

Regulations on land fund development according to the draft amended Law on Land and several assessments and suggestions for completion

Quy định về phát triển quỹ đất theo dự thảo Luật Đất đai sửa đổi và một số đánh giá, góp ý hoàn thiện

Tran Linh Huan¹, Pham Thi Hong Tam², Nguyen Thi Thao Uyen¹, Do Thi Van¹

¹Ho Chi Minh City University of Law

²Phan Thiet University, Binh Thuan

E-mail: tlhuan@hcmulaw.edu.vn

Abstract: In order to develop the land fund and help the state be more proactive in allocating land, the Ministry of Natural Resources and Environment has proposed Chapter VIII on land fund development in the Draft amended Law on Land. Within the scope of this article, the focus is on analyzing and evaluating the limitations and inadequacies in the regulations on land fund development based on a comparison between the Draft amended Law on Land and the current Law on Land, thereby making some suggestions to improve legal provisions to establish a comprehensive and strict legal framework for land fund development activities in Vietnam today.

Keywords: *Completion; draft law on land; land fund development; restriction*

Tóm tắt: Nhằm phát triển quỹ đất, giúp Nhà nước chủ động hơn trong việc phân bổ đất đai, tại dự thảo Luật Đất đai (sửa đổi), Bộ Tài nguyên và Môi trường đã đề xuất chương VIII về phát triển quỹ đất. Trong phạm vi đề cập, bài viết tập trung vào việc phân tích, đánh giá chỉ ra những điểm còn hạn chế, bất cập trong quy định về phát triển quỹ đất trên cơ sở so sánh, đối chiếu giữa Dự thảo Luật Đất đai sửa đổi và Luật Đất đai hiện hành và từ đó đưa ra một số kiến nghị hoàn thiện quy định pháp luật nhằm thiết lập hành lang pháp lý toàn diện, chặt chẽ trong hoạt động phát triển quỹ đất tại Việt Nam hiện nay.

Từ khóa: *Dự thảo Luật đất đai; hạn chế; hoàn thiện; phát triển quỹ đất*

1. Introduction

The land is an extremely valuable resource for developing every individual, nation, and era [1]. Recognizing this importance, the state has implemented policies to develop land resources most reasonably. Land development has long been regulated and supplemented by laws on land to suit the actual situation of the country in each period. Land policies and laws are generally compatible with the market economy, creating motivation to exploit land resources for economic and social development. This content has been mentioned since the 1987 Law on Land and is increasingly emphasized in the 2013 Law on Land. However, in reality, for many different reasons, land users and investors have used land improperly, not complying with the prescribed procedures and planning. This has caused the land fund, especially agricultural land, to be increasingly depleted, losing much value [2]. Many entities need land to use but do not have land funds to use. In contrast, many other entities have the behavior exploiting and wasting land funds, making the already limited land fund even more wasteful. Therefore, to develop land funds and help the state be more proactive in allocating land, the Ministry of Natural Resources and Environment proposed Chapter VIII on land fund development in the Draft of the amended Law on Land. However, the regulations on this issue still have certain limitations, so continuing to study, evaluate and point out the remaining limitations and shortcomings in regulating land fund development in

the Draft amended Law on Land and making some recommendations for improvement is very important and necessary in the current context.

2. Regulations on land fund development

2.1. Regulations on land fund development and shortcomings in the 2013 Law on Land

In the 2013 Law on Land, the development of land funds does not have a separate chapter but is generally regulated in Article 111, Section 1, Chapter VIII, with the title "Finance of land, land prices, and land use rights auctions." The development of land funds is specifically regulated in Chapter 2 of Decree 43/2014/ND-CP on the detailed implementation of some provisions of the Law on Land. Based on Point a, Section 2, Article 5 of Decree 43/2014/ND-CP, the organization for land fund development is defined as follows: "The organization for land fund development is a public enterprise unit established in accordance with the law on the establishment, reorganization, dissolution of public enterprise units; has legal personality, its seal and is allowed to open accounts for operation in accordance with the law; and has branches in districts, towns, and cities under the province. For localities that already have provincial-level and district-level organizations for land fund development, the organizations will be reorganized based on the merger of the existing provincial-level and district-level organizations." In addition, the Decree also stipulates: "The organization for land fund development

has the functions of creating, developing, managing, and exploiting land funds; organizing compensation, support, and resettlement; receiving the transfer of land use rights from organizations, households, and individuals; organizing land use rights auctions and other services." Therefore, according to the regulations of the Decree, the organization for land fund development is a public enterprise unit established in accordance with the law on the establishment, reorganization, and dissolution of public enterprise units; has legal personality, its seal and is allowed to open accounts for operation in accordance with the law; and has branches in districts, towns, and cities under the province.

After many years of practical experience, it has become clear that establishing regulations regarding land development funds plays an especially important role in the short and long term. The Land Development Fund is responsible for creating land reserves, serving compensation and resettlement purposes, and contributing to anti-tax evasion efforts in real estate transactions [3].

However, organizing and implementing these regulations has encountered difficulties and shortcomings, which have prevented the Land Development Fund from fulfilling its role in creating land reserves and created opportunities for individuals and organizations to exploit it. The 2013 Law on Land and Decree 43/2014/ND-CP have vague and general provisions, especially with regard to the specific financial sources of the Land

Development Fund, which does not guarantee the resources needed for land development.

Specifically, Article 111 of the current law only stipulates that the Land Development Fund of the locality is established by the Provincial People's Committee or entrusted to the Investment Development Fund and other financial funds of the locality to provide funding for compensation, resettlement, and land creation according to land use plans. The financial resources of the Land Development Fund are allocated from the state budget and mobilized from other sources according to the provisions of the law.

Clause 2, Article 6 of Decree 43/2014/ND-CP provides detailed regulations on the implementation of some provisions of the 2013 Law on Land but only specifies that the financial resources of the Land Development Fund are allocated from the state budget and included in the local budget plan, supplemented each year periodically; mobilized from other sources such as aid, sponsorship, support, or entrusted management from international organizations, domestic organizations, and individuals.

Therefore, the only financial source of the Fund is the local budget because "mobilizing from other sources" is almost non-existent. While most localities do not have enough revenue to cover expenses, they do not have the money to "pump" into the Land Development Fund [4]. This is the main reason why most Land Development

Funds at the local level operate ineffectively.

2.2. Regulations on land fund development and new points in the Draft Law on Land amendment compared to the 2013 Law on Land

Developing the land fund is one of the important issues raised to supplement and improve the Law on Land. This is an urgent matter to ensure efficient reserve land use and economic development and guarantee the rights of citizens. Reality shows that besides the results achieved, the 2013 Law on Land also revealed many shortcomings and overlaps. Faced with these shortcomings, in the first session of the 15th National Assembly, the draft Law on Land amendment was included in the 2022 law and ordinance building program. Up to now, through the Draft Law on Land amendment to build a mechanism for land fund development, the Draft proposes to add a new chapter on regulations for land fund development (from Article 111 to Article 115).

Specifically, in the Draft Law on Land amendment, the Draft has added Chapter V Land Fund Development, including five articles (from Article 111 to Article 115). The Draft proposes to build a mechanism for land fund development, ensuring the state's proactive role in land allocation and market regulation. Specifically, the regulations on the state's investment in land fund development to meet the demand for investment projects, auction of land use rights to create state budget revenue, land fund development is carried out according to investment

projects decided by competent state agencies, for the right purposes, publicly, transparently, effectively, and in accordance with the law. Accordingly, the forms of creating land funds through land recovery projects in surrounding areas of projects, infrastructure construction, urban refurbishment, rural residential areas, or coastal encroachment projects using state budget sources are specified [5]. The specific regulations on which projects fall under the recovery category to be put into the land fund create favorable conditions for individuals and competent agencies to apply the law and make decisions to recover each case. In addition, the land put into the fund is quite diverse, including different land funds that create conditions for the state to manage, expand, promote, and facilitate the development of investment projects.

In Article 113, the draft proposal suggests amending and supplementing the regulations on the Provincial Development Fund, which the People's Committee establishes at the provincial level to receive and manage financial resources allocated from the budget and mobilize other sources. Additionally, the proposal defines the responsibilities of the People's Committee regarding submitting to the People's Council at the same level for a decision on allocating funds from land use fees and annual land rentals of the locality to the Provincial Development Fund. Specifically, the regulations specify that the Provincial Development Fund is established or entrusted by the People's Committee at the provincial level to

receive and allocate funds for compensation, land clearance, and land fund creation as prescribed in Article 111 of this Law. Financial resources of the Provincial Development Fund are allocated from the state budget and mobilized from other sources according to the law. At the same time, the People's Committee at the provincial level is responsible for proposing to the People's Council at the same level a decision to allocate at least 10% of the revenue from land use fees and annual land rentals to the Provincial Development Fund. The government stipulates the structure, organization, functions, tasks, and operating mechanism of the Provincial Development Fund. Compared to Decree No. 43/2014/NĐ-CP detailing the implementation of some articles of the Law on Land 2013, the Decree only stipulates that the funding for the Provincial Development Fund is allocated from the state budget and included in the local budget plan, which is granted at the establishment and supplemented each year periodically, and mobilized from other sources that have proven to be very limited or almost non-existent in practice. Therefore, the draft Law on Land amendment proposes a new point by supplementing regulations that the People's Committee at the provincial level must allocate at least 10% of the revenue from land use fees and annual land rentals to the Fund. This aims to create a flexible and stable funding source for the Fund instead of waiting for allocation from the state budget and mobilizing resources to

operate the Provincial Development Fund in localities effectively.

Furthermore, in Article 114 of the proposed Draft, it is suggested to assign the management of land funds in Section 3 of Article 111 to the Land Development Fund Organization to serve the state's allocation and leasing for investment projects in accordance with the law. The People's Committee of the commune where the land is located is responsible for coordinating with the Land Development Fund Organization in managing and protecting the land from encroachment or occupation. In cases where the land funds have not been allocated or leased for investment projects, the Land Development Fund Organization is authorized to lease them for short-term use by organizations or individuals to effectively and efficiently exploit the land in accordance with government regulations. Additionally, the proposed Draft also suggests amending and supplementing regulations on the position, function, and duties of the Land Development Fund Organization. According to Point a, Section 2 of Article 5 in Decree 43/2014, the Land Development Fund Organization is a public career unit established at the provincial level. However, in Section 1 of Article 115 in the proposed Draft, the organization is defined as a public career unit or a business that supplies products or public services wholly owned by the state and managed by the People's Committee at the provincial level according to the law. Furthermore, the Land Development Fund Organization is proposed to be assigned additional

functions, including implementing investment projects specified in Sections 1 and 2 of Article 112 of this Law; carrying out compensation, assistance, resettlement, and land clearance for other projects; organizing land use rights auctions; managing and exploiting land funds; establishing agricultural land funds through land use rights leases, land use rights transfers, and land use rights consignments; and leasing land to investors for agricultural production and other tasks as decided by the People's Committee at the provincial level.

3. Some suggestions for improvement

In practice, real estate transactions often have two prices: the actual payment price between the parties and the price stated in the contract. The price in the contract is usually lower than the actual payment price, intending to reduce the amount of tax paid to the state, causing tax losses [6]. Although tax authorities are aware of this behavior, it is difficult to handle because it is a civil transaction, and the parties have the right to freely and fairly negotiate [7]. Furthermore, the parties in the transaction do not deal at prices lower than the land price list set by the provincial People's Committee. According to the provisions of the Draft Law on Land amendment, 10% of the land use and annual land lease fees are allocated to the Land Development Fund. Thus, if the revenue from these activities is high, the financial source of the Fund will be even greater. Therefore, it is necessary to consider whether, if there are cases where the transaction value stated in the contract is

too low compared to the market transaction price, the land development organization has the right to use the Fund to purchase land at the right market price and then put it into the Fund or auction it to return the money to the Fund. The land development organization should have priority in purchasing it. When repurchasing real estate to the Fund to expand land funds for localities, if these real estate properties are used to auction land use rights, they will also contribute to managing and controlling land use issues, avoiding situations of abandoned land, unexploited land, and undeveloped investment.

In addition, the government should also provide detailed regulations and establish legal corridors for how much price difference between the two prices is a violation, thereby promoting the development of the Land Development Fund.

Article 106 of the first Draft of the Law on Land has a provision for the "Agricultural Land Bank." This is a state-owned enterprise established by the government to create a fund for agricultural land by leasing, receiving transfers, accepting consignments of agricultural land use rights, and leasing land to investors for production. However, after the revision process, the lawmakers completely abolished this provision in the second Draft of the Law on Land. The function of the Agricultural Land Bank was merged with the function of the Land Fund Development Organization in Article 115(2) of the second revised Draft of the Law on Land. The term "Agricultural

Land Bank" is included in Resolution 18/NQ-TW dated June 22, 2022. Would it be reasonable if we did not include it in the law? It can be seen that such a merger is not reasonable because the nature of the Agricultural Land Bank is not for profit, is guaranteed by the state for payment ability, and is exempt from taxes and state budget obligations. Therefore, it is necessary to maintain the provision of the Agricultural Land Bank to separate it from the function of the Land Fund Development Organization.

In Article 111(3) of the revised Draft, the provision for land recovery for creating a land fund includes the recovery of land for economic and social development projects for the benefit of the nation and the public. To overcome the shortcomings of the Law on Land, the Draft has specifically defined the concept of economic and social development projects for the national interest and public benefit. The Draft has proposed to remove the provision on the approval authority for projects, replacing it with a provision for projects subject to state recovery. This issue is not yet fully addressed, as there is no clear regulation on the authority for these projects. It can be assumed that the state will naturally give these projects land, leased land, or recovered land for project activities without considering their scale, capital, and strategy. If not regulated, it could lead to the misuse of land recovery for investment projects. Therefore, in addition to the regulation on projects given land or leased land by the state from recovered land, it is necessary to develop regulations to adjust these

projects' scale, structure, capital, economic, and strategic aspects.

4. Conclusion

Overall, the new provisions and amendments of the Draft Law on Land on Land fund development have addressed the current Law on Land limitations, contributing to improving legal regulations. In addition, the deficiencies that have existed for many years, causing losses and waste of valuable land resources, are gradually being overcome to lay the foundation for protecting these resources. However, to ensure the feasibility of the provisions during the implementation process, it is important and necessary to continue researching, evaluating, and seeking people's opinions on improving this Draft in the current context.

References

- [1] N. K. H. Nguyen, P. P. Ngan and N. T. T. Uyen, "Experience in land management in several countries around the world", *Journal of Industry and Trade*, no. 24, pp. 18-23, 2022.
- [2] N. C. My and H. X. Nghia, "Four directions of breakthroughs in agricultural, rural and farmer policies in the current period", *Journal of World Economic and Political Affairs*, no. 7(147), pp. 64-73, 2008.
- [3] M. Bon, "Using the Land Development Fund to Combat Tax Loss", 2023. [Online]. Available: <https://baodautu.vn/su-dung-quy-phat-trien-dat-de-chong-that-thu-thue-d183814.html>. [Accessed 06/10/2023].
- [4] N. V. Hien, "Difficulties in human resources financing for land fund development for resettlement when the state acquires land", *Journal of Scientific Research Audit*, no. 48, pp. 37-39, 2011.

[5] T. Van, “Develop a mechanism for land fund development, ensuring the State's initiative in land allocation”, 2023. [Online]. Available: <https://baochinhphu.vn/xay-dung-co-che-phat-trien-quy-dat-bao-dam-su-chu-dong-cua-nha-nuoc-trong-viec-phan-bo-dat-dai-102230130164640005.htm>. [Accessed 06/10/2023].

[6] M. Bon, “How to fight two prices in real estate transactions”, 2023. [Online]. Available: <https://baodautu.vn/cach-nao-chong-hai-gia-trong-giao-dich-bat-dong-san-d184240.html>. [Accessed 06/10/2023].

[7] A. Hong and L. Thanh, “Real Estate Transfer Tax Squeeze: Still Tangled With Proper Price Determination”, 2022. [Online]. Available: <https://tuoitre.vn/siet-thue-chuyen-nhuong-bat-dong-san-van-roi-voi-xac-dinh-gia-dung-20220507083058802.htm>. [Accessed 06/10/2023].

Ngày nhận bài: 25/4/2023

Ngày hoàn thành sửa bài: 15/6/2023

Ngày chấp nhận đăng: 26/6/2023