

Another meaningful victory against Shanghai local government in respect of inheritance of garden villa on allocated land

Description

A few months ago, I was approached by one of the offspring of Sun Yat Sen, the founder of the Republic of China, for his trouble in inheriting a garden villa located in Xuhui district in Shanghai China. The trouble is that he and other heirs to the estate garden villa are required by local land administration to pay a big sum of land grant fee for the land underlying the garden villa house, which is completely out of the blue to them. It is never heard that inheritors are required to pay land grant fee in practice. I was actually kind of puzzled by client's puzzle.

Then I told my client that according to the rule promulgated by Shanghai municipal land administration back in April of 2010, which is designed to regulate the transfer of garden villa (a special type of residential properties) and non-residential properties sitting on allocated land (those land that were given to users without cost) by providing that upon transfer of such properties, land grant fee at market level shall be paid to government before the title transfer is effected. In this rule, it does not define "transfer" (*zhuan rang* in Chinese). However in the absence of a specific definition of this term, it shall be understood and interpreted based on the customary usage of this term which generally means the sale and purchase transaction in which the title of the property is transferred from seller to buyer. In any sense, the term of "transfer" in Chinese legal jargon does not cover the the act of inheritance of real estate. Inheritance of property is distinctly different from sale of property in many aspects such as taxes.

With my advice, the client went to local land administration department again and argued by presenting the aforesaid rule and my understanding thereof above. The people at the department however claimed that the word "transfer" used in that rule meant any kind of change of title holder of the property in question regardless of whether such change is resulted from sale, gift and inheritance of properties.

Such arbitrary interpretation is obviously erroneous.

Given the stubborn attitude of the local land administration, oral argument is not going to work esp on the backdrop that local governments are all starved with cash money. We need to turn to other authorities for help which will have the power to tell the local department what is right to do.

But client has initially ruled out litigation against the local land department for whatever reason.

There are not many options left. I come to think of Chinese ombudsman system to which citizens can petition for help. I wrote a letter sent to Shanghai Municipal Land Administration Department with copies served on other two governmental departments which are empowered with authority to oversee the legislation work by local administrative departments.

It is a long wait before a formal reply from Municipal Land Administration Department is received just a couple of days ago. I am much delighted to see that in the formal reply, it clearly states that (1) the

word “transfer” should be interpreted as having the same meaning as used in higher-level legislation, and (2) in the case of title transfer of the real estate on allocated land as a result of legal inheritance thereof, the land department can grant consent to applicant for continuing using the allocated land without effecting land granting formalities if the applicant applies for such continuance, and the land department shall effect the land granting formalities for the applicant who shall pay the land granting fee.

In essence, the reply now allows the applicants (the inheritors) to choose to pay or not pay the land granting fee in their course of inheriting garden villas and non-residential properties built on allocated land in China.

If you can read Chinese, you may wish to continue reading another article [here](#).

Note, for more information about Chinese allocated land system, please click [here](#).



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