Legal problems of the land code applying in Russian Federation

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Abstract. The most important step at the present stage of land reform was the adoption of such basic legislative acts as the Land Code of Russian Federation, the Federal Law "On the Delimitation of State Ownership of Land", the Federal Law "On the Turnover of Agricultural Land", the Federal Law "On the transfer of land or land plots from one category to another", as well as the adoption of other regulatory legal acts in compliance with the specified federal laws. This caused a consistent continuation of the land reform, but no radical shifts in its implementation took place, and, therefore, new amendments are required to the current legislation.

1 Introduction

Modern legislation in the field of land relations does not cover all issues that need to be settled. There are a number of problems, the solution of which is one of the primary tasks of reforming land relations. In this regard, it is necessary to change and to supplement the provisions that establish the powers of the state authorities of the Russian Federation and the constituent entities of the Russian Federation, as well as local authorities in the field of management and disposal of land, as well as the procedure for delineating state ownership of land.

2 Materials and methods

The legal acts adopted in recent years on ensuring the rational use and protection of land are the basis for the creation of a new system of land legislation of the Russian Federation, which are focused on delimiting state ownership of land, the emergence of new legal titles for land plots among citizens and legal entities. At the same time, as N.N. Averyanova rightly notes, despite the fact that land reform in Russia has been carried out for more than twenty years, land legislation is still at the stage of formation. The basic land laws adopted during this time are one of the most frequently changed, which undoubtedly negatively affects the law enforcement process.

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At present, in accordance with the current land legislation, the acquisition of rights to land plots in state and municipal ownership is carried out in the following ways.

- 1) by prior agreement on the location of the object,
- 2) at tenders (competitions, auctions),
- 3) when privatizing state and municipal unitary enterprises,
- 4) upon acquisition of land plots by the owners of buildings, structures, facilities,
- 5) through the assignment of lease rights to state and municipal institutions.

The most common are preliminary agreement on the location of the object and for the auction.

Currently, in more than 95% of cases, the lease of land plots that are not built-up and free from the rights of citizens and legal entities, which are in state and municipal ownership, is carried out according to the procedure of preliminary agreement on the location of the object. This procedure has several significant disadvantages.

1. The applicant is obliged to obtain a large number of various kinds of approvals and examinations, which in practice may take from 3 months to 3 years.

2. Only at the federal level there are about 19 legislative acts, which provide for the approval and examination of the act of choosing a land plot.

3. The applicant can go through part of the approvals, having spent more than a year on it, and face a refusal in the next approval or a refusal to decide on preliminary approval of the location of the object. Thus, investing time and money in the passage of all approvals, the investor does not have any guarantees that these funds are not wasted.

4. State authorities, at their own discretion, make a decision on the provision of a land plot to this or that person, if there is a demand for such a plot from several persons. The criterion for choosing a person who will be provided with a land plot is the size of the rent, and the subjective opinion of the authority. This gives rise to the practice of creating organizations affiliated with the authorities, which receive a privileged position in the provision of state and municipal lands, which leads to the monopolization of the land market.

Another common way of acquiring rights to land plots is tendering. In accordance with the current legislation, such a land plot must be formed prior to the auction. Preparation of land plots for bidding is a time-consuming and costly procedure in terms of financial resources. In this regard, it is necessary to study the possibility of attracting extra-budgetary funds for the preparation of land plots.

Currently, the State Duma of Russian Federation has prepared a draft law "On Amendments to Certain Legislative Acts of the Russian Federation on the Implementation of Urban Planning Activities", the purpose of which is to improve the procedure for granting land plots that are in state and municipal ownership. Novelties of this bill.

1. Provision mainly at an auction, as well as a list of cases of granting land plots without an auction is established (instead of seized land plots for state and municipal needs, residents of a special economic zone, persons with whom concession agreements have been concluded, citizens, in in the case of priority or free provision of land plots, etc.), as well as a clear procedure for the provision of land plots without holding auctions is established.

2. Mandatory availability of documentation on the planning of the territory when providing land plots

These changes in land legislation are interconnected with changes in urban planning legislation.

3 Results and discussion

Problems of registration of the ownership right of the subject of the Russian Federation to unclaimed land shares.

In accordance with the Federal Law "On the turnover of agricultural land", the constituent entities of the Russian Federation are obliged to formalize the ownership of the constituent entity of the Russian Federation for unclaimed land shares - land shares, the owners of which did not dispose of them for three or more years from the moment of acquiring the rights to the land share.

Problem 1. The location of the unclaimed shares subject to allocation, according to the Federal Law, is determined by the decision of the general meeting of owners of land shares. The Ministry for State Property Management of the Sverdlovsk Region (hereinafter - MUGISO) is unable to collect this meeting, since the equity holders live throughout the territory of the Sverdlovsk Region, and MUGISO does not have its own territorial bodies in municipal formations. We have to contact the municipality with a request to organize a general meeting of equity holders.

In addition, in a number of cases, the participants of the general meeting, realizing that land shares will be confiscated from them, fundamentally do not collect a meeting, in connection with which work on the formation of the ownership of land shares cannot be carried out.

Taking into account the above, it is proposed to exclude from the federal legislation the norm on the need to hold a general meeting of owners of land shares.

The Ministry of Agriculture and consumer market of the Sverdlovsk Region has repeatedly come up with a similar proposal - to simplify and concretize the procedure for registering the ownership of a constituent entity of the Russian Federation to a land plot formed at the expense of unclaimed shares, by recognizing in a judicial proceeding the ownership of a constituent entity of the Russian Federation to unclaimed shares, until the formation of the boundaries of the land plot, as well as the possibility of including in the unclaimed shares the land shares of the deceased owners of common ownership of land plots.

In the course of the land reform in Artinsky urban district, 90 thousand hectares of land were transferred to common ownership over 10 thousand citizens. Fulfilling the order of the SO Government a certain work is being carried out in the Artinsky in this direction. So, for three former agricultural enterprises "Kurkinskoye", "Azigulovskoye", "Potashkinskoye", MUGISO provided lists of owners of land shares who are currently deceased or have left the GO. The boundaries of the land plots have been formed and approved. At the same time, a number of agricultural producers (are ready to accept Land Manchazhskaya, Agrofirma Severnaya) are ready to take unused land for the production of agricultural products. But the imperfection of land legislation, the long procedure for registration of rights to land plots slows down the process of involving unused land in agricultural production.

Problem 2. In order to register ownership of unclaimed shares, a constituent entity of the Russian Federation must first demarcate the land plot to be allocated, put it on cadastral records, and then go to court to recognize the ownership of the constituent entity of the Russian Federation. Land surveying is carried out in a fairly long time.

In addition, after the land surveying and cadastral registration of the land plot is carried out at the expense of budgetary funds, an application is submitted to the court for the recognition of the ownership of the subject of the Russian Federation to the demarcated plot. And then persons who have not used their land share for more than 3 years come to the court session and declare that they are ready to use it now. The court excludes these shares from the land plot subject to the ownership of the subject of the Russian Federation.

The following proposal for reforming the current legislation may seem rather unexpected - to prohibit the court from accepting applications from citizens in the course of a court session who have not used the land for more than 3 years and about their readiness to use it.

Problem 3. In accordance with the Code of Civil Procedure of the Russian Federation, together with filing an application to the court for the recognition of ownership of unclaimed shares for a constituent entity of the Russian Federation, MUGISO is obliged to provide the court with information about the place of residence of all persons who have not used land for more than 3 years, to notify them by the court. Otherwise, the court returns the application without consideration, since it cannot notify all interested parties. At the same time, certificates of ownership of a land share were issued to citizens about 15 years ago. Some of the citizens received certificates, some of the certificates were only formalized, but the citizens did not come to receive them. All information is available only as of the date of issuance of such certificates in the archive of the territorial departments of Rosnedvzhimost. It is possible to collect information only for 60-80% of citizens (some have moved, some have died, etc.). Thus, MUGISO cannot provide information about the place of residence of all persons, and the court, based on the norms of the Code of Civil Procedure, returns the applications without consideration.

To solve this problem, it is proposed to introduce into the Code of Civil Procedure of the Russian Federation a rule that, upon recognition of the ownership of and the subject of the Russian Federation to unclaimed shares, the notification of persons who have not used their land for more than three years is carried out by the subject of the Russian Federation in the official media about the upcoming court session.

Withdrawal of land plots, including through redemption for state and municipal needs.

To date, there are problems with the application of legislation governing the procedure for the seizure of land plots, including through redemption for state and municipal needs. These issues are regulated by the norms of civil legislation and the Land Code of the Russian Federation. According to Art. 279 of the Civil Code of the Russian Federation, the procedure for preparing and making decisions on the seizure of land plots for state and municipal needs is determined by federal land legislation. At the same time, this procedure is not defined by the Land Code of the Russian Federation.

In addition, at present, the list of information contained in the decision on the seizure of land plots for state and municipal needs, as well as provisions regarding the registration of this decision and notifying the owners, land users, landowners and tenants of the seized land plots, has not been determined.

4 Conclusions

1. Clauses 1 and 2 of Article 3 of the Land Code of the Russian Federation establish a correlation between the norms of land, environmental and civil legislation. In particular, since land is immovable property and an object of civil turnover, property land relations (property rights, transactions with land, etc.) are to one degree or another regulated by civil law, since it is it that regulates property relations. This is also indicated by paragraph 2 of Art. 3 of the Land Code of the Russian Federation. However, taking into account the specifics of such an object as land, it can hardly be argued that property land relations are exclusively a subject of civil law, since civil law establishes rules regarding all things without taking into account their features. Land, as already noted, is a specific object, and the regulation of any relations of ownership, use and disposal should be subject to special rules, which are established precisely by land legislation. Thus, property land relations are regulated jointly by the norms of civil and land law, while civil law establishes general provisions, and land law - features associated with a special object - land.

Thus, the principle of differentiating the action of the norms of civil and land legislation is in close relationship with the main principle of land law, which consists in the continuity of the concept of a land plot as an object of nature and an object of immovable property. The legal regime of land plots is determined by cross-sectoral institutions, which include

norms of various industries (norms of civil, land, urban planning legislation, etc.). Property relations are regulated by several branches of legislation, which have different qualitative specifics, due to their goals and objectives. Civil legislation regulates part of property relations independently, and part - in close relationship with the norms of a different industry affiliation within the framework of such intersectoral institutions.

2. In order to avoid a conflict between the norms of the Civil Code and the Land Code, it seems advisable to remove the land private law norms from the Land Code, leaving only public law norms in this document.

3. With the relationship between land and environmental law, the principle of the relationship between general and special norms is traced, when environmental and other relations are regulated by the norms of the relevant branches of legislation, and in cases of their contradiction, the norms of the Land Code of the Russian Federation are priority.

References

1. S.P. Grishaev, IBT, (2011)
2. O. V. Burlachenko, *Land is the system of real estate*: Author. dis. ... Candidate. jurid. Sciences, 16 (Ekaterinburg, Well: D. Ex., 2006)
3. O.I. Krassov, *Environmental Law Review*, **4** (2011)
4. O.I. Korotkov, *Modern law*, **4** (2011)
5. A. D. Aleksandrov, *Legal world*, **1** (2002)
6. I. A. Ikonitskaya, *Proceedings of the conference. The new Land Code of the Russian Federation: Some problems in the theory and practice of State and law* **9**, 2002
7. R. A. Savin, *Civil Law*, **4** (2009)
8. A. P. Anisimov, S. A. Charkin, A.Y. Chikildina, *Tsivist*, **1** (2011)
9. A.Ya. Ryzhenkov, *Law and Economics*, **5** (2016)
10. N.N. Averyanova, *Workshop on land law* (Saratov: Saratov source, 2008)