

20) follow this principle-stating section.

Since the Act is only the declaration of governmental principle, its effect in land policies depends on the future specific legislation realizing the Act.

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2. Law of Property and Obligations

The Basic Land Law Act.

Promulgated on December 22, 1989. Ch. 84. Effective as of December 22, 1989.

[Background of the Legislation]

Since 1985, land prices in the center of Tokyo have risen and the increases of land prices have gradually spread major cities in Japan. After 1987, it became nearly impossible for ordinary people in big cities like Tokyo or Osaka to buy an apartment house, still less a detached house. This rapid increase of land price has caused many difficulties. For example, national and local governments have to spend quite huge amounts of money to buy small plots of land in order to carry out social overhead capital programmes. People also have realized the vast differences of wealth between those who own property and those who do not. Land and housing policy became one of the most important political issues for the first time in Japanese history. Because of the fear of creating social unrest, the Japanese government set up a special committee for reconsidering land and housing policies (*Tochi-Rincho*). This committee published a final report in June 1988, and at the same time the government made up an outline of comprehensive land policies. During 1988 and 1989 many land Acts were enacted. The parliamentary session in 1988

is usually called “the Land Diet”. The landmark of the Land Diet was enactment of the Basic Land Law Act which is based on the above two measures. The Basic Land Law Act (*Tochi-Kihon Ho*) was enacted in December 1989.

[Outline and brief comments of the Act]

1. Introduction

Following the publication of the final report of *Tochi-Rincho*, opposition parties prepared a bill for the basic law for land in 1988. However, the government was at first very reluctant to legislate such an act. The Prime Minister Takeshita was eager to show his government efforts for solving land and housing problems, and he decided to enact a basic land law act on the basics of the opposition parties’ bill.

During the process of legislation, researchers and people involved in land and housing problems criticized the contents of the bill because the bill only states ideals of land policy and does not include any concrete obligatory provisions. Furthermore several researchers, academics, lawyers and motivated citizens proposed an alternative bill for a basic law for land. Unfortunately, none of these peoples’ efforts was able to affect the contents of the Act.

The main purposes of this Act are to legislate fundamental principles for future land policies. The Act is separated into three chapters. The first chapter of the Act provides the following five major points: first of all, the primacy of public welfare in land policy; second, the proper use of land; third, the planned use of land; fourth, the control of speculative land transaction; fifth, the proper burden according to profit from increase in land value.

2. Basic objectives of the Act

Article 1 provides basic objectives of the Act, namely deciding fundamental ideals for future land policy; clarifies obligations of national and local governments, private developer and people concerning with land; determines provisions on the basics of land policy; secures proper land use; and promotes comprehensive land policy in order to form normal supply and demand of land and establish proper land

prices. Through these measures the Act contributes to security and improve peoples' lives and the sound development of the national economy.

This Act takes the form of a basic law, because mere statements of policy in governmental documents do not restrict future activities of the government. Therefore, as the government wants to carry out the provisions of fundamental principles of land policies in this Act without regard to political changes, the government provides the following principles in the form of enactment. The government has an obligation to put these principles into effect. However, the obligations are too abstract to materialize and lack obligatory binding forces to regulate concrete activities of the government. In this sense the obligation of the government is said to be rather a political statement than a legal document. Even so, the government has a political obligation to revise or abolish existing acts which conflict with this Act and to legislate new acts to realize the basic principles of the Act.

3. Fundamental principles for future land policy

(1) Articles from 2 to 5 of the Act provide five principles on land policy. Article 2 provides the primacy of public welfare in land policy as the basic principle for land. Article 29 of the Constitution of Japan provides "The right to own or to hold property is inviolable. Property rights shall be defined by law, in conformity with the public welfare". On the basis of subsection 2 of article 29, there are many land acts which define the content of property rights in land. The National Land Use Planning Act of 1974, the Town Planning Act of 1968, and the Building Standard Act of 1950 are typical examples. Article 2 of this Act further empowers the government to regulate and control property rights in land. In this sense, the term "public welfare" has significant meaning concerning the direction of future land policy. However, the public welfare has no definite meaning, so it is very important to define the exact meaning of the public welfare, especially with regard to the context of individual cases. Unless there is an unanimous opinion on the definition of the public welfare, this term may be used as a pretext to control property

rights of private individuals by the pursuit of big corporation's private interests.

(2) Article 3 provides two principles; the first is a principle of the proper use of land, and the second is the planned use of land. The principle of the proper use of land implies an introduction of restricting measures on vacant and unused lands. As the tax on land holdings is not a heavy burden, and expecting future increase of land price, many people managed to continue to hold land with no future land development plan. The objective of this clause is to exterminate these social conditions.

The principle of planned use of land means an adjustment of possible different uses on the same land. This also requires that the land shall be used in a planned way in order to realize reasonable use. This article particularly means a compliance of land use with land use plan based on the Town Planning Act and other programmes under it.

(3) Article 4 provides a control of speculative land transactions. Speculative land transaction is defined as a transaction with an intention of absorbing profits of land price increases accruing from the future land transfer. As speculative land transactions are not based on any firm demand of land, they are likely to produce high land prices. Therefore, the Act seeks to control speculative land transactions. However, the meaning of speculative transaction is abstract and this article lacks any possible way of realizing this purpose.

(4) Article 5 provides a principle of proper burden according to profit from increase in land values. The increase in land values, which is different from ordinary commodities, comes from external factors such as a concentration of population and industry, the improvement of social overhead capital such as roads and railroads, and the increased possibility of land development through the changes of land use regulation. As the increase in land values does not depend on the efforts of landholders, profiting from increases in land values is regarded as unjust and a kind of unearned income. Therefore, many proposed to the government to introduce a system of betterment levy. Owing to these practices, this article introduced the idea of imposing reasonable burden on the land use plan.

4. Other provisions of the Act

(1) In addition to five principles on land policy, the Act stipulates obligations of national and local governments (article 6), obligations of private developers (article 7), and obligations of individuals (article 8). Also, the government has a duty to take necessary legal, financial and monetary measures (article 9). The government shall submit an annual report to the Diet concerning land prices, land use, land transactions, other trends related to land and basic measures which the government took concerning land (article 10).

(2) Section 2 of the Act (articles 11 to 18) is entitled Basic Measures on Land. Each article specifies the responsibility of the government concerning land. The government shall make plans of land use (article 11); the government shall take necessary measures to ensure proper land use (article 12); the government shall take measures to control land transactions (article 13), and to impose the proper burden according to profits from increase in land values (article 14); the government shall take proper measures on tax (article 15); the government shall make efforts to rationalize land assessment (article 16), to survey statistics on land (article 17) and to improve governmental organization (article 18).

(3) Section 3 of the Act deals with the Land Policy Council. The Land Policy Council shall be set up within the Land Agency. The Land Policy Council shall examine and discuss comprehensive and fundamental measures on land, and basic matters on land use (article 19). Article 20 provides details of the Land Policy Council.

These are the contents and comments on major provisions of the Basic Land Law Act. Since 1990, land prices in Osaka and Tokyo had started to decrease, not because of the Act but because of financial policies of the Bank of Japan and the Ministry of Finance. We have to wait and see to evaluate effects of the Act.

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