On the Object of the Right of Residence in the Property Title of the Civil Code

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Abstract

The property rights section of the Civil Code of the People's Republic of China stipulates that the object of the right of residence is "someone else's residence", but the relevant provisions are both vague and missing. It is necessary to clarify its connotation and extension from the perspective of hermeneutics. The object of the right of abode includes ancillary facilities that are partially necessary for life, while the non-essential facilities need to be agreed upon. Ancillary facilities that are not agreed upon are not necessarily covered by the object of the right of residence. The dwelling part may establish the right of abode and the corresponding place may be registered in the register. The objects of the right of residence include stock housing, pre-sale commercial housing, policy houses with full property rights, hotel-style, service-type, and business apartments that meet the conditions, and rural self-built houses. The right of residence can no longer be established on policy-oriented rental housing such as public rental housing and talent apartments.

Keywords

Right of abode, Object of residency, Residence of others, Dwelling

1. Formulation of question

In 2020, the right of abode was officially codified into the property rights section of the Civil Code of the People's Republic of China, which defines the right of abode as the right to occupy and use the usufruct of another person's residence. The establishment of the right of abode is a response to the needs of the times in our country, such as "satisfying the residence of specific groups of people" (Tan Qiping & Fu Yiyao, 2020). Article 366 of the Civil Code limits the object of the right of residence to "the residence of another person". According to the literary interpretation, "other people's dwelling" can be interpreted as a person other than the right of residence, a building used for living and living. Can the "dwelling" part become the object of the right of residence? Does "residential" extend to ancillary facilities? Can pre-sale commercial housing establish residency? Can rural villagers establish the right of abode if they build their own houses? The Civil Code does not clearly stipulate these issues, and some scholars in China have studied and discussed them, and some issues have reached consensus, but there are still differences worth thinking about and discussing, which need further study. Therefore, this paper intends to start from the connotation and scope of the object of the right of residence, and combine the views of scholars to further study and discuss the object of the right of residence, in order to provide an applicable scheme for the application of the right of residence system.
2. Object of the right of abode "someone else's home"

What exactly is the meaning of "the residence of another person"? The Civil Code does not clearly stipulate these issues. The content of the subject matter of the right of abode will be discussed further.

2.1 Non-operating housing

Article 366 of the Civil Code clearly stipulates that the right of residence is established "to meet the needs of living and living", and the right of residence cannot be established on commercial buildings such as shops. The commercial premises here cannot be simply understood as the buildings built on commercial land. There are also residential apartments built on commercial land, which also meet the needs of living and living.

2.2 Ancillary facilities of "Residential"

Can the ancillary facilities of the "residence" of the object of the right of abode become the object of the right of abode? Article 180 of China's 2005 Property Law of the People's Republic of China (Draft) stipulates that the object of the right of residence includes "ancillary facilities", and the current Civil Code does not mention ancillary facilities in the right of abode part. Most scholars in China have a positive opinion on whether ancillary facilities can become the object of the right of residence, but it should be limited according to the characteristics of the "dwelling" of the right of residence to meet the needs of living and living. For example, facilities necessary for daily needs, such as elevators, roads, and stairs, are of course the objects of the right of residence. However, the parking spaces, swimming pools and other facilities that are not necessary for life owned by the owner shall be agreed upon by both parties, and if no agreement has been made, the owner of the right of residence does not automatically have the right of residence for such ancillary facilities.

2.3 The "Residential" section

Can the "dwelling" part be the object of the right of residence? Affirmators believe can become the object of the right of residence. For example, Professor Fang Shaokun explained that the establishment of a right of abode in part of a dwelling does not violate the object-specific doctrine of property rights," although on the surface, the right of abode is established on a part of the dwelling, but it is actually a burden on the entire dwelling, but the scope of the exercise of the dwelling right holder must be limited to a specific part' (Fang Shaokun, 2020). Some people in the registration practice department believe that the object of the right of abode is a dwelling, and a single room cannot be registered as a real estate unit (Deng Ying, 2020). Some scholars believe that affirming that the part of the "dwelling" can become the object of the right of residence is a breakthrough in the principle of the object of property rights, which will shake the foundation of the property law, and further explain that the part of the "dwelling" is not a complete thing, and does not have specificity and integrity (Wang Rongzhen, 2021).

I prefer the first view, one of the purposes of the establishment of the right of residence is to promote and guarantee the people's diversified use of housing, and effectively play the economic function and utility of housing (Wang Liming, 2020). In order to "make the most of the premises", it should be recognized that there are multiple holders of the right of residence, and the establishment of the right of residence is more appropriate than an easement, which is also a usufruct right, and the easement is also a transfer of part of the interest. When the owner and the owner of the right of residence live together, there is no legal basis for this situation if the right of residence is not recognized for part of the dwelling; When multiple people have the right to reside in the same dwelling, disputes over location and extent are inevitable, and the advantages of clear zoning agreements and records come into play.

3. The scope of the object of the right of residence

At present, there are different types of housing in China, including commercial housing, policy-oriented housing, apartments, and rural self-built houses. Residency is not possible on all types of dwellings.

3.1 Ordinary commercial housing

Ordinary commercial housing includes stock housing and pre-sale commercial housing. There is no need to argue that existing houses can establish the right of residence, and what is still controversial is pre-sale commercial
housing. Some scholars believe that the right of abode is not expected, and the pre-sale houses that are still under construction do not belong to the real thing, so they cannot be used as the object of the right of abode. I do not agree with this point of view, in real life, when parents buy a house for their children, they want to establish the right of residence for themselves, and there is a reasonable expectation of the right of residence, which is not promised on the actual delivery of the house, and this reasonable expectation should be protected. In order to protect the transferor of ownership and prevent the sale of the house to a third party or the establishment of a mortgage right before the assignee actually acquires the house, some scholars propose to protect the right holder through the "advance notice registration system", and carry out the advance notice registration of ownership and residence right at the same time before completion, and the registration of ownership transfer and the establishment of the right of residence at the same time after completion (Weng Rongzhen, 2021). I strongly agrees with this, this method can better protect the interests of the transferor. Therefore, both stock houses and pre-sale commercial houses can establish the right of residence.

3.2 Policy-oriented housing

At present, there are the following types of policy-oriented housing in China: shared ownership housing, affordable housing (including pooled housing), public rental housing, talent apartments, etc.

In addition to purchasing in accordance with the government's purchase conditions, full property rights can only be obtained after the expiration of the purchase period stipulated by the government, at which time the co-ownership housing and affordable housing are no different from ordinary commercial housing, and can also become the object of the right of residence.

Policy rental housing such as public rental housing and talent apartments is different from the above two types of policy housing, and its property owner has always been the government, and the people facing them only have the authority to rent. Before the right of abode was clarified in the Civil Code, China has been using special lease contracts to adjust this type of policy housing, which is clearly different from ordinary lease contracts, such as the lease contract signed by public rental housing, the lessee can live for a lifetime without violating the contract, and does not need to renew the contract, nor is it subject to the maximum lease period of the lease contract. Now that the right of abode system has been introduced, the author believes that it is more appropriate to adjust this relationship with the right of abode contract. First of all, the right of residence is more in line with the requirements that such policy-based rental housing shall not be rented, transferred, inherited, mortgaged, or disposed of; Secondly, the right of abode system can better protect the rights and interests of the occupants, as a usufruct right, the degree of protection of the right of abode is stronger than that of the lease right formed based on the lease contract, when the right is infringed, the residency holder has the right to claim property rights, while the lessee only enjoys the right to claim possession protection.

3.3 Business apartments, serviced apartments and serviced apartments

China implements land use control, business apartments, serviced apartments and serviced apartments are non-civil residences built on commercial land or comprehensive land, and the difference from ordinary residential buildings lies in the use life and purpose of the land they are attached to, and whether the use period can be automatically renewed after the expiration of the service life. Can an apartment be the object of the right of residence? Affirmative scholars believe that apartments are not only used for commercial purposes, but also for civilian use, and the right of residence can be directly established on them; Negative scholars believe that commercial apartments are built on commercial land for commercial purposes rather than civil use, and cannot be recognized as "residential" and cannot become the object of the right of residence. I believe that although these apartments were not positioned as civilian residences when the government planned and constructed, these apartments could in fact meet the needs of living and living and meet the conditions for the establishment of the right of residence. The establishment of apartment residency rights can promote the implementation of the multi-channel and multi-mode housing guarantee system. What’s more, more and more young people choose to spend less money to buy apartments for living life, and based on actual needs, apartments should also be allowed to set up residency rights on them.

3.4 Self-built housing in rural areas

The ownership of self-built houses in rural areas is limited to the members of the collective economic organiza-
tion, and can only be transferred within the collective economic organization. Rural villagers also have a real need for housing to establish the right of residence, for example, after divorce in rural areas, women cannot divide the common property of the homestead, and it is difficult to apply for a new homestead in the mother's family, and the right to subsistence and the right of residence may be violated (Xia Jianghao, 2020). Therefore, rural self-built houses should be allowed to become the object of the right of residence.

4. Conclusion

The object of the right of abode shall be non-operating housing, "Other people's residence" should of course extend to ancillary facilities that partially meet the needs of life. The part of "dwelling" can also become the object of the right of residence and the corresponding location can be registered. Stock houses and pre-sale commercial houses, policy houses that have obtained full property rights, rural self-built houses, hotel-style, service-type, and business apartments, can all establish the right of residence, while public rental housing, talent apartments and other policy rental houses can no longer establish the right of residence, which is more appropriate to identify as the right of residence established by the government for residents.

References