

MUNICIPAL LAND OWNERSHIP: FEATURES OF IMPLEMENTATION

PROPIEDAD DE LA TIERRA MUNICIPAL: CARACTERÍSTICAS DE LA IMPLEMENTACIÓN

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PhD. Anna V. Gubareva
Ural State Law University,
Ekaterinburg, Russian Federation
ashipova@mail.ru

PhD. Ekaterina Y. Gaevskaya
Ural State Law University,
Ekaterinburg, Russian Federation,
ekaterinagaevskay@yandex.ru

PhD. Kseniya E. Kovalenko
Altai State University,
Barnaul, Russian Federation
Kovalenko1288@mail.ru

PhD. Olga V. Vagina
Ural State Law University,
Ekaterinburg, Russian Federation,
bmpmag@mail.ru

Resumen. En las condiciones actuales del desarrollo de las relaciones municipales, el derecho a poseer adquisiciones de tierras. Un hecho legal o, más a menudo, la composición real es la base inicial para el surgimiento del derecho de propiedad municipal. La propiedad municipal de la tierra es también un sistema de relaciones para la apropiación de la tierra por parte de la población de los municipios. Junto con la propiedad estatal de la tierra, municipal — un tipo de propiedad pública. El derecho de propiedad municipal a la tierra el derecho de los municipios a ejercer los poderes de posesión, uso, disposición y otros poderes legales del propietario en relación con las tierras. Tanto directamente como a través de gobiernos locales, empresas municipales, instituciones y organizaciones. Los eruditos de la ley notan la existencia de una naturaleza dualista de la propiedad municipal.

Palabras clave: municipio, propiedad, tierra, contrato, ley.

Abstract. In the current conditions of the development of municipal relations, the right to own land acquires more and more turnover in the sphere of local self-government. A legal fact or, more often, the actual composition is the initial basis for the emergence of the right of municipal property to a plot of land. Municipal ownership of land is also a system of relations for the appropriation of land by the population of municipalities. Along with state ownership of land, municipal — a kind of public property. The right of municipal property to land is the exclusive right of local communities to exercise the powers of possession, use, disposal and other legal powers of the owner in relation to lands. Both directly and through local governments, municipal enterprises, institutions and organizations. Law scholars note the existence of a dualistic nature of municipal property that combines features of state and group ownership.

Keywords: municipality, ownership, land, contract, law.

1. INTRODUCTION AND RESEARCH PROBLEM

The right of municipal property to land is the exclusive right of local communities to exercise the powers of possession, use, disposal and other legal powers of the owner in relation to lands. Both directly and through local governments, municipal enterprises, institutions and organizations.

Law scholars note the existence of a dualistic nature of municipal property that combines features of state and group ownership.

Today, municipal property, including a developed network of economic and social facilities, as well as resources, including land, localized within the municipality (and sometimes beyond its administrative borders), is an important element of the economic system.

If the federal authorities solve large-scale political, environmental and social problems, the goals of municipalities are communal problems, improving the living conditions of the population, organizing local economy and other issues of local importance.

Ownership of land is the social relations regulated by the norms of the land and other branches of law for the ownership, use and disposal of land by citizens, organizations, and the state.

A distinctive feature of land ownership is that absolute landed property does not exist. On the one hand, the state grants land owners the right to own, use and dispose of it (within the limits prescribed by law), and on the other hand it restricts this right due to the specific nature of the land (natural object). In the theory of land law, restrictions are divided into permanent and temporary.

Constant restrictions include the duties provided for in legislation:

- To comply with the requirements of rational use and protection of lands and the preservation of the ecological situation in the process of its use;

- Do not violate by their actions the rights and legitimate interests of other owners, users, and land tenants;

- To fulfill special conditions for the use of specially protected areas, protected areas, places of residence and economic activities of small peoples and ethnic groups;

- Conducting construction in accordance with building codes and regulations, and on the lands of settlements, also with the observance of planning and building projects;

- The right of the state to compulsory purchase of land from the owner for state and municipal needs;

- To exclude degraded agricultural lands and contaminated land from economic circulation (with their preservation by the owner).

To the number of temporary restrictions, the owner's powers include strict target use of the land plot and the possibility of completing a purchase and sale transaction of a site occupied in agricultural production, provided that its purpose is kept.

Restriction of land rights (including property rights) is caused by the specific nature of the object of rights, its limitations and indispensability. Restrictions on property rights can arise from laws, contracts or judgments. On the objectives can be identified restrictions in the interests of the state, society and restrictions in the interests of individuals. The grounds for limiting the rights to land (including property rights) can be provided only by laws (Article 1 of the Civil Code of the Russian Federation).

Restrictions on property rights in the interests of the state and society are regulated by art. 56 The Land Code of the Russian Federation.

According to this article, the following restrictions can be established:

- Special conditions for the use of land plots and the regime of economic activity in security and sanitary protection zones;
- Special conditions for environmental protection, including animal and plant life, nature monuments, history and culture, archaeological sites, conservation of the fertile soil layer, natural habitat, migration routes for wild animals;
- Conditions for the beginning and completion of construction or development of a land plot within the established time limits for a project agreed upon in accordance with the established procedure, construction, repair or maintenance of a motor road (road section) when granting rights to a land plot in state or municipal ownership.

Restriction of rights can be appealed by the person concerned in a judicial procedure. Restrictions of rights are subject to registration in accordance with the Federal Law of July 21, 1997, No. 122-FZ "On state registration of rights to real estate and transactions with it." Restrictions on land rights may be of an indefinite nature or may be fixed for a certain period. The imposed restrictions impose the land plot directly, and therefore, when the right to the relevant site passes to another person, they remain.

Restrictions on property rights in the interest of private individuals can arise on the basis of a contract. For example, by concluding a lease, the owner limits his own powers of possession and (or) use. Civil law also provides for an easement agreement that grants the person in favor of which an easement is established the right of limited use of other people's real estate. The easement agreement may limit the owner's authority to own and use the land to ensure passage and passage through its section, laying and operation of power transmission lines, communications and pipelines, ensuring water supply and land improvement, and other needs of the owner of the neighboring land plot.

In addition, in accordance with the current legislation, it is possible to single out, in particular, restrictions related to the choice of the counterparty to the transaction (for example, not all land plots can be acquired by foreign citizens, stateless persons and foreign legal entities); the need to preserve the purpose of the land when making a transaction.

2. RESEARCH METHODOLOGY

The current research uses the methods of observation, comparative legal studies, formal logic, description and interpretation. The goal of research is to show that together with citizens, legal entities and the state (the Russian Federation and subjects of the Russian Federation), full-fledged participants in land relations are municipal entities.

Municipal land ownership is the property of municipal entities that, together with other municipal property, in accordance with the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation", the financial and economic basis of local self-government. The municipal right to land creates the prerequisites for independence and independence of local self-government, serves as a guarantor of effective use of local resources.

Municipal ownership of land is also a system of relations for the appropriation of land by the population of municipalities. Along with state ownership of land, municipal — a kind of public property.

3. DISCUSSION

In the current conditions of the development of municipal relations, the right to own land acquires more and more turnover in the sphere of local self-government. A legal fact or, more often, the actual composition is the initial basis for the emergence of the right of municipal property to a plot of land. The list of grounds for the emergence of this right is established in Article 19 of the Land Code of the Russian Federation (hereinafter referred to as the Land Code of the RF), according to which municipal landed property consists of land plots:

1. recognized by such federal laws and regional laws adopted in accordance with them;
2. Municipal ownership rights to which appeared as a result of differentiation of state property;
3. Transferred free of charge to municipal property from public legal entities;
4. Acquired in accordance with civil law.

Recognition of a land plot in municipal property is reflected, for example, in the law "On Specially Protected Natural Territories", according to which specially protected natural territories of local importance belong to the municipal entity and are under the jurisdiction of its bodies. For example, in the municipality "city of Yekaterinburg" such specially protected natural areas include: parks named after Lenin, Chkalov, Engels, Park Stadium of the Himmash plant, a square along Shahumyan street, Boulevard along Fergana street, etc.

The adjacent previous basis is the delineation of state ownership of land. This basis is presented in the law on the introduction of the Land Code of the RF, the procedure for delineation is discrete (temporary). As a result of differentiation of state property, municipal property includes:

1. Land plots where buildings, structures, structures belonging to the relevant municipal formations are located;
2. Land plots granted to local self-government bodies of the relevant municipal entities, as well as to state and municipal unitary enterprises or non-profit organizations created by these local government bodies;
3. Other land plots provided for by federal and regional laws.

It should be noted that in the delimitation of state ownership of land, the emergence of the right of ownership of municipal entities to land plots is possible in this situation only for plots of land that are located within the boundaries of municipalities.

As a basis for the emergence of the right of municipal property, gratuitous transfer to the

municipal ownership of land plots by public legal entities is recognized as the Russian Federation, its subjects and municipalities.

The legislator in the norms of the RF LC does not give an explanation, what is the reason for the transfer of property from the federal to the municipal property. The procedure for such transfer is regulated by Federal Law No. 423-FZ of 08.12.2011, which provides that the head of the settlement or the head of the city district, in whose territories there is a military property subject to gratuitous transfer, has the right to initiate such transfer (denial of transfer is permissible only to ensure federal bodies of state power of defense and security of the Russian Federation).

The Land Code of the Russian Federation provides for the transfer of land from the regional to the municipal property for the development of municipalities. According to the official position of the Ministry of Economic Development of the Russian Federation, the realization of such a right is possible if there is a document of territorial planning that confirms the need for free transfer of these land plots. An unauthorized free transfer of property (including land) is also provided for by law, in case this property is not allowed in federal or regional ownership. The Constitutional Court of the Russian Federation rightly noted that the implementation of the above provision is feasible with the appropriate coordination of such transfer between state and municipal authorities, i.e. It is impossible to transfer by ignoring the will of local self-government bodies.

The last option of gratuitous transfer of land between public entities is the transfer from one municipal entity to another. The basis for such a transfer is the provision of land plots to certain categories of citizens and non-profit organizations established by citizens. Federal legislation in this situation refers to certain categories of citizens having three or more children, and also grants the right to subjects of the Russian Federation to determine the circle of persons belonging to this category. As an example, we will cite several categories of persons who can be granted a land plot for

individual housing construction in accordance with the land legislation of the Sverdlovsk Region:

1. Citizens who are registered as needy in residential premises provided under social employment contracts;
2. Citizens who have received professional education and work under an employment contract in rural areas on the received specialty;
3. Citizens who have not reached the date of filing the application, 35 years of age and married to each other in the case of joint application of the application, etc.

Civil legislation provides ample opportunities for acquiring ownership of land plots by concluding various kinds of transactions, seizing a land plot for municipal needs, or by violating its legislation by the owner, court decisions and other legal facts. For example, if a land plot is withdrawn for municipal needs, its owner is compensated for the market value of such a site or the market value of other rights to it, as well as additional losses associated with the withdrawal of the site.

CONCLUSION

The Russian legislator correctly pointed to various grounds for the emergence of municipal ownership of land, but it should be noted that there is a relatively small number of laws that would concretize the listed grounds, which does not fully realize the land potential of the state. It is suggested, firstly, that the transfer of property from the federal to the municipal one is acquired in the law by a program-purpose character and legally expanded, i.e. was not limited to the transfer of military property. Secondly, there is also a need to gradually incorporate into the norms of the federal legislation new categories of persons (similar to regional legislation) that have the right to free reception of a land plot, which will contribute to solving social issues such as housing, labor, etc. And, thirdly, the issue of seizure of property for municipal needs remains controversial, since on the one hand, this undoubtedly has an impact on the

development of the municipal formation, and on the other, it causes public resonance among landowners due to the forcible seizure, it would be desirable for the legislation to provide the most optimal model of legal regulation on this issue. Thus, it can be summarized that Russian land law has many prospects for legislative improvement of public relations, including in the field of municipal land rights, which are of great importance in the implementation of the competence of local self-government.

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