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Public Ownership of Land Differentiation: Law Application Problems

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The process of state ownership of land differentiation is currently in progress. Both in theory and practice there is a number of problems connected with reference of separate acres to this or that public formation. The author of the article considers the following issues: public ownership of land differentiation in a situation where under the right of ownership a public-legal formation does not possess a whole building but its separate premises as well as where real estate objects which are other subjects' (natural or legal persons') ownership are located on the area of a state (municipal) enterprise.

Keywords: public ownership differentiation, public ownership (property), municipal property, parcels of land.

Introduction point

In the USSR existence period the land within a state frontier had been a uniform state land fund being a complete and indivisible object of public ownership right. However, the political system change and the recognition of a variety of ownership of land forms by the Russian Federation Constitution resulted in the necessity to differentiate public ownership of land between the property of the Russian Federation, its subjects and municipal enterprises as well as to define its order.

The process of public ownership of land differentiation has lasted for two decades. But in practice this process has given rise to a lot of issues. Irrespective of numerous changes in legislation concerning the sphere mentioned above, the greatest complexity

lies in application of this or that ground for differentiation.

Example

One of the basic principles of land legislation which is directly stated in Article 11 of the Russian Federation Constitution is public ownership of land differentiation between the Russian Federation property, property of the Russian Federation subjects and property of municipal enterprises.

The problem of public ownership of land differentiation became a central one in the Russian Federation Land Code approved in 2001 as well as in Federal law № 101-FL "On public ownership of land differentiation" dated 17.07.2001.

As it has been stated and remains urgent nowadays, the land which is not citizens', legal

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bodies' or municipal enterprises' property is subject to public property. Public property in the Russian Federation is constituted by the property belonging to the Russian Federation and to the Russian Federation subjects under the right of ownership. But Clause 1 of Article 17 and Clause 1 of Article 18 of the Land Code concerning parcels of land which are in public ownership remain unchanged. As per these clauses the following parcels of land which are subject to public ownership:

- parcels of land recognized as such by Federal laws;
- parcels of land public ownership of which resulted from public ownership of land differentiation;
- parcels of land purchased on the grounds provided by the civil legislation.

Previously, according to Law № 101-FL "On public ownership of land differentiation" dated 17.07.2001 (Russian Federation Code of Laws, 2001) which was in effect till July 2006, the data on the parcels of land subject to property right of the Russian Federation, the Russian Federation subjects and municipal enterprises had to be collected in order to differentiate the state ownership of land.

Specified data and documents were submitted to the Ministry of Property of Russia in order to form the lists of such parcels of land. Prepared and coordinated with the public authorities of the Russian Federation subjects, local governments, these lists were approved by the Russian Federation government. The disputes on parcels of land lists between the Russian Federation, a Russian Federation subject and municipal enterprises were referred to consideration of conciliatory commissions established by the territorial administrations of the Ministry of Property of Russia. On the basis of the analysis the conciliatory commission made a decision whether to include a parcel

of land in parcels of land list coordinated by the parties or to submit a dispute case to the court. Only after that the data on the parcel of land were included in the state land cadastre documents and the property right of the Russian Federation, the Russian Federation subjects and municipal enterprises to the parcels of land was registered.

Such an order was extremely laborious and time consuming. Grounds for differentiation overlapped and frequently prevented from differentiation of the property right to a concrete parcel of land.

All these complexities have resulted in the necessity of the public ownership of land differentiation order revision.

Nowadays public ownership of land differentiation takes place owing to the Federal law that directly states criteria of this or that parcel of land (acres) reference to the Russian Federation's, the Russian Federation subjects' or municipal enterprises' property. Observance of any conciliatory or other procedures of such differentiation is not required any longer.

Federal law № 137-FL (under edit. on 30.06.2006) "On the Land code of the Russian Federation enactment" dated 25.10.2001 (further referred to as "the Introductory law") defined not only the grounds for a parcel of land reference to the property of a corresponding public formation but also established an order of such a parcel of land disposal.

For the purpose of differentiating public ownership of land the following parcels of land are subject to the federal property:

- parcels of land with buildings, structures, constructions which are the Russian Federation's property;
- parcels of land given to the Russian Federation public authorities, their territorial bodies as well as state enterprises, state unitary enterprises or

noncommercial organizations established by the federal public authorities;

- parcels of land which are under the right of permanent (unlimited) use, lease, free fixed-time use by the state academies of sciences and organizations established by such academies of sciences;
- other parcels of land and acres if provided by the federal laws.

For the purpose of differentiating public ownership of land the following parcels of land are subject to the property of the Russian Federation subjects:

- parcels of land with buildings, structures, constructions which are the Russian Federation's property;
- parcels of land given to the public authorities of the Russian Federation subjects as well as to state enterprises, state unitary enterprises or noncommercial organizations established by the public authorities of the Russian Federation subjects;
- other parcels of land and acres if provided by the federal laws.

The following parcels of land are subject to municipal enterprises' property:

- parcels of land with buildings, structures, constructions which are the corresponding municipal enterprises' property;
- parcels of land given to the local governments of corresponding municipal enterprises as well as to state enterprises, municipal unitary enterprises or noncommercial organizations established by specified local governments;
- other parcels of land and acres if provided by the federal laws and the laws of the Russian Federation subjects which were approved in conformity with them (Russian Federation Code of Laws, 2006).

Even one of the criteria of a parcel of land reference to this or that property level is sufficient for property relations to a corresponding parcel of land to emerge.

Moreover, Clause 5 of Article 3.1 of the Introductory law provided for the rule concerning the acts on validation of parcel of land lists, published by the Russian Federation government till July 1, 2006, which gives rise to a public formation's property right under the public ownership of land differentiation. Such acts are grounds for a corresponding public formation for the state registration of its property right to these parcels of land.

Thus, according to the Introductory law both parcels of land with real estate objects belonging to the public property and parcels of land given to public authorities, local governments and state (municipal) legal bodies established by corresponding authorities are subject to differentiation. Other parcels of land are in state ownership and not subject to differentiation. Such plots of land are in local governments' disposal.

The order of legal registration of the property right to a parcel of land under public ownership of land differentiation has also been slightly changed since 01.07.2006. According to Article 30.1 of Federal law № 122-FL "On the state registration of the rights to real property and transactions therewith" dated 21.07.1997 the state registration of the property right under public ownership of land differentiation is implemented on the basis of the statement of an executive body of the government or local government or an assigned person (Russian Federation Code of Laws, 2006). The list of the documents necessary for the state registration of the property right to a parcel of land under public ownership of land differentiation is approved by the Russian Federation government.

Such a list was approved by the Russian Federation governmental resolution № 404 "On affirmation of the list of the documents necessary

for a state registration of the Russian Federation's, Russian Federation subject's or municipal enterprise's property right to a parcel of land under public ownership of land differentiation" dated 30.06.2006 (Russian Federation Code of Laws, 2006).

As it has been noted above, parcels of land given to public authorities (local governments) as well as to state enterprises, state (municipal) unitary enterprises or noncommercial organizations established by public authorities (local governments) are subject to the property of a corresponding public-legal formation.

In practice, the cases when the property belonging to other subjects (natural or legal bodies) is located on a parcel of land given to a state (municipal) enterprise are not a rare occasion. Is a specified criterion of public ownership of a parcel of land differentiation subject to application in this case and aren't the rights and legitimate interests of other proprietors of real property objects infringed?

According to Clause 3 of Article 36 of the Land Code, in case a building (premises in it) occupying an indivisible parcel of land belongs to several persons under the property right, they are entitled either to purchase the given parcel of land in joint property or to lease it with plurality of persons on a lessee's side.

Initial state registration of the right to federal property, property of the Russian Federation subjects, municipal enterprises carried out under public ownership of land differentiation interfere neither with the subsequent privatization nor acquisition of the right to lease it by citizens and legal bodies, that are proprietors of buildings, structures, constructions located on these sites, according to order and terms established by the law nor with purchasing indivisible parcels of land in joint equity ownership.

Owing to the fact that direct prohibition isn't established by the Land Code as well as to the

provisions of Clause 1 of Article 18 and Clause 1 of Article 19 of the Land Code that specify the origin of the property right to the parcels of land purchased by the Russian Federation subjects and a municipal enterprise on the grounds stipulated by the civil legislation the possibility of subsequent acquisition of an indivisible parcel of land in joint equity ownership or in lease with plurality of persons on a lessee's side including such subjects is not excluded.

Last years' arbitration courts practice proves to recognize such an approach (<http://krasnoyarsk.arbitr.ru/90/137/925.html>). A different decision of the matter will interfere with public ownership of land differentiation and can lead to a situation when the property right to a parcel of land will be registered by none of the proprietors of real estate objects located on the given parcel of land. It creates uncertainty of the rights to it and also makes the subsequent acquisition of the property right to a parcel of land impossible for other interested persons in the order stipulated by the Land Code (the Bulletin SCC Russian Federation, 2010).

The situation when a building with one part of the premises belonging to the state and the other part to other persons is located on the parcel of land property of which is not differentiated seems similar at first sight. In compliance with the provisions of Article 36 of the Land Code concerning such parcels of land it is possible for legal owners to purchase premises that are in equity ownership or lease with plurality of persons on a lessee's side. But is initial registration of the right to federal property under public ownership of land differentiation admitted? It should be noted that differentiation criterion for this case is as follows: "parcels of land with buildings, structures, constructions which are the Russian Federation's property are subject to the federal property". That is, Article 3.1 of the Introductory law specifies such civil rights objects as buildings,

structures, constructions. At the same time the premises in a building are independent civil rights objects which are not reduced to a building.

The conclusion drawn is deemed not to lose its sense even in case the suggested changes are introduced to the Civil Code. Article 298⁶ of a new Civil Code draft provides the proprietors of premises in a building with joint equity ownership of a parcel of land necessary for a building use. The draft specifies the premises as a part of a building or a construction limited to a three-dimensional closed contour suitable for use. Article 298 of the draft, in its turn, stipulates that the state registration of the property right to the premises terminates the property right to a building where the premises in question are located.

So, literal interpretation of legislative norms sets forth that a parcel of land with buildings, structures, constructions but not their parts (for example, the premises) which are the Russian Federation's property are subject to the federal property. Thus, as per Clause 3.1 of the Introductory law the right of a public formation to a share in joint equity ownership of a parcel of land cannot be registered either. Article 3.1 of the Introductory law does not contain the corresponding ground but Article 36 of the Land Code is subject to application.

Articles 16, 19 of the Land Code and Article 3.1 of the Introductory law set forth that public ownership differentiation is an independent ground for the right of public ownership and on the given ground a public-legal formation can have a property right being an individual subject

only. It's not so for the right to a share in the right of joint ownership with participation of citizens or legal bodies along with a public-legal formation. Proceeding from literal interpretation of Clause 3 of Article 3.1 of the Introductory law, being a municipal enterprise's property, uninhabited premises in the house alternatively to buildings as a whole cannot constitute a ground for joint (a public-and-legal formation's and other proprietors' of premises) equity ownership of a corresponding parcel of land as a result of public ownership of land differentiation (<http://ras.arbitr.ru>).

Conclusion

Thus, if real property objects belonging to other subjects (natural or legal bodies) are located on a parcel of land which is given to a state (municipal) enterprise this parcel of land is subject to the property order differentiation. Registration of a public formation's property right to a parcel of land does not interfere with subsequent transition of the property right to the proprietors of real estate objects.

In a situation when the part of premises in a building is not in the federal property the parcel of land under such a building is not subject to the federal property. That is, there are no grounds for differentiation in this case.

Such state of affairs facilitates consecutive implementation of the principle of destiny unity of a real property object and a parcel of land into practice and leads to the reduction of cases when a proprietor of a parcel of land and a real property object located on it do not coincide.

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Разграничение государственной собственности на землю: проблемы правоприменения

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В настоящее время продолжается процесс разграничения государственной собственности на землю. В теории и на практике существует ряд проблем, связанных с отношением отдельных земель к собственности того или иного публичного образования. К числу вопросов, рассматриваемых автором в настоящей статье, относятся: разграничение публичной собственности на землю в ситуации, когда публично-правовому образованию на праве собственности принадлежит не все здание, а отдельные помещения в нем, а также когда на земельном участке, который предоставлен государственному (муниципальному) предприятию, расположены объекты недвижимости, находящиеся в собственности иных субъектов (физических или юридических лиц).

Ключевые слова: разграничение государственной собственности, государственная собственность, муниципальная собственность, земельные участки.
