



RESEARCH ARTICLE

Protect the Land User Rights when it is Illegally Possessed by Others in VietNam

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ARTICLE INFO	ABSTRACT
Received: May 13, 2024 Accepted: Aug 20, 2024	In the context of Vietnam's strongly growing economy, land is an important asset and needs to be protected and managed effectively to ensure the rights of all stakeholders. In the 2013 Land Law, the land user rights are considered property ownership rights and are protected by law. However, reality shows that land disputes and land appropriation are very complex and frequently occurring issues. In cases where people have their land appropriated by others, the 2013 Land Law clearly stipulates the rights and obligations of people to protect their land user rights. However, in reality, it is very difficult and complicated for people to protect their land user rights and property or request competent authorities to protect their rights. It is necessary to study current regulations and propose amendments to the 2013 Land Law to protect businesses and people regarding regulations related to land user rights. Therefore, protecting people's land ownership rights in case it is occupied by others is extremely necessary. This article will analyze in detail the regulations related to land ownership and provide assessments of the current situation for people and businesses in Vietnam, thereby making recommendations to amend the Land Law.
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INTRODUCTION

Land user rights are rights granted by the state to people and organizations to use land for production, business and living purposes. Land user rights are the rights of organizations and individuals who are assigned land by the State for use and can transfer, mortgage, lease or lend land user rights to others according to the provisions of law. Land user rights are classified into types such as residential land user rights, production land user rights, industrial park land user rights, agricultural land user rights, residential land user rights, and land user rights. public construction land and special-use land user rights according to the provisions of law. According to the 2013 Land Law, "Land is owned by the entire people with the State representing the owner and uniformly managing it. The State grants land user rights to land users according to the provisions of this Law.

¹Tran Thi Hien (2019). "Research on land use rights of Vietnamese people in the reform period." Vietnam Journal of Legal Sciences, No. 10/2019

²Ministry of Natural Resources and Environment, "Land-related rights", https://www.monre.gov.vn/wps/portal/!ut/p/z1/pVJdb4lwFP4VHhUhLOmx-QUMhQUWY1NJIjilGyBAkDjyKzxxW5f5d2f515KclB5WgEdU6IWfU3Jmk63OZpjinwOcyAYIADr_yuAL9K-T-bbJkwG7FJuj3qGjp7V5WFXjvBt0Rm515pYmj5xrVe76me0StzRZdNVKp8z4Z-M4nF2JnMV3LqCWWXlbWnSvmpKjzdHPDhJ0o8SYTlpT1v6UaxA6Ulvh6YqpY6hdLp6jLxNA_AjfAhlQWdl/

Thus, people have the right to use land. This is one of the basic rights of people to use their property and contribute to the country's socio-economic development.³

In many cases, people have legal rights to use land but it is being occupied by others and they need to "take back" their land to serve their needs. Protecting the land user rights when it is possessed by others is extremely important because it is related to the basic rights of the people, and is also related to ensuring social order, safety and security. protect the rights of other people. In many cases, when others appropriate people's land, these people will lose their source of income, have no place to live, and cannot produce, do business, or live. This can cause negative impacts on people's lives, especially poor people who are backward in using the law. In addition, the appropriation of people's land can also cause disputes and conflicts between related parties, leading to social order and security instability. Therefore, protecting the land user rights also means ensuring social order and safety and ensuring the rights of other people.

There are many ways that other people can possess people's land such as Illegal Appropriation (Other people can trespass on people's land without the owner's permission, this is considered an act of illegal appropriation), Pressure, intimidation (Others can pressure or threaten land owners to force them to cede land user rights), Taking advantage of position and power (In some cases, other people can take advantage of their position and power to take possession of people's land, especially in big cases, where land has high economic value). fraud (Others may use fraud and deception to defraud land owners and take possession of their property). Illegal land appropriation acts as above will cause serious consequences for land owners, especially people, so there needs to be measures to protect the land user rights to prevent them. block these actions.

There can also be quite common acts of illegal occupation such as the end of the lease term without returning the house or money, or the end of the lease term for a factory or factory without returning the factory or factory. In these cases, it is very difficult for land owners to reclaim their homes and land user rights.

2. MATERIALS AND METHODS

The research built on common research methods in the law sector in Viet Nam such as: empirical legal analysis, empirical legal assessment, and comparative legal research.

3. RESULTS

Vietnamese legal regulations on protecting the land user rights when possessed by others

Land user rights are one of the people's rights guaranteed under the 2013 Land Law, specifically: According to Article 4 of the 2013 Land Law, "Land belongs to the entire people with the State acting as the owner's representative and uniformly managing land. The State shall grant land user rights to land users". Article 5 of the 2013 Land Law also clearly stipulates: " Land users may be allocated land or leased land, have land user rights recognized by the State, or acquire land user rights in accordance with this Law " by the State. Clause 3, Article 6 stipulates: " Land users may exercise their rights and perform their obligations within the land use term in accordance with this Law and other relevant laws." Protecting the land user rights when land is illegally possessed is also stipulated in Article 12 on prohibited acts including "encroaching, occupying, and destroying land" and "Obstructing, or causing difficulties to, the exercise of the rights of land users as prescribed by law" .

³Land Law 2013, Article 4.1: "Land use rights are the rights of organizations and individuals who are allocated land by the state to use for production, business and living purposes in accordance with the provisions of law. "

In addition, the Land Law also stipulates the State's responsibility to ensure the land user rights in Articles 26 and 27, specifically as follows: Article 26. State guarantees for land users : " Grant of the certificates of land user rights and ownership of houses and other land-attached assets to land users who are eligible as prescribed by law". Article 27. Responsibilities of the State regarding residential land and agricultural production land for ethnic minorities : "To adopt policies on residential land and land for community activities for ethnic minorities in conformity with their customs, practices and cultural identities and the practical conditions of each region" and "To adopt policies to help ethnic minorities who are directly engaged in agricultural production in rural areas have land for agricultural production " .

Chapter 11 of the Land Law 2013 regulates the rights and obligations of land users, accordingly, Article 166 stipulates the general rights of land users: To be granted the certificate of land use rights, houses and other land-related assets ownership; To enjoy the results of the labor and investment on land; To enjoy the benefits derived from facilities constructed by the State for protecting and improving agricultural land; To receive the State's guidance and assistance in the improvement and fertilization of agricultural land; To be protected by the State against others' infringements of their lawful rights and benefits related to land; To receive compensation when land is recovered by the State in accordance with this Law; To complain about, denounce or file lawsuits over violations of their lawful land use rights and other violations of the land law."

To be able to exercise this right, land users must normally possess the land to exploit benefits from the land. However, there are cases where the land user leases land at the end of the lease term, the lessee does not return the land, or there are cases where confusion about boundary markers leads to someone else occupying the land user's land. In such cases, the 2013 Land Law and other documents such as the 2015 Civil Code... also recognize the state's protection when others violate their legal rights and interests in land. can complain, denounce, and sue about violations of land user rights. State agencies are responsible for returning land or compensating people who have lost land. In addition, the 2013 Land Law also regulates the handling of cases where people use land in violation of the law, including cases of illegal land appropriation. However, reclaiming land ownership rights from land users is sometimes difficult to do and faces many difficulties.

The issue of protecting the land user rights is one of the hot spots of the Land Law amendments in 2013. Previously, if people had their land expropriated by others, they would have many difficulties in filing a lawsuit. and reclaim their land user rights. However, with the change in land law in 2013, the protection of the land user rights has been significantly improved.

If people have their land expropriated by others, they can reclaim their land user rights through legal measures such as asking the Commune People's Committee for land conciliation, making an administrative complaint or suing in court. . The law also stipulates handling of people who violate land laws in Article 206 of the 2013 Land Law: People who violate land laws depend on the nature and severity of the violation. but are administratively handled or prosecuted for criminal liability according to the provisions of law ; People who violate land laws and cause damage to the State or other people, in addition to being handled according to the provisions of law, must also compensate according to the actual damage to the State or other people. suffered damage.

In addition, the 2013 Land Law has many other regulations on the rights of land users when possessed by others, such as setting out regulations on the responsibilities of state agencies in protecting land user rights of people. people. Accordingly, state agencies are responsible for ensuring the correct identification of land owners and providing measures to protect the land user rights if their land is illegally appropriated.

Although there are many such regulations in the 2013 Land Law and the 2015 Civil Code as well as the 2015 Civil Procedure Code, when a land user has their land taken away by someone else and cannot use their land, It's still very difficult for me to reclaim land user rights.

4. DISCUSSION

Actual infringement of land possession rights of people with legal land user rights.

The reality is that illegal land possession by others is currently a serious problem in many countries, including Vietnam. Illegal land possession can reduce the impact on the legal rights and interests of land users and cause disputes and conflicts in the community, destabilizing social order.

Common acts of illegally possessing other people's land include:

First: land encroachment. This is a situation of improperly expanding the land area approved in planning or illegally occupying other people's land for use. This is a very complex issue and has a major impact on economic development and the environment. According to Clause 1, Article 3 of Decree 91/2019/ND-CP (amended and supplemented in Decree 04/2022/ND-CP), regulations on the concept of land encroachment and appropriation are as follows: Land encroachment: *“ Encroachment Land is the act of a land user moving a landmark or land plot boundary to expand the area of land used without permission from the state land management agency or without the legal user of the lost land area. That encroachment is allowed. ”*

Second, the act of occupying another person's house or land. This is a violation of the law and very serious. This is a situation when a person illegally appropriates, uses or encroaches on a house, building or land owned by another person without the owner's consent.

According to Clause 2, Article 3 of Decree 91/2019/ND-CP (amended and supplemented in Decree 04/2022/ND-CP), regulations on the concept of land encroachment and appropriation are as follows: Land encroachment: *“ Occupation Land is the use of land in one of the following cases: Arbitrary use of land without permission from the state land management agency; Arbitrarily using land under the legal use rights of another organization or individual without the permission of that organization or individual; Using land allocated or leased by the State that has expired but has not been extended by the State and a land recovery decision has been announced and implemented but the land user does not compliance (except in cases where households and individuals directly engage in agricultural production and use agricultural land); Using land on the ground without completing procedures for land allocation or land lease according to the provisions of law. ”*

Illegal land and house occupation often occurs in large cities or rapidly developing urban areas, when the demand for housing increases and land prices increase. This can lead to some people using illegal methods to take over other people's homes, or using fake documents to usurp ownership.

This situation causes many serious consequences for both the person occupying the land and house and the owner of the land or house being appropriated. Occupiers can be criminally prosecuted and face legal consequences, while owners lose their ownership rights and suffer loss of property and life.

To prevent illegal house occupation, the government and authorities need to strengthen supervision, strictly handle violations and increase propaganda to raise people's awareness of this issue. In addition, there needs to be policies and support measures to solve the housing problem for those in need and ensure the ownership rights of real estate owners.

Third, the act of renting a house without returning the house at the end of the rental term. The situation of rent expiring but not returning the house is a common problem. This usually occurs when a tenant ends the lease but does not return the home to the owner. Tenants may accidentally or intentionally do so, in case they do not have another place to live or do not want to move to a new place.

This situation causes many risks for real estate owners, especially in cases where they want to use the real estate for other purposes or want to resell the real estate.

Fourth, the act of preventing the use of other people's land. This is a fairly common problem. This usually happens when another person prevents the land holder from using or developing that land.

This can be due to many different reasons, such as disputes over land user rights, disputes over the value of land assets, disputes over the exercise of rights and obligations of land users.

When a situation arises that prevents the use of other people's land, the parties involved need to find a way to resolve the problem through conciliation and legal means. If the issue cannot be resolved through conciliation, the party will need to seek legal solutions, such as litigation in court, to resolve the dispute.

Preventing the use of other people's land not only causes economic loss and damage to land users but also causes difficulties in the economic and land development of the area and leads to social disorder.

To resolve the above situation, the owner can begin the process of issuing a notice and requesting the return of the land and house in illegal possession of their land. If that person does not comply, the land user can request that the case be resolved through legal authorities, usually through filing a lawsuit in court to resolve the dispute. However, this process is often long and complicated.

In some cases, an illegal possessor may be considered an encroacher and may be subject to an administrative fine of up to 500,000,000 VND for individuals, not exceeding 1,000,000,000 VND for organizations. Article 14 of Decree 91/2019/ND-CP regulates administrative penalties for land encroachment and appropriation. Or must be held criminally responsible according to Article 228 of the 2015 Penal Code with a maximum penalty of up to 7 years in prison and in addition, compensation for damages to the land user.

The basic law also has quite detailed regulations like that, but in reality land encroachments and infringements on the legal possession rights of land users still occur and are increasingly complicated. The process of "reclaiming" land from legal users is also long and difficult, such as the case of "22 long years...reclaiming encroached land". In 1984, Ms. The farmland has an area of 972m² (27m wide, 36m long), located in Ph hamlet, T commune, C district, S province. During this time, Mr. Chau Minh D, an official of T commune, encroached Mrs. H's land. On January 13, 1987, the People's Committee of T commune resolved the case in the direction of assigning another part of land to Mrs. H. As for the land that Mr. D was encroaching on from Mrs. H, Mr. D continued to use it. use. Mrs. H was happy, excited, and eagerly waited for the day she was assigned new land. But that promise of the T Commune People's Committee never came true. Ms. H continued to complain. Although the complaint lasted for many years, she was determined to reclaim the land that Mr. D had encroached on Mrs. H. During the complaint process, she discovered that Ms. Tran Thi N, Mr. declared and was granted a certificate of land user rights. In 2006, Ms. H filed a lawsuit with the People's Court of District ⁴M. Or like the case of "Handling land encroachment when a permanent house has been built". In 2015, Mr. While living, a neighbor encroached and lost 11 square meters of residential land and built a house on it. The time to build a house on the land was around mid-2016 and their family was recorded by the local government for illegal house building behavior but the family did not know how to find a way to reclaim the land ⁵. Therefore, it is necessary to have solutions in terms of implementation and completion of the 2013 Land Law on protecting the legal ownership rights of land users.

⁴<https://tgpl.moj.gov.vn/Pages/hoi-nhap-phat-trien.aspx?ItemID=31&l=Vuviecdienhinh>

⁵<https://phamlaw.com/xu-ly-lan-chiem-dat-dai-khi-da-xay-dung-nha-cua-kien-co.html>

4. Some solutions to strengthen the protection of the ownership rights of legal land users

To ensure land ownership rights of land users, the following solutions need to be implemented:

First: Adjust the process of making and approving land planning

To ensure transparency and fairness in the land planning process, it is necessary to increase dialogue and participation of local communities to avoid illegal appropriation of other people's land. Adjusting the land planning preparation and approval process needs to include elements such as: Ensuring transparency and fairness in selecting land management subjects, especially for residential areas. The better land is planned and managed, the more illegal possession can be limited; Ensure the right to vote and contribute opinions of local people in the land planning process. Land planning will greatly affect people's interests. It can benefit some subjects but can also lead to the interests of other subjects being affected. Then land appropriations may have a chance to take place; Enhance consideration of potential impacts on the environment and people's interests.

Second, strengthen management and supervision of land use

To protect the ownership rights of land users, it is necessary to strengthen management and supervision of land use. Specific proposals include: Increasing resources and training for relevant authorities to monitor and control land use. Not only managing land users through land registration. It may also be necessary to have measures to manage land users. For example, does leasing or renting land require registration or notification to a state agency to ensure legality; Develop monitoring tools and standards to ensure the accuracy and reliability of land-related information. For example, measuring land plot boundaries clearly and specifically can avoid encroachment on other people's land; Strengthen the handling and supervision of violations of land user rights, especially the appropriation of people's land.

Third, Strengthen propaganda and education

Strengthening propaganda and education is an important factor to protect the land user rights. Propagating and educating not only through traditional methods, but also enhancing education and persuasion right at mediation sessions so that the parties clearly know their rights and obligations. So that those who are illegally possessing other people's land understand and return other people's land. Suggestions may include: Developing education and propaganda programs to introduce people to land-related rights. In particular, it is necessary to educate and propagate the ownership rights of land users to special subjects such as people from ethnic minority groups, the poor, and rural people. Groups of people with different levels of knowledge may have different illegal possession of other the land user rights.

Fourth, promote the resolution of land disputes

Disputes related to illegal possession of land user rights are often lengthy, causing both material and mental costs for both parties. Therefore, promoting the resolution of land disputes is extremely necessary. To effectively resolve land disputes, it is necessary to strengthen measures such as: Creating mechanisms and processes to resolve land disputes quickly and fairly. Mediation of land disputes is currently almost a mandatory measure while its effectiveness in practice is still not high and there are still many troublesome and complicated procedures ⁶. Therefore, simplifying land dispute conciliation procedures as well as increasing effectiveness or connecting with other agencies when detecting criminal or administrative signs is extremely necessary. . In case the parties are determined not to reconcile, there should also be shortened procedures so that the parties have time to quickly bring the dispute to court for resolution.

⁶<https://lsvn.vn/ban-ve-cong-tac-hoa-giai-tranh-chap-quyen-su-dung-dat-tai-ubnd-cap-xa-thuc-trang-va-kien-nghi1667846423.html>

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