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**Vietnam Law on Property Handling After Land Exception - Regulations and Some Recommendations**Nguyen Thanh Phuong<sup>1</sup>, Nguyen Huu Nhan<sup>2</sup>, Nguyen Phan Quoc Kiet<sup>3</sup>

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**Abstract:** The article focuses on analyzing the regulations on property handling after coercion from the perspective of property rights in civil law. In which, clarifying cases where regulations on post-coercive property handling must be applied, and responsibilities of the organization in charge of enforcement; At the same time, find out the current situation of applying regulations on management and handling of assets after coercive land recovery in Vietnam. From there, the article proposes recommendations to improve Vietnam's law related to property handling after coercive land recovery.

**Keywords:** Land recovery, forced land recovery, property handling

**1. Introduction**

For the State coercive is a powerful activity, this is an effective means to help the State easily coordinate the land. In addition, it is also necessary to clarify whether the implementation is in accordance with the legal process or not, which is a topical and sensitive issue. Limiting the scope of research, the authors only mention legal issues related to post-coercive property handling measures in case the State recovers land for defense and security purposes; socio-economic development for national and public interests; Besides the mechanism of protection and handling of assets, how is it done in case the owner temporarily refuses to receive the property after enforcement. In order to clarify this issue, the article will summarize the key issues related to coercive land acquisition such as the concept of coercive land acquisition, handling of movable property, principles, and characteristics of land acquisition Post-coercive property handling when the State recovers land in Vietnam has compared and contrasted the experiences of some countries. From there, point out the inadequacies that Vietnam is facing in order to propose effective solutions to contribute to the improvement of Vietnam's law related to forced land acquisition.

**2. Research Methods**

In the process of researching the topic, the authors have applied a number of methodologies and research methods as follows:

- Methods of analysis, interpretation, commentary, synthesis: this can be said to be the method that the authors have commonly used to analyze laws, legal documents, and related issues when The state conducts coercive land acquisition.
- Comparative method: present legal provisions on the handling of movable property after enforcement of land recovery, experience in implementation in provinces and cities in Vietnam and compare with the experience of some countries in the world to see the advantages and disadvantages still exist in the land acquisition regulations.
- The method of statistics, collection, and analysis of actual data: this is the method that the author mainly uses in the content of the law implementation situation of some localities when applying the law on handling of financial assets. the property after the forced land recovery, in order to clarify the points of achievements, limitations, and shortcomings in the implementation of the law.

### 3. Research content

In the framework of the article, in addition to studying the current theoretical and legal issues related to the operation mechanism of property handling after the forced land recovery of the State of Vietnam, the theory of the view on asset handling activities, procedures, and methods of receiving coercive assets to the stage of handing over and handling after enforcement. On the other hand, in line with the application orientation, the research work will focus on clarifying the inadequacies and obstacles in the application of the provisions of the law to the practice of the post-coercive property handling process. applied in localities in Vietnam. Thereby giving comments, solutions, and proposals to improve the mechanism of asset handling after coercive land recovery in Vietnam. Because coercive activities and property handling after coercive land recovery is a very broad topic applied to many cases, the authors limit the scope of the study to mainly focus on analyzing and clarifying. regulations on cases of application of coercive land recovery with the application of property handling measures in Articles 61 and 62 of the 2013 Land Law of Vietnam and other effective legal documents.

### 4. Research results

With the aim and scope of the study as stated above, the article will point out the inadequacies of asset handling activities after coercive land acquisition in Vietnam. Since then, the study has brought the following specific results:

**Regarding the scientific significance:** the topic systematically synthesizes the legal provisions on coercive land acquisition according to the Vietnamese law over time, specifically the law on land. This is the process of understanding and applying in some localities to assess the practice of law implementation, pointing out the advantages, inadequacies, difficulties, and obstacles in the process of coercion and asset handling. forced. On that basis, propose and propose solutions to improve regulations on property handling after coercion when the State recovers land.

**In terms of application value:** the research work is a reliable document with sufficient scientific and legal basis to serve as research and reference documents for individuals and organizations, especially for students. Law student, People's Committee, land fund development center in Vietnam. In addition,

the work is also a necessary reference for individuals and agencies competent to issue legal documents, amend and supplement current regulations and perfect the legal system. Vietnam.

#### **4.1. Overview of forced land acquisition**

##### **4.1.1. The concept of forced land acquisition**

“Coercion” according to the Vietnamese Dictionary is “forcing to obey by force of power” [1, 499] or “using state power to force compliance” [2, 294]. However, up to now, according to Vietnamese law, there is no legal document that specifically explains the concept of forced land acquisition. In terms of legal science, coercive land acquisition belongs to administrative coercion. This is the activity of the competent authority to conduct when there is a decision of the competent State agency; is a mandatory measure of a State agency applied to people whose land is recovered but do not comply with the decision on land recovery. The purpose of coercion is to force people whose land is acquired to comply with the government's decision. In other words, coercion is considered as a legal measure to ensure the effect of terminating a legal relationship on land. Through that, "coercion" is also understood as a forceful measure of competent State agencies, applied against certain individuals or organizations in cases where the law provides for physically or mentally, for the purpose of forcing an individual or organization to perform or not to perform certain acts or to submit to certain restrictions on the property of the individual or organization or physical freedom of individuals [3].

In terms of management science, the combination of persuasion and coercion in state management is very necessary. In this combination, persuasion should be the main focus, while coercive measures are only applied when persuasion fails. According to V.I. Lenin, no matter what, we must first persuade and then coerce [4].

Through the practical application of the law, the coercive measure of land acquisition is not the will of both parties. On the one hand, on the side of people whose land is recovered: there are many reasons why they do not comply with the decision on land acquisition such as: (i) that the compensation value is still low compared to the market, especially the price issue. compensation land; (ii) believe that life and activities in the resettlement area are not guaranteed; (iii) consider that it is not suitable for people's living habits. For these reasons, people, more or less, do not want the State to recover their land, much less do they want to be coerced because when being coerced, it affects their psychology, health, and property. On the other hand, the State does not want to apply coercive measures because the application leads to time-consuming, human resources, costs, and more or less affects the security and order situation in the locality. Therefore, the principle of coercion needs to be established at the forefront of regulations on enforcement of land acquisition, taking into account the specific elements of this activity.

##### **4.1.2. The concept of handling property as movable property after forced land recovery**

On the basis of the Vietnamese dictionary: "Handling is arranging and solving work and tasks in specific conditions"[5]. From the perspective of the research scope, the handling, in this case, is understood as the arrangement and settlement of the remaining assets after the enforcement of land recovery from inventory, receipt, storage, return procedures. property liquidation. Thereby, it can be generalized that the handling of the property after coercive land recovery is the arrangement and settlement of the material

wealth of the coerced person and the material wealth of the relevant subjects after the State agency competent country to implement coercive land acquisition. In the process of coercive land acquisition, it is quite common for the coerced person not to receive the property after being coerced. This is completely reasonable because this is basically a unilateral decision of one party in the administrative dispute relationship. Therefore, the regulation on property handling after enforcement is one of the important contents that need to be explained, as well as specific instructions. Meanwhile, the handling of the property after enforcement of land recovery is not only governed by the regulations of the Land Law branch but also ensures the implementation and protection of the regulations of other branches of law. For example, if the enforcement of land acquisition is carried out by an administrative decision, the adjustment method is command, authority, and obedience. The term "property disposal" itself has more or less expressed the civil element, the element of equality and agreement. Therefore, property handling, in general, is not only related to the field of land law but also to many other branches of law in the Vietnamese legal system in many different fields. For example Administrative Law, Civil Code, State Compensation Law....

However, up to now, the legal documents on land have not conceptualized the term "Property handling after coercive land recovery" to clearly distinguish it from other forms of property handling. Because the content of the term has not been clarified, it is easy to cause confusion with some related terms of asset disposal, such as collateral disposal.

Looking at the issue from the perspective of handling collateral, it can be seen that the asset handling mechanism in land recovery is administratively heavy through decisions on recovery and enforcement, on the basis of established from the Land Law. Belt, does not carry heavy profit elements, trade goods The handling is carried out by a public authority which is the State without the participation of investors and enterprises, as well as an agreement on the method of asset disposal after coercion. After all, the goal is still to return when the owner receives it. At that time, the operating mechanism to handle the collateral is based on: "By the due date for performance of the security obligation, the obligor fails to perform or improperly performs the obligation" (Article 299, Civil Code). 2015).

The subject that plays the role of handling collateral can be an enterprise, a bank, etc., but not a State administrative agency. Furthermore, the ability to seek assistance from public authorities (commune, ward, and township People's Committees and police agencies) in seizing collateral for disposal was also not recorded in Civil Code 2015 while in practice, some banks have implemented this mechanism quite effectively [6]. At that time, the ultimate purpose of the mechanism to handle collateral through the auction method is to recover the initial capital.

The key difference between the two forms of property handling to distinguish them from each other is that the property handling ensures that the parties can agree on one of the methods of handling the pledged or mortgaged property. such as: (1) Property auction; (2) The secured party sells the property; (3) The secured party assumes the property itself to replace the performance of obligations of the securing party; (4) Another method, based on Clause 1, Article 303, Civil Code 2015. In contrast, the property handling mechanism in coercive land recovery activities is unilateral from the State when it is the owner. can dispose of assets such as: inventory on quantity, decision on destruction, auction, return time, payment method, etc.

As mentioned, the State sets regulations on coercion on the basis of its public power and land ownership. In fact, this problem is sometimes understood and solved in a different way. There was once a view that "the acquisition, then the coercive recovery of land, has the meaning of exercising State rights, not merely a transaction of equal value (commercial)". Unfortunately for property owners, this concept dominates land management activities and the exercise of state ownership. That is, in the relationship of recovery, coercion, handling, and preservation of assets after coercion, the power factor of the State is always used to the maximum [7]. In contrast, for people whose land is forcibly acquired, their "return" obligation is often "concerned" by the State more than the legitimate benefits they are compensated for, for example in cases of Failure to receive the property back after enforcement will be unilaterally implemented according to the will of the State such as: deciding on the agency responsible for preserving, the time limit for return, the maintenance fee, the sale price of the property, etc. There is a negotiating institution like simple civil transactions. When it is the property on a legal basis, the relevant rights should be guaranteed.

#### **4.2. Conditions for coercive land recovery**

It is necessary and inevitable that the State takes land from the owner to serve public purposes. However, the method of implementation and the issue of ensuring property safety for owners when forced to carry out coercion should be carefully considered to have appropriate regulations, absolutely not to abuse power to the coercive recovery of lawful property of land users. Therefore, in order to avoid the above situation from happening continuously, it is necessary to introduce conditions on coercion on the basis of Article 71 of the 2013 Land Law. At that time, the enforcement of land recovery shall be carried out when the following conditions are fully satisfied: (i) The person whose land is recovered does not comply with the decision on land recovery after the commune-level People's Committee, the Front the Vietnam Fatherland Front at the commune level where the land is recovered and the organization in charge of compensation and ground clearance has mobilized and persuaded; (ii) The decision on enforcement of the decision on compulsory inventory has been publicly posted at the headquarters of the commune-level People's Committee, at the common area of the residential area where the recovered land is located; (iii) The decision on enforcement of the decision on compulsory inventory has taken effect; (iv) The person subject to enforcement has received an effective enforcement decision. In case the coerced person refuses to receive the enforcement, decision or is absent when the enforcement decision is handed over, the commune-level People's Committee shall make a record.

The provisions on conditions for coercion mentioned above according to the current land law, although ensuring convenience for enforcement in State management, are detrimental to the coerced people and show signs of being contrary to the principle of "ensure in accordance with the provisions of the law". Because if a certain procedure is omitted in the process of land acquisition, it cannot be considered as a "guarantee of compliance with the provisions of law". At that time, if the competent actors continue to deploy and carry out coercion, they will inadvertently violate this principle. Suppose, if there are cases where people do not receive notice of land acquisition or receive it too close to the time of land acquisition, it is clear that they cannot hand over land on time. This requires a review of the coercive conditions in order to implement the principle of "guaranteeing compliance with the provisions of law" as noted in Clause 1, Article 71 of the 2013 Land Law.

Comparing with the law on coercion in Korea, we can see the difference in coercive conditions between the legislative work of the two countries. If in Korea the coercive process is based on the principle of necessity and urgency, after the consultation process between the public authorities and the landowner has failed, then the new power mechanism is coercion. established on the subject is the land user. Accordingly, consultation is understood from the perspective of experts who give comments and opinions to the enforcement agency for each case requiring enforcement, and only when it is absolutely necessary and urgent will the enforcement issue be conducted. From the above principle in Korea, more than 95% of land acquisition cases are successful after consultation and only 5% have to resort to the violent method of coercion [8]. From that, it is thought that the legislator should make an adjustment on the principle of conducting coercion on the basis of necessity and urgency. Because, in fact, it can be seen that many cases of hasty implementation of coercion lead to the loss of people's places to eat, stay, and property, then the status quo of "hanging planning" leads to great consequences. for society, for social security work.

### **4.3. Authority to coercive land recovery**

On the basis of the provisions of Article 71 of the 2013 Land Law; Presidents of district-level People's Committees have the authority to issue decisions on enforcement and organize the implementation of such decisions. However, if based on Point a, Clause 3, Article 17 of Decree No. 43/2014/ND-CP, this authority can be transferred from one another to the point of view that can be "Chairman or Vice-Chairman of the People's Committee of District. The fact that the Decree contains instructions different from the 2013 Land Law causes certain difficulties in the process of understanding and applying the measure of coercive land recovery.

When the research revolves around the issue that the authority to coercive land recovery belongs to the chairperson of the district-level People's Committee, however, the responsibility for receiving and preserving the property after the enforcement is handed over to the commune-level People's Committee, The author noticed a number of inadequacies around this issue, specifically:

Inheriting the 2003 Land Law, the 2013 Land Law does not provide for land allocation authorization. However, the 2013 Land Law has a new provision that allows the People's Committee of the province to decide on land recovery or authorizes the People's Committee of the district to decide on land recovery in case the area to be recovered includes both subjects under the jurisdiction of the People's Committees of provinces and districts (Articles 59 and 66 of the 2013 Land Law). Therefore, once there are regulations allowing authorization, most of the provinces and cities simultaneously authorize the withdrawal and coercion to the district-level People's Committees. This overloads the district-level People's Committees, leading to inconsistency in the management of cadastral records due to the lack of consistency between the powers of assignment, collection, and enforcement. Therefore, there should be comprehensive studies to evaluate the effectiveness and nature of benefits in the regulation of this authorization [9].

Legislators have a right to their own when stipulating the authority for each agency. However, from the author's point of view, the functional structure between the assignment, recovery, coercion, and disposal of property... Vietnam's law should be consistent with a certain subject, avoiding the situation where the

institution decentralizes powers to the Committee. The people at the provincial level perform the assignment function, however, the coercion is assigned to the district level, and property handling is the result of coercion at the commune level as at present.

It is this unbalanced balance that will cause many mixed reactions because if any agency assigns or leases the wrong object or authority function, that subject will perform the responsibility to explain to the subject of the violation. enforce enforcement, as well as keep the property intact for the owner, and at the same time compensate if damage occurs. It is thought that, as long as the law has not established a clear self-responsibility mechanism, an effective monitoring mechanism has not been established for the exercise of the right to represent the entire people's ownership of land in the allocation and lease of land. land, it should not be rushed to give too great coercive power to the district People's Committee. This causes opposition, negative reactions to the enforcement agency is obvious.

The regulation of the authority to coercive land acquisition is too large for local authorities without a legal mechanism to control and handle effectively, leading to the situation that some localities take advantage of the people's ownership of land in the area. revocation and coercion. Since then, legislators should consider and adjust the decentralization between central and local levels in land allocation, land lease, and forced land recovery [10] ...in the direction of overcoming limitations, Inadequacies in the current decentralization, ensuring the centralized management, unifying documents related to coercion and handling of assets after coercion from central to local levels.

#### **4.4. Order of enforcement of land recovery**

The term "sequence" is used to describe the steps to perform a certain task, before and after in order to ensure the job is done efficiently [11]. In particular, with the order of coercion and handling of property upon land recovery, it is not only carried out by a separate entity, but it is coordination between State agencies, socio-political organizations, and governments. local authorities and especially the people where the land is coerced. On that basis, the 2013 Land Law and its implementing documents have not yet specifically described the order of property handling after coercive land recovery. Accordingly, the invocation of the procedure for coercive land acquisition with property treatment is carried out according to the simulation-based on local documents [12]. Specifically:

(i) Based on the coercion decision and approved enforcement plan, the Enforcement Committee shall coordinate with relevant agencies to conduct enforcement in the field.

Before coercion, if the coerced person voluntarily implements the decision to settle the land dispute, the Coercive Implementation Board shall make a record to recognize the voluntariness.

On the contrary, if this agreement does not achieve the purpose originally set out by the Coercion Board, such as in the case of the coerced person intentionally absent or present but does not comply with the decision to settle the land dispute, the decision on enforcement Coercion is still carried out but must be present in the presence of representatives of the commune-level government and two witnesses.

(ii) The Coercion Implementation Committee forced the coerced person and unrelated people out of the enforcement area. If these people do not leave the enforcement area, the Enforcement Division requests the enforcement force to remove them from the enforcement area and take coercive measures. The

commune-level People's Committees shall coordinate in assisting in the movement of assets out of the coercive areas.

(iii) If the coerced person is absent or present but refuses to receive the property on the land and is not subject to coercion, the enforcement board must make a record of the refusal to receive the property; The minutes must clearly state the type, quantity, and condition (quality) of the assets. The minutes on the refusal to receive the property must be signed by the representative of the enforcement board, the representative of the commune-level People's Committee where the coercion is organized, the coerced person, and the witness; if the coerced person is present but refuses to sign, it must be recorded in the minutes. The coerced person must be solely responsible for the damage, loss or damage that occurs. When performing coercive land recovery but the coerced person refuses to receive the property, the enforcement board shall hand over the property to the commune-level People's Committee to preserve the property according to the provisions of law, all related expenses. to the lien of the property shall be paid by the obligee.

One of the conditions to proceed before coercion is: "after the commune-level People's Committees, commune-level Fatherland Front Committees where the land is recovered, and organize the compensation and site clearance tasks, mobilized and persuaded". Although the 2013 Land Law stipulates the work of advocacy, persuasion is one of the conditions for the coercive implementation of the decision on land acquisition. However, the practical application of advocacy and persuasion to people whose land has been recovered faces many difficulties in handling situations that occur in the process of mobilization and persuasion. Many localities attach more importance to coercive land acquisition than the work of mobilizing and persuading people whose land has been recovered to voluntarily hand over the land. Therefore, many coercive decisions are issued unnecessarily, even in some cases, causing complications, affecting the security and order situation in the locality.

From a scientific perspective, it is necessary to clarify what the knots and contradictions leading to coercive measures are. Ideally, disagreements should be independently reviewed by a third party before proceeding with enforcement, similar to the property handling mechanism to avoid infringing on private property rights, which is essential for the property handling process. carried out by an independent agency through a contract of property handling, on the basis of the responsibility set forth in the Civil Code.

Through this, Vietnam needs to study a summary complaint and complaint settlement mechanism for ground clearance cases and cases to completely solve problems before conducting enforcement [13], redesigning regulations on land recovery and compensation in the direction of public dialogue before conducting coercion, ensuring transparency and fairness, in case of force majeure, people do not hand over the land, only rarely will coercion be conducted.

#### **4.5. Inadequacies in the handling of movables after enforcement**

##### **4.5.1. Types of movable property that are and are not allowed to be processed after enforcement**

In general, the concept of "movable property" has very diverse and rich connotations from form, nature and value. However, within the limit of the handling power that the law assigns to the commune-level

People's Committees seems to be "endless", when there is no delimitation of the scope of adjustment of the boundary between the property allowed to be handled or not authorized to undertake special duties. It is this that can cause conflicting reactions on the views and functions of the commune-level People's Committees with respect to people's property.

From there, the problem posed in the work of coercive land recovery needs to determine which assets are not allowed to be distrained and preserved, which properties are handled, which assets need to be liquidated and destroyed; This should be clarified in writing. Mainly because the importance of this institution has not been fully recognized through direct adjustment documents, leading to the consequences that each locality applies each style, not ensuring fairness and uniformity. legislation aimed at. When comparing in the same issue related to the disposition of assets after enforcement, some differences can be noticed.

*Firstly*, for specific reasons, in certain cases, the law still has exclusionary restrictions on movables that are not allowed to be distrained and handled. In which, it is listed as medicine for treatment, food for essential needs of individuals under coercion, items that are considered as tools of labor and co-use of daily living. In addition, it also includes spiritual properties, spiritual values such as worshipping utensils; foreign objects, medals, and certificates of merit (Article 19 of Decree 166/2013/ND-CP). However, this is not consistent with the local property handling when the actual enforcement in Quang Ngai province, the seized property can be the whole tool for the owner's daily life. owned. For example containers for water, food, rice, cups, forks, etc., serve the livelihood of the household. From the above reality, Vietnamese law needs to have a clear planning policy before conducting enforcement. Because the value of the property just presented is not high, the high cost of keeping the property can lead to the case of not coming to receive the property. This causes waste to the State but also directly affects the economy of the coerced people, when their occupation is interrupted by the impact of coercion.

However, due to spiritual concepts, along with the holidays that carry separate meanings for each subject and religion, coercion affects property such as worshipping objects, according to the principle of needing to be excluded. This is extremely necessary, starting from a number of cases related to asset recovery affecting beliefs, which took place with An Cu Pagoda, Son Tra, Da Nang, the climax of the problem occurred when the force forcibly destroyed many temples and structures, causing anger and violence from believers [14].

Since then, with the case of handling property related to beliefs, ancestors need to ensure that they do not violate the right to freedom of belief as stipulated in Article 24 of the 2013 Constitution. At the same time with other types of worshipping objects such as: Incense, lamps, altars ... carry spiritual meaning, the relocation has a heavy impact on the owner's psychology. Since then, the law on land should establish regulations related to this issue, avoiding possible social unrest.

*Secondly*, in the process of performing official duties, for the purpose of site clearance, the direct impact on land-attached assets such as (livestock, aquatic products, crops...) is inevitable. . However, so far, determining whether these types of assets can be preserved after coercion or not is still controversial, the reactions are multi-dimensional, in terms of Thai law in order to minimize the impact. Regarding these types of assets, most of the state chooses the method of purchasing on the basis of market price parity

with the cases of forced recovery of agricultural land without having to go through the retention process like in Vietnam [15]. Looking at the other side of the problem, handling these types of assets will lead to time, human, and financial waste and more or less affect civil rights. In order to avoid complaints and quickly stabilize life, the compensation mechanism for movable property attached to agricultural land in Thailand partly shows profound humanity, contributing to solving difficulties related to complaints. property claims after coercive land recovery in Vietnam.

Regarding the facilities for handling these assets, in Vietnam most of the regulations belong to the group of difficult-to-preserve assets, the solution is taken into account in the localities that conduct immediate sale or auction or destruction on The principle that the owner of the property must bear the difference and damage occurs. Commenting on the issue on the basis of civil law, the local form of handling is still prejudiced with the imprint of the sanctioning mechanism rather than the guarantee of property value, which is not really suitable for economic institutions. the market, especially towards the goal of ensuring private property rights, above all, the parity factor shows the will of the owner in civil transactions. Because:

(i) a practical mechanism for liquidation of assets, in order to reduce risks for owners. However, in fact, not all assets can be passed this form, it is necessary to determine whether the property is suitable for the needs of society at the right time of liquidation. Moreover, in some cases at the time of enforcement, the property has not yet reached its value in terms of quality or is still young. Besides, this method is only really effective with small businesses, the problem arises when coercing a plot of land, the handling of property is only for one farmer; On the contrary, when carrying out coercion of many adjacent plots of land, how to deal with tens of tons of unharvested fish and rice, when previously the competent State agencies have not solved the problem on the balance of benefits and losses, in other words, “ensure property rights” and “effective land acquisition”.

According to the assessment of the World Bank and the Chinese Academy of Social Sciences, approximately half to two-thirds of the wealth of ethnic groups and people are tied to land [16]. Since then, coercive land acquisition has directly affected people's property rights. Therefore, in advanced countries, the enforcement of land acquisition is considered a measure that should not be taken, in this situation, if in Korea, the state will enter into an agreement with the property owner to find the best solution. Preferably with unharvested assets, the time for liquidation with normed assets shall not exceed 1 year from the date the two parties agree to the negotiation results. In case the two parties cannot find a common voice with all movables attached to the land, if affected by coercion, the compensation level is calculated on the basis of 2 times the total annual income from agricultural production.

Since then, when considering the handling of assets such as crops and livestock in general, the regulation of land also needs to plan a broader issue that is the potential of public authorities to be able to preserve and develop assets in the best direction, whether or not the mechanism is infringing on the legitimate rights and interests of the people when this is the livelihood of more than 60% of Vietnamese farmers. Should these cases be followed by the State mechanism to acquire assets that cannot be kept? Because according to the representative of the World Bank in Vietnam: “Farmers are the poorest, but along with the modernization of the country, they have been dragged into the spiral of poverty. hunger, extremes”

[17]. Since coercion has inadvertently pushed farmers into impoverishment, the policy to ensure the legitimate rights and interests of the people should be promoted in such cases.

(ii) Regulations on asset handling through auction are regulations promulgated by auction organizations on the basis of law in order to create a legal corridor, all participants in the auction process are adjusted and must comply with the regulations on the rules and regulations on asset auction [18]. The disposition of property after coercion is formed on the principle of optimizing the value of the property, selling it before the value of the property is nullified, seeing the problem positively, then the form of auction. The price is not quite suitable for short-lived asset classes. Because of the fact that the auction is unsuccessful or there are no auction participants, it is a common case in Vietnam. Along with that, if the civil judgment enforcement auction mechanism is invoked on the principle of a fixed price or the price agreed upon by the involved parties, the property will be returned to the owner when all relevant measures are taken regarding unsuccessful liquidation. The last method is applied to destroy the property if the owner expresses his opinion that he does not accept it, leading to the property being damaged. However, in the post-coercive property handling, the issue has not been approved by the owner, the owner's representative, the person with related obligations, etc., the enforcement board has conducted an auction method that is not suitable for the original version. of the Civil Code.

*Thirdly*, on the basis of Article 87 of the Law on Civil Judgment Execution of 2008, which also sets out the scope of assets not being inventoried and handled, it can be (i) assets banned from circulation in accordance with the law; assets serving the national defense, security and public interests; (ii) Necessary items of the disabled, items used to take care of the sick; (iii) Necessary labor tools, of low value, used as the main means of livelihood for the family; (iv) Necessary household utensils. Accordingly, assets banned from circulation are those that the State prohibits buying, selling, and transferring such as military weapons, military-technical means, explosives, inflammables, radioactive substances, drugs, etc. The communication of these types of assets must be decided by the competent State (Article 47 of the Ordinance on Civil Judgment Execution 2004). Due to specific reasons, the group of assets banned from circulation will be transferred to the direct management agency, not within the scope of handling by the commune-level People's Committee. In addition to humanitarian reasons, properties for the disabled, sick, and means of living in the excluded category are essential. However, when reviewing the types of movables that are not subject to inventory and handling, it seems that it is still unclear when the law still uses phrases such as "not large assets", "necessary assets". lack of practical quantification. After all, at present, the detailed concepts explaining the above phrase have not been clarified, the application of property identification without processing is still sensory and unscientific.

*Fourthly*, for assets being gold, silver, precious metals, gems, and foreign currencies, they shall be temporarily assigned to the State Treasury for management; for assets being industrial explosives, combat gears, objects of historical and cultural value, national treasures, antiques, and rare and precious forest products, they shall be temporarily handed over to state management agencies. management major;

*Fifth*, considering the issue on the basis of civil law, with the property legally pledged or mortgaged, according to Clause 4, Article 438 and Clause 3, Article 439, the mortgagor may not sell, exchange, donate the mortgaged property without the consent of the mortgagee. At the same time, the right to

dispose of is limited, and the right to use and exploit the utility of the property is also limited [19]. Therefore, in cases where the property is in a mortgaged state, in addition to notifying the owner, it is also done with the mortgagee.

The 2013 Constitution recognizes new legal perceptions of private property, the subject of private property rights has been expanded from "citizens" to "everyone" as reflected in Article 32. Although property rights Ownership has been extended but has not yet completely protected the inviolability of private property. At that time, in China, the institution of "lawful private property shall not be infringed" was "constitutionalized" with the provision to protect private property in order to reflect the reality of China's economic development after that. 20 years of reform [20]. When discussing the issue of the too great power of the commune-level People's Committee, but more specifically, the State can directly affect property rights and decide on behalf of the owner's rights, which is explained by the Constitution. Vietnamese law has not yet covered the institution that regulates the inviolability of private property. Therefore, in order to ensure the consistency and harmony of the legal system related to property handling, only one law such as the Civil Code should be promulgated to generalize all related issues. to coercion and post-coercion property disposal instead of the current existence of many forms of post-coercion disposition of assets.

#### **4.5.2. Time limit for handling movable property after coercion**

Considering the completion level of the Land Law 2013 in terms of legislative techniques, it is possible to recognize that there are still "defects" when it is incomplete before encountering problems in reality, in order to limit the negative effects. affecting social life, specifically, the method of property handling, the minimum and maximum time for which the state can keep the property after the forced land recovery, has not been fully regulated. Therefore, localities in Vietnam must "apply" many different relevant documents to stipulate the time to handle assets after coercion. This content can be expressed in the form of guiding views in meetings to implement plans or plans for enforcement of land acquisition. Therefore, the regulations on property handling time are sometimes not the same in terms of will, opinion, and opposition from each locality; Even in each case of enforcement related to property disposal in the same locality, there are also contradictions. In order to explain the reasons why many cases of coercion have become hot spots, it is not only the large number of people who oppose the authorities because, after all, it is because of the rights and interests related to the property. On the basis of institutionalization from administrative and civil handling documents, etc., the author realizes that certain points of view on setting the norm after 06 months from the date of receiving the notice on the property that Individuals or organizations whose assets do not receive them back will be auctioned. In contrast, for some localities that have not yet formed documents related to post-coercive handling, it seems to be a major bottleneck in law enforcement activities. Approaching to clarify the issue, when directly conducting consultations on the post-coercive property handling process in Can Tho city, an area with a strong urbanization trend in the Mekong Delta, At the same time, the locality has not yet regulated the process of handling assets after coercion, showing a strong divergence in opinion on law application. Accordingly, the application period of the movable handling mechanism at each commune and ward People's Committee can be temporarily divided into 3 different institutions:

(i) After six months from the date of issuance of the enforcement decision, if the owner does not accept the property, it will be liquidated on the basis of law.

(ii) The processing time is specifically fixed through each enforcement decision, after the time on the property is settled on the basis of law.

(iii) the time for handling and returning depends on the time of complaint and complaint settlement by the competent authority.

In addition, when conducting a survey on the issue of asset storage costs, the results obtained are heterogeneous:

(i) the owner incurs holding costs and enforcement costs at what is said to be a “reasonable cost”. According to another principle in calculating fees for storage and preservation of assets, it must be appropriate for each subject of enforcement, however, understanding what is “appropriate”, conformity is expressed as a percentage of the total value. assets are secured or appropriate based on the economic condition of each subject. When the actual settlements related to the coercion and handling of assets are considered unsuitable for the enforcement situation, for example, the fees for hiring labor for taking pictures and filming the asset tally after. coercion, accommodation, lodging, and costs associated with the notice of return of property are all transferred to the property owner. (ii) the owner may have to bear the cost of custody if the result of the complaint is the correct part of the enforcement decision-making body, otherwise, this cost will not be paid if the enforcement mechanism enforcement is wrong, the charging only applies to the case of true enforcement, to the case of false enforcement. This may be a view that is highly concurred by the owner. However, it should be noted that along with this mechanism should also be changed judicially as the court can shorten the time to hear cases related to complaints about coercive withdrawal through withdrawal procedures. compact.

Through the above issue, the law in Vietnam should limit the provision of “qualitative” phrases in the regulation of the cost of keeping assets. In order to be clear, open, and transparent in this case, it is necessary to have specific guidelines to “quantify” regulations related to household maintenance costs into direct and easy-to-apply regulations. In the long term, it is necessary to study and refer to the experiences related to legislative and regulatory techniques of developed countries in designing issues related to asset handling after enforcement. This not only emphasizes simplicity, straightforwardness, and accessibility but also ensures fairness between the subject of coercion, that is, no one will bear the cost higher or lower than the quantitative price that the State has publicly imposed. At that time, in advanced countries like Singapore, where 9% of the total investment capital was spent on a project to pay for compensation, the cost of coercive land acquisition, people did not have to pay these fees. A review of the operation in Korea has determined whether the costs related to enforcement, asset relocation and asset handling are carried out by the project owner.

This is the basis to ensure fairness in the enforcement process, applying the guarantee of having the same “answer” to similar cases even though the enforcement takes place in different localities, because of the different subjects.

### 4.5.3. Problems arising in the handling of movables after enforcement

Considering the issue related to the property handling mechanism after coercion, it can be seen that the Vietnam Land Law is biased towards the content of state management of land, i.e. land administration, while civil rights about land, property attached to the land or movable property must be considered in other legal documents such as civil law. As long as there are no specific guidelines on the handling of assets after enforcement and compensation for property damage when the State conducts coercive land recovery, these relationships are easily put under the perspective of "administrative law". chemistry". Although "property rights" or property compensation is one of the important institutions of the civil law industry, one cannot find any legal documents in Vietnam that refer to the provisions on guaranteeing property rights. property rights when the State conducts land recovery and coercive land recovery to the provisions of the Civil Code. This shows that the issue of "Handling property after coercive land recovery" is not "connected" with the compensation law in general and the civil law in particular, but is "confined" in the legal regulations. on State management in the field of land and institutionalization from local documents.

From the above prejudice, with each form of local handling, there is still a heavy imprint of the administrative sanctioning mechanism, rather than the guarantee of property value in terms of civil law. It should be emphasized that, with forced land recovery, the main object that the State targets is a specific area of land, then, the owner's property rights are still preserved when not transferred to the State. . In other words, the owner can perform all acts according to his will as long as it is not illegal. Because of the specificity of the enforcement of land acquisition, implemented in the direction of "Land acquisition first, settlement of complaints later", it has not been guaranteed with property rights in the Civil Code, giving rise to many conflicting issues. , the consequences after handling the property. Specifically:

*Firstly*, when comparing in the same issue related to property handling under Vietnamese law, opinions still overlap. After all, even if the person whose property is being handled by the public authority for any reason, they still have the right to relate to the property, the right to compensation, if there is no accurate conclusion from the authority. competent authority. Recognizing the problem in terms of handling assets of persons held in custody or temporary detention, methods of application to objects, personal belongings, money, etc., which belong to this subject must be deposited at detention facilities or authorized for custody. management by their relatives or legal representatives. In case of cancellation, it must be witnessed by the person held in custody or temporary detention and must make a record of the cancellation; In case the detention facility is damaged or lost, compensation must be paid (Clause 1, Article 24 of the Law on enforcement of custody and temporary detention, 2015). In addition, if you look at the State management institutions in the field of preserving assets for judgment enforcement, the property is transferred to the owner, the person who is using and managing the property; In case these objects are refused, they will be handed over to individuals or organizations with conditions for preservation or preservation at the warehouse of the judgment enforcement agency (Article 25 of Decree 173/2004/ND-CP).

Looking directly at these two institutions, they are completely independent of each other in the Vietnamese legal system, but there are many similarities on the basis of respecting and protecting the

legal rights of the owners, through The priority level towards keeping the property is always the owner and next can be listed as a co-owner, someone with blood relatives. However, studying in detail and comparing these two regulations with the view of property handling related to land acquisition, it is possible to see the incompatibility between those who are able to receive the property, when the first entity entitled to take over in enforcement of land acquisition other than the owner will be the public authority. Thereby, in order to balance the homogenous interests of the owners, through legislation, mechanisms and policies need to plan that the assets to be handled after the forced land recovery will be transferred to the co-owners of the property or to the owners of the property. If the object is related by blood, kinship, or kinship, public authorities will make every effort to protect it on the basis of legal permission. This can be seen as an optimal principle that needs to be selected to protect the rights and interests of the people who are forced to acquire land.

*Second*, the right to possession is understood in terms of holding and managing property, in order to protect the possession from other subjects infringing, then Article 185 of the 2015 Civil Code stipulates: "In case the occupation If the property is infringed upon by another, the possessor has the right to require the infringing act to stop the act, restore the original condition, return the property and pay compensation for damage..." It should be emphasized that Protecting the possessor is necessary, any subject that violates the illegal property rights should also be protected by the State. On the other hand, if the State plays the role of infringing on the property rights of others by way of deviant behavior as in the case of false coercion in terms of authority, procedures, and legal status, the issue of compensation will be usually to the owner is seen as fair argument. However, with land acquisition, the principle of compensation is considered to be the market price, determined on the price list set by the People's Committee, whereas the compensation mechanism in case of wrong enforcement still seems to be "unknown". when there is no law that invokes the wrong enforcement to compensate on an out-of-contract basis or must be understood "implicitly" through the State Compensation Law because this is done through an administrative decision bearing the law on compensation. civil service.

Besides the solid theoretical basis for wrong enforcement will be compensated, the practical basis is one of the important bases to assess whether the law is on the right track or not, for example in the case of the Commission. The people of Son Tinh district coerced an area of 32,500m<sup>2</sup> of land for ornamental flower cultivation, instead of using the measure of moving to a new cultivation place, or keeping it at a crop exploitation site, functional forces used strong external force to cut down "devastating" more than 421,660 ornamental flowers. After the complaint, the final decision unanimously agreed that the enforcement was done to the wrong object, which was also a premise to help Mr. Nguyen Thanh Tri's family make a claim to an agreement to compensate 50 billion VND on the basis of the Department of State Compensation Liability Law. When considering and assessing the problem, the People's Committee of Quang Ngai province imposed compensation prices on the basis of the law on land when setting a compensation level equivalent to 1.3 billion VND and other support for a career change, bank interest since the time of enforcement, and 100m<sup>2</sup> of resettlement on the basis of compensation when the state recovers the land, the agreement was unsuccessful despite having gone through 4 negotiations to determine the compensation level. The most important thing is the need to change the better management institutions, towards the common goal set for any case of wrongful enforcement, so there should be a

transitional provision regarding compensation on the basis of the law. legalization of the proposed State Compensation Law.

*Third*, one of the human rights to the property is the right to use, considered as a right to exploit utility, material benefits within the scope of the law, including the receipt of the results of the property. natural causes such as eggs laid by poultry, small cattle laid by their mothers... Usually, the owner has full rights to exploit the use but can transfer it to another person on the basis of a legal contract from the owner [21]. In the case of property seized after enforcement increases in quantity, whether the owner automatically inherits that added value or not, the law on land has not clarified this issue.

*Fourthly*, regarding the enforcement fees, after the enforcement, the property is transferred to the payer who is the owner of the property, which causes many conflicting views. Due to the fact, there are many damages when compensation for land, but the land law of Vietnam has not identified, for example, damage to spirit, health, time for site clearance, etc. . In developed countries this has been foreseen and has a sound policy. At that time, in Vietnam, statistics showed that 77% of surveyed households after land acquisition in Hanoi reflected that they could not control food and had to buy rice regularly. Many households lost their livelihoods and waited for hired jobs to pay off their debts to buy rice. Protesting against land acquisition decisions is still a goal of interests, when this cannot be met, the State transfers to them a new "debt", the problem of conflict is understandable. It is not uncommon for the coercion to voluntarily pay the coercive costs, the property seizure costs or the insufficient return of the enforcement costs, or the inability to pay. Based on a number of provisions of current law, it can be seen that some localities in Vietnam have integrated and invoked Article 86 of the Law on Handling of Administrative Violations to have a mechanism to handle shortcomings related to administrative violations. Regarding this issue, through the legalization of the matter on the basis that the person with the enforcement decision-making authority considering the economic condition of the subject of enforcement uses the method of deduction of wages or distraint. assets of equivalent value for auction to pay fees related to coercion and handling of assets. It can be seen that this provision directly affects the interests of the owner, in order to satisfy the conditions between the parties in this matter, should the law allow the property owner to have the right to negotiate the time to pay the bills? related fees. In the long term, it is necessary to have legal documents guiding the content of land recovery to create favorable conditions for the authorities to conduct enforcement and to ensure the legitimate rights and interests of the people.

## 5. Conclude

In fact, the number of cases related to the enforcement of compulsory property handling accounts for a small proportion of the total number of land expropriation cases. However, it can be seen that each case related to the actual application of the law on post-coercive property handling still has a "divergence" in each local enforcement decision. The explanation for this can be emphasized from the amendments from the Land Law that have not yet been regulated or "connected" with civil legal documents. Therefore, it is urgent and necessary to adjust and supplement the principle related to the handling of assets after coercion on the basis of civil law provisions. At the same time, the law also needs to have provisions related to the mechanism of compensation for damage to movable property if the property is subject to enforcement of land recovery in order to develop a legal document. guidelines are sustainable and have

an element of equity. This is also the basis for localities to apply the law on property handling after coercive land recovery in a uniform manner, in order to ensure the rights that the law has given to property owners, to avoid encroachment on property owners. to the legitimate rights and interests of the people.

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