, the value of the houses originally demolished is still unknown. The land parcel to which the houses belong may be appreciated due to successful development or become an uncompleted project due to demolition and development and other reasons. Can't we reduce the compensation amount when the land parcel depreciates. For the residents who have been relocated, the benefits of inconvenience caused by relocation and other aspects are the same. When the land gained appreciation, on the one hand, it was due to the report of undertaking commercial risks, which was the market return of a rational economic man relying on a series of commercial exploration means and subjective boldness and other factors. They should not touch his cake again, otherwise they will lose the power of business and eventually hinder economic development. Secondly, profitability is a major feature of market behavior. The behavior of real estate development is not the same as buying a house for family living. The latter is not to seek additional economic benefits beyond the transaction consideration, but the former itself is to rely on the flow of factors in the market to realize the reallocation of resources and gain profits through the reallocation of resources. And the appreciation of real estate and its land is an ex-post consideration factor, which cannot be used to consider the public interest before housing demolition.

It is worth noting that public interests and commercial interests can coexist. First of all, both commercial interests and public interests will fundamentally increase the level of welfare in the region. If the welfare level can be measured like utilitarianism, although the relative value of social welfare may not increase, the absolute value of social welfare may increase. For example, if the purpose of demolition is to build a comprehensive commercial center. Firstly, the developer has gained value-added profits, and many merchants can seek commercial interests in full competition. Secondly, the surrounding residents can get a more convenient shopping and living environment^[3]. Even for the residents who were originally

relocated, they lived in a relatively cleaner and cleaner community, and obtained a better living environment and newer buildings. Compared with the situation that residents are inconvenient to buy living materials before demolition and no one cleans up garbage, public interests have not been impaired. Therefore, both public interests and commercial interests have been improved.

Secondly, from a certain point of view, commercial interests will also be transformed into public interests. Although the intention of the government to develop the land cannot only be based on economic considerations, the developers cooperating with the government are mainly based on interests. For example, if a three-dimensional parking lot is built after demolition and construction, then a certain part of the business interests of developers at this time will be converted into a public interest that facilitates residents' parking to some extent. Therefore, from a certain perspective, commercial interests can be transformed into public interests.

4. Judgment Organ of Public Interest

4.1 Judgment Mode of Legislature

Legally, the legislature can naturally judge the standard of "public interest" when demolition is involved. The power of the people's congress of the legislature also comes from the people, so it is legitimate for it to explain the legal concept in the application and define the public interest. But the problem is that the NPC and its Standing Committee have stipulated the general scope of public interest at the national level. And the local people's congress cannot legislate all the demolition behaviors in various places, otherwise it will cause legal fragmentation. Finally, when the People's Congress is not in session, it will lead to confusion. Therefore, there are some practical obstacles for the legislature to judge. In addition, according to the provisions of Paragraph 7 of Article 8 of the Legislative Law of China, the collection and requisition of non-state-owned property can only be stipulated by law, that is, it can only be stipulated by laws formulated by the National People's Congress and its Standing Committee, and local people's congresses have no right to formulate local regulations to regulate it. Although Article 9 stipulates that authorization can be granted, the State Council alone cannot authorize local people's congresses. Therefore, the local legislature has no possibility to directly participate in judging the "public interest".

4.2 Judgment Mode of Judicial Organs

The judiciary has the advantage of judging individual cases. Judges consider the value orientation according to different situations of individual cases and within the scope of their discretion. Secondly, the judgment mode of the judicial authority is to judge by the judge in the middle. The judge has the professional characteristics, so that he can more accurately judge whether the demolition belongs to the needs of "meeting the public interest".

However, the judgment of the judicial authority is passive. It is only between the parties, often between the party to be demolished and the demolition party, that there are different opinions on the standard of public interest, which is not enough to cause the intervention of the judicial authority. Judicial review can only be started when one party brings a lawsuit and seeks judicial relief. Secondly, the judgment of the judicial organ belongs to the judgment after the event^[4]. The parties cannot reach an agreement on whether to remove the house. After the house is removed, they can file a civil lawsuit to the court, and then seek judicial relief to solve it through the civil procedure. Not only does the court review undoubtedly need to face the theoretical and practical difficulties in defining the public interest, but even if the original petition is ultimately supported by the judicial organ, it is difficult to restore the original state, and can only be compensated by way of price compensation.

4.3 Judgment Mode of Administrative Agencies

Administrative organs are flexible and relatively professional, and relevant personnel have a certain theoretical basis. At the same time, due to the long-term demolition practice of the administrative organ, we have some practical experience in defining the "public interest" in demolition. Compared with the legislature, the administrative organ is also a permanent organ, which can meet the requirements of regular judgment.

However, the administrative organ plays a triple role: it is not only the executor of new urbanization, but also the maker of land acquisition and demolition policies, and the coordinator of government

interests and residents' personal interests. This is likely to lead to the situation of "being both an athlete and a referee". Demolition is led or led by the administrative organ. Before the administrative organ forms the demolition resolution externally, it often has passed many discussions and studies internally and reached an agreement. In other words, before the demolition, the administrative organ has recognized the necessity of demolition, that is, the need for "public interest". It may be superfluous to leave it to judge the "public interest". Especially the particularity of demolition, the realization of its "public interest" is often based on the premise of damaging "private interest". We should be more cautious. Finally, the administrative authority may consider other influencing factors, such as the social impact of demolition, the impact on the image of the local government and other factors that should not be taken into consideration, leading to the risk of imbalance in its judgment.

Therefore, since the power of judgment is entrusted to an organ alone, it is mainly decided by the administrative organ, but it is subject to the laws made by the legislature and the judicial organ. The supervision of the legal supervision organ is indispensable. The supervision also includes the supervision of the whole organ and the supervision of the responsible persons in the organ.

5. Evaluation Model of Public Interest

5.1 Based on Construction Purpose

Article 8 of the Regulations on the Acquisition and Compensation of State-owned Land and Housing also classifies different construction projects, and different construction projects will indeed have an impact on the definition of "public interest", so how to make a classification has become the first problem to be solved.

It is mainly based on the public choice theory: first, abstract whether all demolition projects are commercial or not and whether they have externalities. In addition to the judgment of externality, the externality should be further refined^[5]. Whether it is beneficial to the positive externality of society or unfavorable to the negative externality of environmental society should be added.

The following combinations are obtained through permutation and combination. Firstly, it is commercial and has positive externalities (for example, after the demolition of houses, the purpose of construction is to build a large comprehensive commercial body. After its completion, it can not only enable developers to obtain economic benefits from renting shops, developing advertising spaces, and renting parking spaces, which is commercial. It can also meet the needs of residents around and improve the quality of life with externalities); Secondly, it's of commerciality without externality (For example, after the house is demolished, the purpose of construction is to build residential commercial housing, from which the developer obtains the difference between the price of selling the house to the buyer and the price of purchasing land and building the house, which is commercial. However, it is rare in real life, because most developers plan to have a base business in the periphery of their development community. Although the main target customers of these businesses are residents of the community, they do not hinder them We serve other residents around. In real life, the real estate in the villa area may have this characteristic); Thirdly, it's of commerciality and negative externality (For example, after the house is demolished, the purpose of construction is to build a dyeing factory that will pollute the river. For the owners of the dyeing factory, they will certainly gain economic benefits. Although engaging in dyeing activities will also bring economic development, which is commercial, to a certain extent, because the dyeing of cloth will bring a lot of sewage, even after a certain degree of purification, it will still bring damage to the environment, so it has a negative externality); Fourthly, it's of no commerciality, positive externality (For example, after the demolition of houses, the purpose of construction is to build a series of traffic facilities such as urban trunk roads or parks, civic culture parks and other facilities. Because excluding the road toll income generated by the setting of toll stations and special bridges, the construction of roads will not bring income to the local government that expropriates land, so it is not commercial. The construction of roads can greatly improve the road location according to the different levels of roads The travel convenience of residents and enterprises in the radiation area has positive externalities); Fifthly, it's not commercial and does not have externalities (for example, the houses demolished are used for living in the dormitory of the enterprise itself, or for living by itself. Because they are provided for living by the enterprise's own employees, the enterprise did not consider obtaining direct profits by reallocating the resources of the land itself at the beginning of the house demolition, so it is not commercial. Because it is provided for living by the enterprise's employees, it does not have externalities.); Sixthly, it is not commercial and has negative externalities. Such demolition will not occur generally, because if it is not commercial, various market entities will not be motivated to act. With

negative externalities, the government also has no incentive to implement demolition behavior.

Therefore, according to this classification, there are five different types of nested demolition. First of all, it can be seen that public interest and commercial interest cannot coexist under specific circumstances. Secondly, these modes are classified at different levels. Projects with commerciality and negative externalities should be most careful when measuring the public interest because this model not only has commerciality but also has negative externalities, which will bring trouble to the surrounding residents, and a little carelessness will lead to a decline in the level of welfare. In the middle, there are commercial and non-externalities, commercial and positive externalities, and noncommercial and non-externalities. On the one hand, some of the three will bring negative effects, but on the other hand, they can also bring some positive effects. Or it has little impact on other external social contributions. The measurement of "public interest" in these models should be at the intermediate level. At the end of the list is noncommercial and positive externalities^[6]. In measuring the public interest under this mode, it can be in the most relaxed position among all different manual construction purposes. It is not only in line with the needs of national construction from a historical perspective, but also a project that can maximize social welfare from the perspective of interest measurement. That is to say, "public interests" are arranged hierarchically according to different construction projects.

5.2 Follow Legal Procedures Strictly

Although both are in the "public interest" because house demolition belongs to expropriation, which is different from expropriation and will not return the house to the property owner, we should be more careful. The government must follow the legal procedures to derogate from the rights of citizens. Once laws and regulations at all levels have detailed descriptions, they will not be repeated one by one. However, within the framework of legal procedures, it is necessary to focus on several principles. That is to say, the procedural definition of public interest should be subject to certain principles. First of all, the principle of proportionality is the principle that needs to be considered. The principle of proportionality focuses on the equivalence between the goal pursued and the means used. For example, when demolishing houses to build power stations, first consider whether it is necessary to build power stations, and it seems that other ways can be used to meet regional power demand. For example, market methods such as peak valley price can be used to control power consumption, which is sufficient to meet regional public interests. Secondly, to measure whether it is possible to meet the needs of the public interest to build on other idle land without demolishing the houses in the area. Finally, consider the number of houses to be demolished to minimize damage^[7]. Considered the public interest and personal rights and interests many times.

Secondly, we need to follow the principle of fairness. In housing demolition, the demolition compensation is an important embodiment of the principle of fairness. The timely and fair payment of demolition and construction compensation is also a performance of judging the public interest. Only when the compensation is paid reasonably before demolition, some unnecessary social impacts can be avoided. First of all, the compensation price needs the intervention of market factors. According to the service life of the house, location, and other objective conditions, as well as in some projects with strong commercial nature, if any developer is willing to participate in the first level development, then the willingness of the developer is also part of the market freedom. Secondly, the calculation of price cannot completely depend on the market. From a certain point of view, the issue of compensation is also a market behavior, but a special market behavior mixed with public power. Although when the government regulates economic activities, it can hardly do anything that is in the public interest. However, in fact, the market mechanism in its spontaneous operation may and may lead to various failures. All kinds of failures will not only lead to low efficiency of the market, but also be accompanied by various forms of interest impairment. For example, the real estate developers involved in the primary land development, driven by the profit instinct, will try to lower the price as much as possible. Therefore, the market mechanism is not as perfect as assumed. Therefore, the amount of compensation cannot be adjusted solely by the market. It also needs to proceed from the perspective of humanization. The game of interests should have rules, which should not only put humanization in it, but also follow the market rules, and follow certain government guidance.

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