

Purchasing Colonial Religious Property in China

Recently, one of our clients consulted us on the purchase of an old house located in Shanghai. After investigating its ownership, we found that the house was in fact an old colonial property belonging to a catholic group. As a result, we had to advise our client that under present PRC laws and practices, it is extremely difficult to purchase such a colonial religious real estate property.

Maarten Roos

History of Colonial Religious Property

During the boom times of the 1920s and 1930s, France, Britain and other countries built many foreign-style houses, gardens and churches in Shanghai, mainly in the area that is now known as the French Concession. A large number of these properties belonged to foreign religious groups. According to the law of that time, foreign religious groups obtained ownership of these properties upon their completion.

Change of Ownership

After the foundation of the People's Republic of China in 1949, the Central People's Government promulgated the Regulations on the Registration of Cultural, Educational and Remedial Institutions and Religious Groups that Act as Foreign Subsidiaries and Are Operated by Foreign Funds (1950) to regulate and control religious groups and their property. As a result, religious groups in China that were initially formed as branches of foreign groups decided to sever their relationships with the foreign parent companies, and gradually they came under the control of the people's government. Their property was requisitioned from the foreign groups and transferred to them in the 1950s.

However during the period of Cultural Revolution, property owned by religious groups was either destroyed or "taken" back by the local government for other use (such as residential use). Only in the 1980s, the Central People's Government rectified this situation in the Report on Enforcing Matters concerning the Real Estate Policies on Religious Groups (1980): property rights to the houses were to be returned to the religious groups that previously owned them. If a property has already been rented out by the local real estate administration, the latter would have to find a solution, but to ensure that any rents paid to the religious groups would be fair, these rents were to be based on the standards set before the Cultural Revolution.

In December 1985, the Central Committee of China's Communist Party promulgated the Investigation Report on Enforcing the Religious Policies of China Communist Party and Related Issues, re-affirming that religious groups have the right to manage and use their churches, temples and houses.

In the promulgated rules however, neither the Central People's Government nor the Central Committee of China's Communist Party formally accepted the property ownership of religious groups, instead using the words "property rights" or "right to manage or use the house". This was consistent



with other rules: there was no concept of personal ownership over real property at that time, with land in urban areas owned either by the State or Collectives.

To meet the needs of the market economy and protect private property owned by individuals and private entities, the National People's Congress adopted the General Principles of the Civil Law in 1986. Article 77 of this law states that "the lawful property of social groups, including religious groups, shall be protected by law". Unfortunately, this only establishes that the lawful property of religious groups is protected by law, without answering the question of ownership (i.e. who owns the property?). No further laws or regulations have since been promulgated to clarify the ownership of property by religious groups.

Comments

Without any specific law in China granting "ownership" to religious groups of property controlled by religious groups, the sale of such property remains problematic. One view is that religious groups should be regarded as non-profit legal persons funded by social donations or public finance, in which case their property is co-owned by the whole society but under the management of religious groups. If so, religious groups may use their "property rights" only for religious activities or other non-profit purposes, and cannot sell their property.

We confirmed this opinion with Professor Jin Keke, a well-known jurist teaching Property Law at the East China University of Politics and Law: in his opinion, there is no legal basis for ownership rights of religious groups in China at this moment, and therefore the sale of religious property, especially large property such as real estate, is restricted. Foreign and Chinese individuals and companies that wish to purchase a colonial property in Shanghai are forewarned.

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