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## **Legal Confusions of Collective Land Ownership in China: suburban village redevelopment in Beijing**

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# Legal Confusions of Collective Land Ownership in China: suburban village redevelopment in Beijing<sup>1</sup>

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**Abstract:** Landless farmers and suburban village redevelopment are two important issues of urbanisation in China. While some redevelopment projects have created few millions among villagers many others lead to the loss of life security and steady income for villagers. This paper examines the village redevelopment using a village in Beijing as an example. It describes problems encountered by villagers and discusses constitutional and legal confusions over the definition of rural collective ownership of land. Village collective ownership should be equivalent to the state ownership, not part of it. The land under rural village control should be treated as their collectively owned private property. This however does not mean that the state should not have any control over the development of the land. The state should provide regulations to protect the collective ownership and share the increase in land values with farmers through tax or other charges. In this way, the state will be on villagers' side in negotiation a development deal and will ensure the share of the development profit among the most needed and entitled to.

## Introduction

‘Access to land is a central issue because it is a crucial asset for food production and a key factor for shelter and community development. How issues related to rights of access are addressed in development projects and programmes has a direct impact on the livelihood and security of people not only in rural areas, but in urban and peri-urban settings as well. Failure to address the land tenure interests of all stakeholders in land development or land reform can cause problems and inequalities. These problems can unintentionally fall on the most vulnerable and disadvantages members of society.’ (FAO, 2002, p.1) This statement from the Food and Agricultural Organisation’s tenure studies provide a guiding principle for dealing with land issues in fast urbanising regions. It also set the sense for this paper.

Communist land reform of the 1950s created two types of land ownerships in China: urban and rural ownerships. In urban areas (including the officially defined suburban areas), land was nationalised, municipal governments (on behalf of the state) became the legal owner of land. In rural parts of the country, the very unequal private family land holdings were firstly redistributed to give poor families of their shares. After several collectivisation movements in the 1950s, a collective land ownership was eventually established in villages. Land owned by individual

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families was pooled together for farming and all village residents became the collective legal owners of both residential and production land. From 1978, in order to stimulate farming activities and increase grain production, agricultural land in villages was redistributed to individual families under the so-called 'responsibility system'. Farmers supposed to hold on to the land for at least 15 years which was later extended to 30 years of production. The ownership of the village land however stayed collective and individual families could not sell or transfer land to other uses. (Wu, 1999, 2002 and 2004; Cartier, 2001; Zhu, 2004 and 2005; Ho and Lin, 2003 and 2004; Ding, 2004; Deng and Huang, 2004; Yeh, 2005).

Under this dual land ownership, there was provision for municipal governments to take over collectively owned land for development. In the 1980s, when land was taken over by municipal governments or other new users, they had to pay compensation to farmers; at the same time, new users had to arrange jobs for working-age farmers affected by the transfer. Urban-based employments at the time provided an alternative and more secure way of life to farmers and the process did not cause much concern. This practice was also welcomed by farmers because it provided them an opportunity to have a new life in cities or towns. As urbanisation process intensified and the planned economic system was replaced by a market system, municipal authorities and new land users struggled to find suitable jobs for all farmers affected. As a result, compensations changed from job assignments to financial and housing resettlement instead. Large scale urban development coupled with this change of land transfer process has created a serious problem of landless farmers around all Chinese cities and towns.

A study by the Research Task Force on China's Property Rights of Land suggested that from 1987 to 2001, 2.3 million hectare farmland was converted into residential, commercial or infrastructural developments, and 70% of these lands were transferred from rural communities to the municipal governments. This means during this period, the collective ownership of 1.6 million hectares agricultural land was nationalised. In the year of 2003 alone, 2 million hectares of farm lands were converted into urban and infrastructural uses. The Chinese Academy Social Science (CASS) estimated that urban and infrastructural developments had forced about 40 million farmers out their land in the country. Recent media reports show that the problem is getting worse as urbanization and industrialization process speed up. Forceful demolition and extreme protesting actions from the original property owners were reported from time to time.

Land development and the problems of landless farmers were important topics for Chinese researchers, particularly since 2003. Many publications have been produced, which have led to improvement in land transfer policies and local compensation practice. Land related compensations have increased substantially around large cities and some farmers 'become rich over the night'. Media reports on the high profile cases however have shadowed the reality that collective land owners were still the weak party in the land development process. The loss of land and housing, the most important assets, will have a lasting effect on families. More importantly the destruction of many thousands of traditional communities will have serious implications to the socio-economic and political sustainability of the Chinese society.

Why is the land development process so problematic? What are the main causes of these problems? This paper addresses these questions and contributes to the debate by examining the land development and compensation process in Beijing city. It focuses on the redevelopment of one traditional village and examines the impacts from land and property ownership changes. The paper is based on a research project supported by the Leverhulme Trust Fellowship (UK) and fieldwork conducted in the city between 2008 and 2010. Data and information was collected through interviews with local officials, village residents and local researchers. The discussion begins with an overall view of the changes in suburban villages through a case study of Shucun,

which is followed by an examination of constitutional and legal confusions over the collective land ownership. Late section discusses roles played by various stakeholders within the redevelopment process.

## **Village Redevelopment: An example**

**S**hucun, located in the northwest suburb just outside the fifth ring road, is interesting as it has been undergoing redevelopment since 2000, but the relocation process has not completed yet. The prolonged process highlights issues and problems associated with the village redevelopment programme. It allows villagers to reflect their initial decisions.

Shucun has a land area about 4 square kilometres. During the Qing Dynasty, the village was an important agricultural, commercial and handcraft centre. It benefited from the presence of imperial guards of the 8<sup>th</sup> Military Division (八旗), stationed in the area for the protection of the Imperial Garden – Yuan Ming Yuan. Commercial activities in the village declined when the Imperial Garden was destroyed by European invasion at the turning of the 20<sup>th</sup> century. Shucun remained predominately an agricultural area until 1949. Immediately after the Communist government land reform, land was owned by individual farmers. Between 1952 and 1958, various rural collectives were formed. In 1958, Shucun and several other villages in the area formed the Haidian People's Commune. In the following years, Shucun were merged into the then China Agricultural and Animal Husbandry Research Centre. In 1970, it was returned to Haidian People's Commune. During the early 1980 the People's Commune was replaced by the Haidian Township and farm land owned by the village was redistributed and contracted to individual families under the so-called responsibility system for farming. Throughout of these periods, village residential land was always under the individual family control. Due to population increases and family divisions, new residential plots were created out of spare land or cropland and allocated to newly formed families. From the middle of 1980s and especially the 1990s, farm land owned by the village was taken over piece by piece by the Beijing Municipal Government or large public institutions for urban uses. Village residents gradually switched from farming to other activities, e.g. finding a job in the city or setting up family businesses. Accommodation and room renting to migrant workers also became a major source of family income in the village.

It was claimed by the village committee that 'most families had come out of poverty and became prosperous.' (Shucun Village Committee, 2004) Despite of this positive official view, physical and environmental conditions in Shucun, like many other suburban villages, remained very poor. Traditional style of houses was not well maintained. New insertions and additions were created inside the family courtyards to provide more rooms for either family expansion or renting. By the year 2000, because there was not much agricultural land left; most families relied on rent or income from family business.

Rent from migrant workers became a major source of income. On average, each family could earn about 5000 yuan a month from rent (interview with residents); but residents had to sacrifice their privacy and share their homes and facilities with strangers. The village lacked most of the modern infrastructures, especially road pavement, sewages and drainages and running water toilets. The large scale increase in migrant population made the living environment worse day by day. Smelly sewage run openly along sides of littered streets; traditional public and family toilets scattered here and there. Various types of shops and services could be found along the main streets, including restaurants, food stalls, daily utility shops, barbers, electronic and car

repairs, furniture, construction and DIY materials, distribution markets, waste collection and recycling, small cheap hostels, etc.

Shucun began to plan for village redevelopment in 1997, the plan involved relocation of the village to a nearby high-rise housing estates and free the land for part of the planned green space for the city (Figure 1). This plan was approved by the Beijing Municipal Government in 1998. In 2000, Shucun Redevelopment Plan was approved as part of the Beijing Green Belt and suburban village renewal scheme. In the same year, the Township Government established the Beijing Wangseng Real Estate Development Company Ltd to carry out the redevelopment. The new village – Wanshuyuan Residential District (万树园小区) was built on a piece of remaining farm land owned by the village. Original village residents (home owners, excluding migrants) were to be relocated to this new housing estate. Construction work started in the autumn of 2000, most buildings in the new estate was completed in July 2004. Residents gradually moved in.



**Figure 1** Location of Shucun village and Wanshuyuan Estate

### ***Life in the half demolished village***

The completion of the new housing estate should bring this traditional agricultural village into the normal life of the capital city. The physical changes were however not complete and were not matched by social changes. When visited in March 2008 and July 2010, the old Shucun village was still there. About two thirds of the traditional houses were demolished and the rest remained. As the relocation and compensation were negotiated on a family by family base, families had accepted the relocation terms moved away first, their old houses were pulled down. Families who did not accept the relocation terms stayed. As the demolishing spread out in the whole village, the remaining residents lived among ruins of demolished houses and blocked roads and streets.

Remaining families could not reach a satisfactory relocation and compensation agreement with the village authority and development company. Some of the residents felt that:

- The decision making process was not transparency and they were not properly consulted.
- There were confusions over the organisations and responsibilities.
- There were confusions over the relocation and compensation policies and practice.
- There were unclear legal bases for the relocation.

Essentially, they were either not satisfied with the amount of cash compensation offered to them or with the new flat they might get if moved. They believed that rich and powerful families could bribe either the demolishing company or the village leaders for better deals. As a result, relatively poor families and larger families with small properties (for less compensation) had been left behind. Early movers had the right to select houses in the new estate, and the ones left behind had to choose from poorly located houses on undesirable levels or locations, e.g. elderly people may have to move to flats located on the 5<sup>th</sup> or 6<sup>th</sup> floors. There were no lifts in these buildings.

Some of these complaints (e.g. corruptions of officials) were supported by some ongoing building activities inside the partially demolished village. A new one story house was built in 2008 after the demolition process already begun. It also took over part of the old village street (due to the demolishing of buildings opposite, this became possible). Remaining residents pointed to this as a good example of power abuse and corruptions. 'If they can build it, they will have the way to get it compensated' (quoting from a local resident during 2008 visit). During 2010 visit no more demolitions were found, but more new buildings were constructed over the demolished area. Some of these new buildings were much bigger than traditional houses, from 3 to 4 storeys with 10 to 15 rooms on each floor. One 3 storey dormitory style property was built very recently. On each floor, there were 10 rooms for renting. The common corridors shared by tenants were well maintained. Rent for these rooms (about 12 square metres each) ranged from 550 to 650 yuan per month. The total rent for the whole building could be 18,000 yuan. 'The landlord did not live here. His family had a house somewhere else' (the care taker of the building). Two next door new buildings were also three storeys, but were built together at the same time. They offered similar rooms for rent. 'These buildings belong to two landlords, but they are relatives' (Tenants). When village residents (in both old and new areas) were asked who built these rental houses, they all pointed at village leaders. 'Who else can do that?' When asked did they build on their original courtyard? 'No, they built on land freed by others'. Did they build these houses for more compensation in the future? 'Not necessarily, they just take advantage of land and time. They know that the final clear up is not going to happen soon, by the time it has to be demolished, they will earn enough money'. As Shucun was planned as part of the green belt for the city no commercial developer was there to push the process forward. If the village land was planned for other uses (e.g. commercial housing), the relocation process could be much shorter and probably more violent.

Apart from residential buildings, village collectively owned properties were also rented out to migrant workers. A row of township enterprise workshops were turned into rental accommodations. Because of the poor quality and facility, rent per units (200 yuan per month) was cheaper than the properly built dormitories. The old village committee office quarter was also rented out to migrant workers. The rent income from these collectively owned properties however not necessarily end up in the village common fund. Some of these properties were contracted out to individuals many years ago. Their contracts have not ended yet, though the use has changed from industries or businesses to room renting.

There were about 2000 original residents in the village before the relocation. It was estimated by local residents that there were more than 30,000 people living in this half

demolished village in 2010. Most of this increase came from migrant workers. The sanitary conditions in the village declined. The streets were very muddy and smelly, with rubbish dumps scattered here and there often on tops of debris of demolished houses. More shops, restaurants, barbers, snooker playing areas were found. To accommodate the demand from the increased population, a super market opened in the village recently as well. Despite the declining environmental quality in the village, the economic activities in this half demolished village were more vibrant and dynamic in 2010 than in 2008.

### ***Life in the new housing estate***

The new housing estate was also visited in 2008 and 2010. Trees and gardens between buildings were more established and more cars were found parked beside the buildings in 2010 than 2008. Most buildings were occupied, manifested by the amount of cloths hanging at balconies, steel barber wired windows, and air conditions fixed on the external walls. Only a small proportion of buildings were empty, still waiting for those who had not moved in yet. The number of empty flats was definitely not enough to accommodate those left behind in the old village. Some residents claimed that powerful families had bought two or more flats, and some flats were sold to people who were not residents of the original village.

Those who had moved early were relatively happier when interviewed in 2008 because of the significant change in the general living environment and modern facilities that came with it. The general mood seems changed when time passes. "There were a lot of attractions to give up my old house and moved into a new flat in this estate, but I personally would prefer to stay in my original home. My old house brought us steady rent income and it looked after my whole family. In the new housing estate, we have to pay for everything. We have to earn money somewhere else to look after this flat. I know the living environment in our old village was poor, but we could have improved the environment rather than destroyed it and moved into these flats." Another resident also contested that "I miss our life as farmers very much. It was a pity to see our fertile crop land and houses being turned into open space. Our land had served us for generations. I don't know what lies ahead for us and our children." (relocated local residents)

When asked about life in the new estate, one resident summarised: 'There were both advantages and disadvantages in moving here. In general disadvantages were more than advantages. The main problem is that in the past we can earn rent from our houses, now there is no such income, but we have to spend money every day on everything, including estate management fees. My family of three was given a flat about 90 square metres of floor space. After paying the costs of the new house, we also received about 600,000 yuan (other families could have more – 700,000). This sounds a lot of money before you move. If everything is fine after the move, it can run for few years. If someone fell sick, the money could run out very quickly.'

'Do you regret moving to here?' 'Yes, we should have stayed. Now they (the government) will have to pay a much higher compensation. The families stayed behind will eventually get a better deal.' 'Why did you agree to move in the first place then?' 'They want party members, communist league members to set examples for others. Families were dealt individually, household by household behind doors. They offered a little more money as incentives each time, and we eventually gave up.'

New houses in the estate were the so-called *xiaochanquan* housing (with limited property rights), as the land they occupy theoretically speaking was still collective ownership (by the



village). These houses could not be traded in the market according to the law. This seems not bothered some residents much. Not many ordinary residents in Wanshuyuan could afford to sell or rent their flats, as these were their only homes. There were however rent and sale activities in this estate. Advertisements on walls inside the estate and at the nearby estate agency show that in the summer 2010. One bedroom flat with furniture (56 m<sup>2</sup>) in Wanshuyuan could rent for 2000 yuan per month (equivalent to rent of 4 rooms in the old village). Two bedroom flat with some furniture (80 m<sup>2</sup>) could get 2500 yuan per month. These were cheaper than similar flats in commercial housing estates in the area. A similar sized two bedroom flat in a neighbouring commercial estate could get around 3000 yuan per month. A one bedroom flat (64 m<sup>2</sup>) at Wanshuyuan was marketed for 960,000 yuan. Asking price for two bedroom flat (88 m<sup>2</sup>) was 1.05 million yuan. These were a one off payment cash prices, as these properties did not have full property rights, no bank loans can be secured for it. These sale prices were much lower than that in the commercial market housing estates. For example, sale price per square metre of construction floor space in the next door high market estate Boya Garden was more than 50% higher than that in Wanshuyuan.

The new estate is managed by a management company set up by the village committee. Estate management fee was relatively lower than that in commercial housing estates (Table 1). On average, each family had to pay about 1000 yuan management fee per year. If there were highly paid workers in the family, this should not be a problem. If there were only lowly paid manual workers (advertised service sector wage in the area was around 1500 yuan per month), the family will have to rely on the compensation money they received. Residents seem take the estate management issue easily: 'If we can not afford the fee, we don't pay it. They [the village committee members] have a lot of money from rent of collectively owned properties and other business.' (Resident)

**Table 1 Real Estate Management Charges at the Relocation Housing Estate**

Name of charge	Annual rate of charge	Rate of Tax Payable (%)	Charge plus tax*
1. Gardening	0.55 per m <sup>2</sup>	5.5	58.03
2. Sewage	0.3 per m <sup>2</sup>	5.5	31.65
3. Management fee	2.4 per m <sup>2</sup>	5.5	253.2
4. Small repairs	2.36 per m <sup>2</sup>	5.5	248.98
5. Maintenance of public facility	1 per m <sup>2</sup>	5.5	105.5
6. Building maintenance	5.42 per m <sup>2</sup>	5.5	571.81
7. Service charge	12 per flat	5.5	12.66
8. Waste and rubbish collection and disposal	30 per flat	5.5	31.65
9. Public security and neighbourhood watch	60 per flat	5.5	63.3
10. Cleaning and public health	24 per flat	5.5	25.32
11. Other			
Total			1402.10

\* Based on a unit of 100 m<sup>2</sup> of construction floor space

Source: Beijing Wanshuyuan Real Estate Management Company, August 2010



Photo 1: Partially demolished Shucun Village in 2008



Photo 2: Part of Shucun Village in August 2010



**Photo 3: Replacement flats inside Wanshuyuan (six storey tenements without lift)**



**Photo 4: The central park in the new estate and village committee office (at the background)**

# The Constitutional and Legal Confusions over Collective Land Ownership

Shucun is a very interesting example of village redevelopment. Under normal conditions, the village redevelopment process could be completed within two to three years. In some cases the process may drag a bit longer. The unique situation in Shucun and the long period of confrontation between the developer, the officials and these residents who refused to move (the 'nail households' – dingzihu in Chinese) provide a good example to examine the relocation problems in detail. Why has Shucun's redevelopment stuck in the half way? This section will address these questions by analysing the constitutional and legal frameworks for land development and highlight the confusions over the rights of collective village land ownership.

The way of suburban village redeveloped in China is determined firstly by the urban and rural land ownership and channels through which rural land is transferred into urban uses. The Constitution provides a definition of the land ownership in China. Article 10 stated that:

“Land in cities is owned by the state.

Land in rural areas and suburban areas belong to the collectives except for those plots which belong to the state in accordance with the law; village housing land and privately farmed plots of cropland and hilly land also belong to the collectives.

The State may, in the public interest and in accordance with the provisions of law, compulsorily purchase or compulsorily take over land and give [the original users/owners] compensation. No organization or individual may appropriate, buy, sell or unlawfully transfer land in other ways. The right to use of land may be exchanged in accordance with the law.” (Constitution of the People's Republic of China, 2004)

The definition of land ownership and the mechanism for state monopoly of land development through compulsory purchase and taking over seem clear. In practice, the process is actually very problematic because the collective land ownership is a very ambiguous concept. Government land management officials, academics, and even some farmers believe that in socialist China the village collective ownership of land is only another form of state ownership. Farmers' use of land was granted by the government. When the land is required by the state, the farmers have no other options apart from relocation for some compensation. This understanding arises from the ambiguity of the Chinese Constitution. Article 6 of the Constitution states:

‘The basis of the socialist economic system of the People's Republic of China is the socialist public ownership of means of production, namely, ownership by the whole people and ownership by collectives of the working people.’

In relation to the rural collective land ownership, this statement could be interpreted in two different ways:

- a) Rural collective land ownership is one of the two types of public ownerships and the public refers to those people living in the specific collective only (namely the village).
- b) Rural collective land ownership is a kind of public ownership in which the public refers to the general public of the whole country. In this sense, the distinctions between the rural collective ownership and the state ownership in cities become less obvious. Rural villagers are only the users of the state owned land.

The first explanation seems more in line with the Article 10 of the Constitution, but the second interpretation was in fact taken as the main legal bases for the past and the present land acquisition and development process by most local authorities. In many cases, when there were disputes between farmers, developers and municipal governments, local officials often remind farmers that they should firstly accept the fact that 'all land belong to the state in China'.

Examining the recent legislation changes, we can sense that the Constitution makers may have intended for the first explanation. This is indicated by the change of phrases in the recent revision. In the old Constitution (pre-2004), state may 'take over' (zhengyong 征用) collectively owned rural land for urban and other infrastructure development. To reflect the change from a planned economy to a market economy, the revised Constitution includes an extra phrase on this point: the state may 'compulsorily purchase' (zhengshou 征收) collectively owned land for urban uses. This two character addition gives a stronger recognition over the rights of collective ownership of rural land, because purchasing (even compulsory) is better than simply 'taking over' which does not convene any sense that to whom the concerned land belongs. In the revised PRC Land Administration Act (2004) the phrase zhengyong (征用) were all replaced by zhengshou (征收). This central policy changes were however not picked up or adopted by most local land management authorities. In most locally produced regulations, the new phrase zhengshou is missing (some of the local documents were produced before the constitutional change). When they were questioned, local land management officials tend to say that there is no fundamental difference between these two phrases.

The confusion over collective ownership of land also arises from the land transferring arrangement. The state may compulsorily purchase or take over land for its use and shall make *compensation*. The reference to compensations in the Constitution made the above revision half hearted. Compensation goes well with taking over - zhengyong (征用), but not for compulsorily purchase - zhengshou (征收). If it is a purchasing, even compulsory (zhenshou), a price (not necessarily a full market price) has to be negotiated and agreed between the collective land owners and the state or the new owners.

This Constitutional and legislative ambiguities over the concept of collective ownership of land are one of the main causes for many problems of suburban village redevelopment in China. The village relocation process at Shucun discussed above actually was the final showdown between representatives of the municipality (including the township and village administrative bodies), the developer, and residents. As an agricultural community, Shucun used to own a large area of agricultural land outside the residential area of the village. Over the years before the village redevelopment, Shucun had lost the control of its cropland piece by piece to the municipal government. Land was taken over from the village collective to other users for some compensation under the ambiguous arrangement. Compensations for agricultural land, according to rules set by the central government, were often based on few years of crop product value. Village officials and the township government were the representatives of the rural collective. The involvement of the individual families was very limited. The limited compensation was normally divided between tiers of rural administration including the township government. It was used to create jobs for farmers in the village and for developing village businesses and services, and a small proportion were distributed to the individual families. The legal ambiguity put the farmers at very weak bargaining positions and compensations kept at a low level. This is the main reason that why most Chinese villagers as 'land owners' of suburban areas did not become rich during the urbanisation process and landless farmers became a major social and economic issue. Most villages in suburban areas of large cities turned into the so-called 'urban villages' and shanty towns for the poor. Shucun, with its ownership of 4 square kilometres of

land could have become a well off community through land related development over the year, if the collective ownership was respected as real and if the village was allowed to use its land resources effectively in the market, but before the relocation, Shucun was just such an urban village which had lost most of its cropland and residents relied on property renting to migrant workers to keep their simple life going.

The passed PRC Property Rights Act and recent CCP policies on further reform in rural area may provide some clarification over the confusions. It is widely believed that the Property Right Act provide stronger protections to private and collectively owned property rights. Indeed, since the pass of the Property Rights Act, requisition of collectively owned land has slowed down, especially in suburban areas of large cities and the compensation levels have increased substantially. This is also an important reason that Shucun remaining residents could stay put without being forcefully removed (to maintain stability and avoid major protests from the residents is another reasons). In remote suburban areas and smaller cities and towns, the old practice continues and at an even large scale in some places.

In October 2008, the CCP Central Committee published an important document -'Decisions on Several Important Problems of Further Reform and Development in Rural Areas'. Article 3.2 of this document outlined the Party's new policy on rural land management. '... Reform the land requisition system; strictly distinguish land use for public and social purposes and those for commercial uses; gradually reduce the amount of land requisition, and improve the requisition and compensation mechanisms. Requisition should be carried out according to the law, and same land same price principle, swiftly give rural collectives and individual farmers full and reasonable compensation; ... allow farmers to participate in commercial development and management and protect their legitimate rights and interests. To gradually merge the rural and urban land markets, ... grant legally acquired rural land for construction the same rights as state owned land.' (CCP Central Committee, 2008). The last part of this quote gives strong indication of the Party's recognition of rural collective ownership of land. The also indicated that gradually merge the rural and urban land management systems and grant rural owners the development right. This probably is the only way to clear the mess of land development process and to give rural land owners some benefit from development. This policy is another step forward from the Constitution and the current state land laws. The implementation of this policy will take years to see the effect. The power to oversee these policies to take place is with provincial, municipal, town and county authorities who are very keen to develop agricultural lands into residential sites/ or industrial parks for much higher values.

## **Main Actors in the Redevelopment Process**

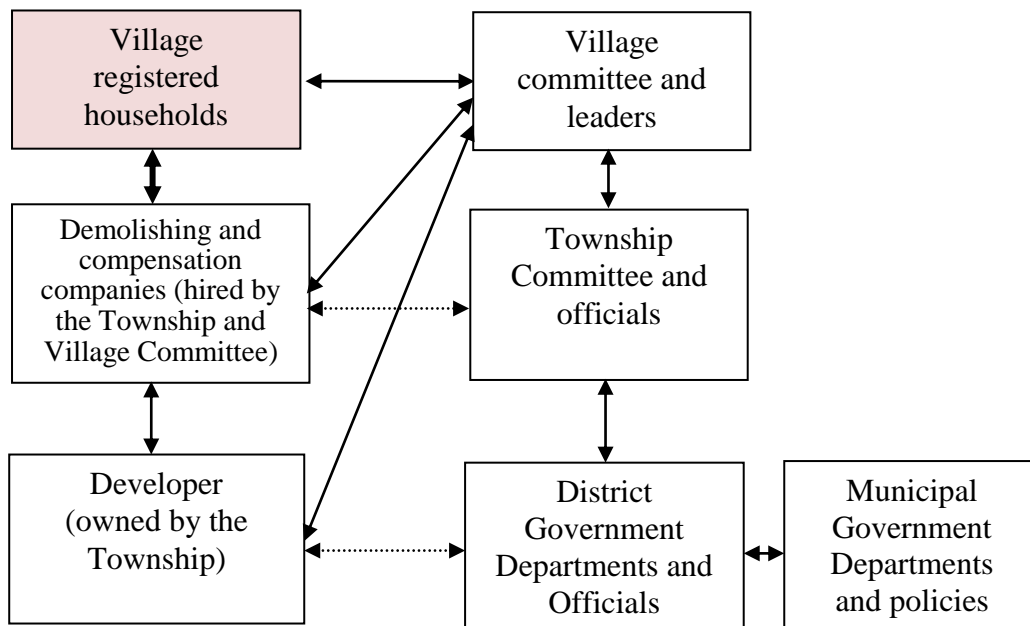
**T**he Constitution and central government policies laid down the main guidelines for land requisition. Local governments produce detailed policies for their area. In Beijing, the municipal Construction Land Compensation and Relocation Methods list the bodies responsible for land requisition and compensation. At the municipality level, the Land Resources Management Bureau is in charge of land related compensation and relocation management; the Labour and Social Security Bureau is responsible to the employment of working age farmers and arrangement of social security for them; the Civil Affairs Bureau looks after other, non-working age people affected by the requisition. At District and County level the correspondent departments take the same responsibilities in their jurisdiction. Other relevant government

organisations including the township government are required to assist and help with the land requisition process. Rural economic organisations and village committees are required to assist the process and perform relevant works (Beijing Municipal Government, 2004).

Transfer of collectively owned cropland from suburban villages to the municipal government for development in most cases were done with less trouble, as the process could be seen as largely happened within the hierarchical government system. The key players in the transfer could include: the municipal government (represented by its various bureau or departments), the township government, the village committee. As long as the village committee agrees, the transfer and compensation could go ahead. Theoretically speaking, the village committee is a self-governing organisation of the rural collective and is made up by village resident representatives. In reality the village committee is also the lowest branch of the government system. When land transfer happens, the village committee members have to face the choice between these two responsibilities: to help the government to secure the land for development and to protect village residents' interests. It is almost impossible for the village committee to stand against wishes of the government by holding back the land. At best, it can bargain for more compensation. In cases there were strong resistances from individual village committee members, the upper tier government officials can put pressure on them or pursued ('dealt with') them individual (often behind the doors). Each municipality normally has their own compensation standards. In Beijing compensation for cropland ranges from 30 to 180 thousands yuan per mu according to the distance to the city centre (666.7 square metres).

All parties involved in the land acquisition and compensation process (including the village committee) in fact normally welcome the development of cropland in their areas. Development means extra income to all bodies involved (and some opportunities for personal gains through corruptions and bribes). Ordinary residents in the village could show their unhappiness about land transfer (losses), but they in general could do nothing about it. This does not mean that ordinary villagers are against development of their land. For them, selling land brings in more cash income than farming as least in short term. Generations of rural poverty and hardship made most farmers lost heart in rural productive activities. As the land is owned collectively and the agricultural production income was so low, farmers were less concerned about the cropland land losses if the process could bring them some cash. This gave officials an impression that farmers in suburban villages are also supportive to land transfer and compensation.

When all cropland has been converted into other uses, the village residential land comes under threat. Development in the area and greater demand for land makes the value of land much more obvious to farmers. When the residential land is required and the whole village has to be demolished or relocated, the development process becomes much more complicated and contentious as this is farmers last defense of life. At this stage more actors will be involved. Apart from the government department themselves, developers (the new use of the land) and the compensation and demolishing companies will also be involved. To avoid direct confrontations with the individual residents, municipal government land management authorities normally leave the negotiation of compensation scheme between the developer (new intended land user) and the village committee. The developer often hired a demolition and compensation company to negotiate directly with the individual families and do the dirty job. Figure 2 shows the key players in the Shucun redevelopment process. This is also why residents in Shucun felt the whole process is confusing. They did not know where exactly responsibilities lie. Superficially, they should dealt with the demolition company, but there was a think web of interests and powers in the background.



**Figure 2 Key stakeholders in village redevelopment and compensation**

Direct effects of village re-development are on village residents. They have to give up their homes and houses and move to another place. The re-development project is planned and negotiated by the municipal government, the township government and the village committee. If the developer was a general commercial company, the township government and the village committee may work together with residents for a better compensation scheme. In the Shucun case, the developer was set up and owned by the township government with support from the village committee. The land freed from the re-development will be used as green space (not as profitable as for commercial housing) and this means that the compensation has to come from the government, which provide not much flexibility beyond the municipal compensation standard.

The municipal government in theory has to make sure there is enough land for development, at the same time it has to implement the central government policies to protect agricultural lands and ensure sufficient food supply. It also has an obligation to ensure farmer's interests are protected when land is required for development. In practice, the national food security priorities are not necessarily on top of the local authorities' agendas. Municipal governments are more interested in economic growth and meeting their financial demands. As agriculture is a relatively low productivity activity, municipal government are motivated to increase land development related incomes. The developers are the key actors in the redevelopment process as they will be the new land users and will provide the fund for village resident relocation and compensation. They work on behalf of the municipal government to carry out the transfer of rural collectively owned land to urban public ownership first. When the compensation and relocation is completed, the land becomes state ownership. Developers have to pay a land use fee for using the land for the period allowed by the law (e.g. 30 years for industrial uses, 50 years for commercial uses and 70 years for residential uses). For developers, the sales/rent of new buildings (whether they are housing or offices) will recover their investment, land use charges made to them by the government and costs of relocation and compensation made to villagers.



This process brings huge income to the municipal government without incurring much liability for them. Municipal government, in fact, sold the use rights of a piece of the originally collectively 'owned' land to a new user, with the new user paying for the relocation and compensation to villagers. In this process, the collective land ownership is only symbolic title. Developers do not buy the land from the 'collective owner', but from the municipal government. In this sense, the 'collective ownership' of rural land is indeed equivalent to the use right of state owned land. This is in line with the second explanation of the constitution in the previous section.

The nature of developers varies from scheme to scheme. It could be a private developer for commercial buildings, a government funded company for infrastructure provision of administrative or social function buildings, or as in the case of Shucun a special company set up for the specific redevelopment by the township government. This means that relocation arrangement and compensation levels vary from scheme to scheme. Despite municipal government set some guideline standards, compensation levels often change according to:

- the nature and size of the developers: powerful and resourceful developers on commercial property development could afford higher compensation.
- the planned use for the land: the land planned for commercial uses (e.g. commercial housing) could secure more compensation, while land planned for social or public infrastructure uses were compensated less. Developers using the land for affordable housing for example often pay less compensation. In the Shucun redevelopment case, the original village site is planned as part of the city's green belt. The bargaining powers of the residents were very limited.
- the time when the land is required: land at the edge of the built up areas of the city required for immediate development could win their original owners a higher compensation; while land at further distance from the built up area for future development were paid less. The establishment of the Municipal Land Banking and Management Centre is one of the approaches to bring the suburban land under the municipal government control before the farmers realise the huge increases in their land values.
- the bargaining powers of the collective: As the village committee often negotiate on behalf of the whole village, forward looking, united and non-corrupted committee could use the advantage of the collective land ownership to secure favourable relocation and compensation policies for the village. Weak and corrupted committee often sacrifice the village interest for their own personal gain. In fact all successful villages in China (such as Huaxi village) have not lost any piece of their land at all. Instead they use the land resources to the full to develop village economy. Some of them developed into sizeable towns which began to take over more land from nearby neighbouring villages (just like a municipal government).
- the bargaining powers and assertiveness of the individuals and their connection with the village leadership, the developer, the demolishing company staff and township officials: as the compensation and relocation contracts were negotiated and signed between the demolition company and the individual families on a one-to-one basis. Neighbours often don't know how much the other families got.

All these factors mean that individual village resident was often on their own in a one-against-all situation (like the Shucun case shows). The government and the law suppose to provide the protection for them. In reality, laws and regulations were used against them. Municipal government dominated by urban interests draft local regulations which do not reflect rural village residents' opinion at all. These regulations were used as the legal basis for village

relocation and redevelopment. The ambiguity of the Constitution and central legislation provide half-hearted protection to collective land owners. Local authorities interpretations tend to suit their requirement. The real victim is the farmers.

## Conclusion

There is no question that suburban village redevelopments everywhere in China are plagued with problems. A few schemes ended up with the creation of some millions (benefited from the huge inflation of commercial housing price in major cities), while others with the loss of life security among the original villagers and even life. Shucun's half finished redevelopment shows a mixed picture. For these who have moved, there was an obvious improvement in their general living environment. The modern flats in a well designed new housing estate provided them essential facilities (e.g. water, sewage and gas). There were no more dangerous buildings, muddy road, shared and smelly toilets. Many of them did not share their houses with lodgers any more and enjoyed some privacy. On the other hand, they have lost many economic opportunities. There is no way that the new replacement flats to be extended to create more rooms for renting. Family members have to find jobs in the city; many of them did not succeed and relied on the compensation payment which could run for some years if there were no any major costs such as medical bills or other disaster. Balanced on the advantages and disadvantages, some residents felt the relocation was a bad move. The reputation of the township government was also damaged by this project. The planned open space is no where to emerge yet.

The analysis of redevelopment of Shucun and the constitutional and legal provisions for land development demonstrated that the root of this wide spread problem lies with the confusion and ambiguity of the rural collective ownership of land. The Constitution's definition of collective land ownership provides half hearted protection for the rural communities. The ambiguity resulted in different interpretations, which led to local explanations of rural collective ownership of land with no difference from the state ownership of land in cities. This left individual farmers with only the equivalent use rights over the land they have occupied for generations. This confusion over village land also affected farmers property rights over their traditional houses. When private property rights have been restored in urban areas and urban houses could be traded in the market, village houses are only for family uses. When redevelopment and demolished is required, there is no accurate ways to get the market values. Compensation and relocation arrangement were often affected by many different factors, e.g. the nature of the new use of the land, the resources of the developers, the level of government support, the clearness of the township and village officials, and the time of the redevelopment and state of the property and real estate market in the areas.

Many of the problems could be solved by clear away the legal and constitutional confusions over the definition of collective ownership of rural land. Village collective ownership is a kind of ownership. It is equivalent to the state ownership, not part of the state ownership. The land under rural village control should be treated as their private property. In this way, the state will be on villagers' side in negotiation a development deal and will ensure the share of the development profit among the most needed and entitled to. Article 6 of the Constitution should be amended or deleted to avoid the confusion. The so-called 'socialist public ownership' is a pre-reform concept. It has become irrelevant in many other economic areas apart from the rural land ownership issue.

This however does not mean that the state should not have any control over the development of the land. The state should provide regulations to protect the collective

ownership and share the increase in land values with farmers through tax or other charges. Getting away the Constitutional and legal confusions will not automatically solve these problems. Every member of the rural collectives should be given the power to safeguard their property. This may involve deep rooted rural reform, including separating the administrative responsibilities of the village committees and the business management responsibilities for the village shareholder companies. Land and other resources owned by rural villages should be managed according to established company rules applied to other business sectors in urban areas.

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