

Research on the Constituent Elements of Regulatory Collection

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Abstract: Regulatory expropriation refers to that although the government did not make a clear expropriation and requisition of the citizens' private property, but due to the needs of public interests, the citizens' private property rights are restricted to a certain extent and should give appropriate compensation. At present, there is no relevant law on regulated expropriation in China, but due to the substantive use of land by administrative organs, the damage to the rights and interests of the regulated persons and the disputes increase. But in judicial practice, the court's judgment has reflected the constitutive elements of regulatory collection, clear regulatory collection should have the purpose of the public interest, the fact of impaired rights, control process, fair compensation of the four elements, absorb the kernel of the typical case, and promote the judicial application, safeguard the interests of the individual.

Keywords: Regulatory Collection, Public Interest, Due Process, Impaired Rights.

1. The Introduction

Protecting the property rights and interests of individual citizens is the inherent requirement of the development of socialist market economy. As the basic constitutional right of citizens, property rights cover the comprehensive rights and interests of citizens in the possession, use, income and disposal of their property. In the process of the development of market economy, the change of land and its ownership, as an important means of production, is directly related to the strength and degree of the protection of citizens' private rights. When the government uses public power for the purpose of public interest to excessively restrict private property, the property right of the right holder is reduced to a large extent, or even basically lost, how to define this kind of behavior and how to make up for the reduced rights and interests of individual citizens have become the focus of disputes from all walks of life. Therefore, clarifying the regulatory collection system in legislation can not only standardize and guarantee the administrative organs to exercise their functions and powers according to law, but also provide a legal basis for the compensation of the controlled persons whose property rights are obviously reduced and interests. Therefore, with the judicial practice of paying more and more attention to the private rights individuals, it is necessary to realize the legalization of regulatory collection.

2. The Origin and Development of the Concept of Regulatory Collection

The concept of regulated collection first originated in the United States. Compared with the traditional way of expropriation, the regulated expropriation does not completely deprive the ownership of the property owner. However, it adopts legislation or specific administrative means to restrict the property owner and the relevant rights and interests of his property. This restriction causes a great damage to the interests of the property owner, or deprived it of its basic power, thus producing an effect similar to a levy. The Mahon case in 1922 (Pennsylvania Coal Co.v. Mahon) Is a key node in the formation of the regulatory collection theory

in the United States. In this case, Judge Holmes raised the important point that if the government's regulatory act "went too far" to cause some serious impairment of property value, it would be regarded as a levy. This view has laid the foundation for the development of the theory of regulatory collection. The types of levy in the United States are divided into positive levy and reverse levy. Reverse expropriation also includes "occupation expropriation" and "regulatory expropriation". Regulatory takings in a broad sense can be divided into two categories: regulatory takings that include possessory or intrusive elements, and regulatory takings that do not include these elements. Because possessory expropriation is relatively easy to identify, the current expropriation law in the United States has essentially evolved into a synonym for "regulatory expropriation". It is the identification of regulatory expropriation. The standard for regulatory expropriation in the United States today consists of three standards and an exception to the "background principle".

The content of specific judgment criteria refers to absolute criteria, including the criteria of substantial possession and economic value deprivation. Under this standard, there are also relevant criteria for compulsory donation, which are usually judged by basic exercises and approximate proportions. Finally, the United States uses a kind of judgment similar to the cover clause - multiple causes

Prime judgment criteria. Based on the above criteria, we can better judge the regulatory expropriation in American judicial practice.

In addition, the "background principle" set forth in the Lucas case directs the government to avoid regulatory expropriation when it loses all possibility of economically beneficial use of private property.

The concept of regulatory expropriation was introduced with the model of American case interpretation development in Germany. Although Germany is a country of written law, the formation of its collection jurisprudence mainly depends on the precedents of the federal ordinary court and the Federal Constitutional Court. Due to the differences and staggered of opinions between the two courts, the whole type system of collection law seems somewhat uncertain and chaotic. In the

German society, Hartmut Maurer, an authoritative administrative law scholar, divided the expropriation types in Germany into four categories: typical expropriation, content restriction that should be given fair compensation, quasi-expropriation infringement and expropriation sexual infringement.

The development of regulated collection in Britain is a complex and multi-dimensional process, involving legal, economic, social and political aspects. In the process of development, Britain has sought a balance between public rights and private rights through a perfect legal system and clever system design.

3. Theoretical Proof of the Constituent Elements of China's Regulatory Collection

We can learn from the constitutive elements of the regulatory collection identified from outside the region, but they can not be completely copied. For example, the standard principle of the identification requirements of regulatory collection in the United States is constantly summarized in the precedents of American judicial cases. However, China is a country of written law, and when a system has not yet formed a system, there is no standard to apply, which may lead to the abuse of power by the courts at all levels, resulting in different judgments in the same case. Judicial practice provides a powerful reference for the research process of this system in China, reflects the identification of the constitutive elements of regulatory collection, promotes the development of judicial practice and makes practical application of the requirements of regulatory collection. Summarize and absorbing the judicial practice is of great significance to the development of regulatory collection in China. The following are the four elements of the composition of the regulatory collection:

(1) Purpose of the public interest

First of all, in China's constitutional and legal system, public interest is often expressed as a type of interest similar to national interest, social interest and collective interest, which exists for the maintenance of public order and social order. Outside the region, Hayek believes that the public interest should be defined as an abstract order, that is, "the concept of the common welfare of a free society or the public interest, can never be defined as the sum of the known specific results to be achieved". In Britain, the determination of regulatory collection not only focuses on whether the principle is in line with the public interest, but also involves the issue of compensation. For example, in the distribution of land development right and land appreciation income, the compensation standard of expropriation is adjusted to the current use value of land under the general development prohibition, which indicates that in the UK, the compensation standard of regulated expropriation is also determined according to the principle of public interest. It can be seen that most of the legal system is regarded as the fundamental standard of the system. It can be seen that both written law countries or case law countries proceed from the public interest consideration.

(2) Due process

Procedural justice is the bottom line of a society ruled by law, which effectively checks and balances power and makes public power used within the normative path. In the process of adopting the controlled collection, the administrative organs should perform the procedure of neutral, rational,

exclusive and equal participation, so as to make the decision of collection or similar collection reasonable and legal. If the administrative act of the administrative organ does not conform to the provisions of the legal procedure, then it is not legal due to the improper procedure, then it is impossible to discuss the specific behavior of the act. If a collection act does not obtain the support of laws and regulations and higher authorities, and does not extensively solicit opinions from the public, and does not hold a timely hearing on the collection concerned about the vital interests of the public, then the collection act inevitably does not conform to the procedural justice, and the public can naturally refuse to implement the administrative requirements. In the cases discussed in this paper, it is not difficult to see that although the administrative organ has a misunderstanding of the nature of the behavior. However, their administrative acts have relevant legal basis, which is not caused by the abuse of power and arbitrary restriction of civil rights.

(3) derogation of rights and interests

If the rights and interests are reduced, it is necessary to compensate. If the rights and interests are not damaged, the compensation basis does not exist. The fact of impairment of interest is the first object for the judicial organ to determine the compensation amount in the trial of collection and collection cases. The main expression of this fact is the depreciation, reduction and loss of the value of property rights, which is not necessarily reflected in the form of money. Sometimes the loss of individual rights and interests can be defined as the loss of rights and interests here. Outside the region, the American judiciary before the late 19th century has always taken interests and damage standards as the criterion of identifying regulatory collection. In the typical American case of *Hodde v. Irving*, Congress enacted relevant laws to prevent the excessive division of land on the Indian reservation due to inheritance, but the court found that the nature of the government in making the law was questionable. These documents actually limit the exercise of civil ownership of property, a right prescribed in the Anglo-American law system as a fundamental right of citizens. Therefore, this act of not completely depriving citizens of their rights but restricting their use constitutes a regulatory collection. The determination of impairment of equity should be considered from the following perspectives: First, the essence of impairment of equity is the limitation of private right individuals on the possession, use, income and disposition of property rights, and the damage and loss of any of them can be defined as the impairment of equity. Second, the impairment must exceed the obligation of the right holder to "properly tolerate". The duty of proper tolerance is an important part of the system of citizens' rights and obligations, and should be considered when there is a conflict between public interests and individual interests. Public interests are the basic conditions for the realization of individual interests, and the protection of public interests will inevitably violate individual interests of citizens, so it is reasonable and reasonable to properly protect individual interests of citizens. Third, the impairment of rights and interests is an objective fact. Although the impairment of rights and interests can be measured by money in most cases, under special circumstances, citizens' rights may also be in non-monetary form. For example, for the impairment of possessory rights, citizens do not take a certain amount of money as expected benefits, but take possession and use to obtain non-monetary benefits. In this case, the impairment of rights and interests

should be protected by law.

(4) Fair compensation

With the loss of citizens' private rights, it should bear the necessary compensation, which is the internal demand of commodity economy, and also the result of the comprehensive balance between losses and expected income based on the consideration of fairness, justice and objective rationality. It is not only based on the requirement of fair compensation at the level of constitutional jurisprudence, but also from the practice of the countries that have established the system at present, both the common law system and the civil law system countries are rooted in the relief of citizens' rights. From the perspective of the American regulatory expropriation system, in such a country that attaches great importance to the protection of citizens' property rights, when citizens' rights are damaged, the government provides relief measures for just compensation. As one of the important contents of the Fifth Amendment to the United States Constitution, just compensation has been repeatedly applied by the Supreme Court and lower courts of the United States. The German land expropriation system takes Article 14 of the Basic Law as its starting point and establishes the principle of "weighing" expropriation compensation, in practice using "transaction value" as the standard of compensation.

In the case of administrative compensation of *Gao Liusheng v. Xinzheng Municipal Government*, the court made a judgment after hearing, expressing support for Gao Liusheng's request for compensation, and requiring both sides to negotiate and communicate about compensation, find out whether there is a public forest in the desert mountains and how to link the compensation of public forest and forest park, so as to achieve a fair and just compensation amount.

To provide fair compensation has been an important factor for judicial organs to consider when adjudicating specific cases.

To sum up, when the regulatory expropriation occurs, we should take the method of fair compensation to protect the loss rights suffered by citizens. The closed loop completion of the regulatory collection system cannot be without the final public.

4. Conclusion

To sum up, the emergence and development of a system is constantly summarized and constantly explored from the practice. The regulatory collection system is a right protection system, which is different from the traditional expropriation and requisition system. Under this system, the administrative organ does not change the original ownership of rights, but only restricts the property rights enjoyed by citizens, and this restriction will inevitably lead to the reduction or even loss of the expected income of individual citizens. Therefore, based on the value of fairness and justice, it is necessary to give necessary economic compensation to individuals whose private rights. When applying the regulatory collection system, the administrative organ should take the public interest as the purpose, comply with the legal due process, and

finally give fair compensation on the case of accurately determining whether the citizens' rights are damaged.

In a word, although the concept of controlled expropriation is formed by the case of U.S. administrative law, and although China's legislation does not have the concept of controlled expropriation, in practice, the phenomenon of the government restricting property rights through administrative control measures also exists, so it is still necessary to transplant, graft and summarize the concept and apply it in practice. "The China Sky Eye" case provides a Chinese sample for understanding the concept of controlled collection and applying the principle to judge the case. The relevant judgments of the Supreme Court have basically achieved the supervision and regulation of the whole process from planning control to administrative collection. With the increasing attention paid to the protection of property rights and the gradual advancement of the construction of a country under the rule of law, as well as the deepening of legislative, administrative and judicial understanding of the issue of controlled expropriation, the theory and practice of controlled expropriation with Chinese characteristics will be more and more abundant.

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