Land allocation problem in establishing boundaries of population centers

Nicholas Radchevskiy, Yanina Zaitseva, Eleanor Tsoraeva

1 Introduction

Having analyzed the division of a land plot from lands of populated areas with multiple owners, the applicant loses the right of common shared ownership of the land plot being changed and registers the right of ownership of the land plot being formed.

This procedure for allotment is not clearly stipulated in any regulatory and legal acts, unlike agricultural land. A land plot with a cadastral number 23:07:0402000:651 is considered.

2 Materials and methods

Let us consider the procedure for separating a land plot from residential land. Figure 1 shows a list of rights to such land plots.

One of the obligatory stages for allotting a particular land plot is, obviously, the preparation of a boundary plan. Schematically, Figure 2 shows a drawing of the land plot obtained as a result of secession before and after the preparation of the boundary plan.

We analyzed the procedure of secession of the land plot with cadastral number 23:07:0402000:651. Figure 2 shows its profile.
Despite the fact that the public cadastral map indicates that this land plot has the category of agricultural land, in fact it is located on the land of populated areas, according to Article 84 of the Land Code of the Russian Federation (LC RF) [1-9].
According to the Reference Information on Real Estate Objects available Online, the land plot with cadastral number 23:07:0402000:65132 has a record of the right of common shared ownership.

In accordance with Article 252 of the Civil Code of the Russian Federation (CC RF), as we know, the property between its participants may be divided by agreement [10-15].

Sample form of an agreement on the method and conditions of separation of a share from the common property (separation of part of the property in kind) (prepared by Garant experts)

Agreement on terms and conditions of the allocation of a share from the common property (allocation of part of the property)

<table>
<thead>
<tr>
<th>place of agreement</th>
<th>date of agreement</th>
</tr>
</thead>
</table>

We, the undersigned (Full name, passport details), hereinafter referred to as the "Parties", at the request of [Full name of the co-owner], guided by Chapter 16 of the Civil Code of the Russian Federation, have reached an agreement on the manner and conditions of the allocation of his share of the common property:

1. Allocate [Full name of the co-owner requesting the allocation of the share] part of the property in kind in proportion to his share equal to [share size] in the right of common ownership.

<table>
<thead>
<tr>
<th>no.</th>
<th>Property name</th>
<th>Value</th>
<th>Amount</th>
<th>Total value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

2. Allocation of a share from the common property entails termination of common ownership of the allocated part and loss of the right of pre-emption by the remaining participants in the common of the right of preferential purchase at the sale of the allocated share.

3. This present agreement shall come into force upon its signing and is drawn up in (number of) copies - one for each Party.

4. Signatures of the parties:

Fig. 3. Screenshot of the public cadastral map (the location of the land with cadastral number 23:07:0402000:651 on the master plan of Staromyshastovskaya village Dinsky district of Krasnodar Krai).

Fig. 4. Sample Form of the Allocation Agreement.

Considering that this land plot has 32 owners, such an agreement must be obtained from each of them.
It is problematic to get the consent of 32 people about the allotment because it is very difficult to find each of the owners. But without their consent it is impossible to allocate the land plot extrajudicially.

If the land plot is a category of agricultural land the consent of all owners is not required, if the number of joint owners exceeds 5, in accordance with article 12 of the Federal law "On agricultural land transactions". On agricultural lands the decision on allotment is taken either through general meeting according to article 13 of the law, or in a notification procedure [15-22].

The problem of the site with cadastral number 23:07:0402000:651 is that the owners try to secede on the lands of settlements, carrying out the procedure under the law "On agricultural land transactions", which does not regulate activities on the lands of settlements, according to article 1 of this law.

In this case, the owners, following the procedure and requirements of the law correctly, receive a suspension of the state cadastral registration and state registration of rights, and subsequently a refusal [23].

3 Results

Considering that it is impossible to separate the given land plot according to the law, and it is practically impossible to receive an agreement from 32 participants at once, the only way to separate is the court.

Also, according to the civil code (art. 252) in case of absence of agreement between the owners, one of the participants has the right to demand the division of its share through court. But before filing a claim, you must notify all shareholders of your desire to secede, and only after their refusal to go to court. Otherwise, if this is not done, the court may deny the separation on the grounds that the agreement procedure between all participants was not followed [8].

4 Conclusion

Based on the research conducted on grounds of legislative and other normative legal acts, we propose the following procedure for allotment of a land plot in case of multiple owners:

1) To send a letter with notification to the address of the place of registration containing an approximate form of agreement, document on the planned division of the land plot, which states that in case of no response within one month of sending it, it will be automatically considered that the participant of the common share ownership has no objection to this procedure.

2) Submission of a petition to court demanding division of one's share in right of common shared ownership of the land plot.

The defendants in this trial will be all the participants of the shared ownership, who have objection to the division of such share of the land plot.

It is common knowledge that if there are more than 5 shareholders, it is not necessary to get permission from each of the shareholders in order to cut the plot off, because the law is aware of the fact that it is very difficult. But if this land plot has the category of "lands of populated areas" with a large number of participants of common shared ownership, it is practically impossible to separate one's share without a court trial.

References

2. B. Kozyrev, E. Tsoraeva, Al-Azawi Nagam, A. Chibirova and A. Kozyrev, E3S Web of Conferences 244, 03018 (2021) https://doi.org/10.1051/e3sconf/202124403018

3. E. Tsoraeva, S. Mezhyan, M. Kataeva, L. Hugaeva, T. Rogova, E3S Web of Conferences 224, 03001 (2020) https://doi.org/10.1051/e3sconf/202022403001


5. E. Tsoraeva, P. Alborova, L. Bazaeva, D. Khanaeva, B. Kozyrev, E3S Web of Conferences 284, 02003 (2021) https://doi.org/10.1051/e3sconf/202128402003


8. V.N. Khlystun, V.V. Alakoz, *Economics of agricultural and processing enterprises* 11, 38–42 (2016)


15. V.N. Semochkin, P.V. Afanasiev, *Some features of the integrated land management on agricultural lands*, Land management, real estate cadastre and monitoring of land resources: Proceedings of the All-Russian scientific and practical conference dedicated to the 15th anniversary Department of Land Use and Land Cadastre, Buryat State University, Ulan-Ude, September 13–15, 2018 / Under the general editorship of V.N. Khertueva, L.O. Grigorieva. – Ulan-Ude: Buryat State University, p. 68–74. 2018
