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ПЕРЕТИН ПУБЛІЧНОГО ТА ПРИВАТНОГО ПРИ РЕГУЛЮВАННІ ВІДНОСИН ПРАВ НА ЗЕМЕЛЬНІ ДІЛЯНКИ В УКРАЇНІ (НА ПРИКЛАДІ СУДОВИХ СПРАВ)

THE INTERSECTION OF PUBLIC AND PRIVATE IN REGULATING LAND RIGHTS IN UKRAINE (USING THE EXAMPLE OF COURT CASES)

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У статті розглядаються питання зловживань повноваженнями місцевими державними адміністраціями при регулюванні відносин права власності на земельні ділянки в Україні (на прикладі судових справ), питання оренди земельних ділянок та вилучення з користування. На підставі вивчення матеріалів судових справ було сформулбовано ряд висновків.

Незважаючи на чітке визначення повноважень у сфері розмежування земель державної та комунальної власності повсякчас мають місце протиправні дії керівників місцевої районної та обласної державної адміністрації, які всупереч законодавству видали: а) розпорядження щодо передачі земельних ділянок, що знаходиться у користуванні на праві довгострокової оренди, іншим фізичним особам; б) розпорядження про вилучення окремих земель із масиву земель лісогосподарського призначення.

Відповідно до п. 1 ст. 124 Земельного Кодексу України «…передача в оренду земельних ділянок, що перебувають у державній або комунальній власності, здійснюється на підставі рішення відповідного органу виконавчої влади або органу місцевого самоврядування…». Тому якщо районна держадміністрація мала сумніви щодо законності договору оренди земельної ділянки,

The article examines the issues of abuse of authority by local state administrations in regulating land ownership relations in Ukraine (using the example of court cases), the issue of land lease and withdrawal from use. Based on the study of court cases, a number of conclusions were formulated.

Despite the clear definition of powers in the field of delimitation of state and municipal lands, illegal actions of the heads of local district and regional state administrations are constantly taking place, who, contrary to the legislation, issued: a) orders on the transfer of land plots, which are in use on the right of long-term lease, to other individuals; b) orders on the withdrawal of certain lands from the massif of forestry lands.

According to paragraph 1 of Art. 124 of the Land Code of Ukraine "…the lease of land plots that are in state or municipal ownership is carried out on the basis of a decision of the relevant executive body or local government body…" Therefore, if the district state administration had doubts about the legality of the land lease agreement concluded between citizen N. and the village council, it could simply re-issue such a lease agreement.

Employees of land resources bodies and the state land cadastre, either due to lack of qualifications or intentionally,

укладеної між громадянином і селищною радою, то вона могла просто переоформити такий договір оренди.

Працівники органів земельних ресурсів та державного земельного кадастру чи за браком кваліфікації, чи з умислу приймали неправомочні рішення щодо оформлення права власності та користування земельними ділянками.

У діях місцевої районної та обласної державної адміністрації прослідковується поетапна, цілеспрямована та заздалегідь передбачена зміна їх цільового призначення з метою отримати вигоди матеріального характеру. Про це свідчать акти поступового переведення земель лісогосподарського призначення з однієї категорії до іншої (землі лісогосподарського призначення – землі сільськогосподарського призначення – землі промисловості) для досягнення поставленої мети. Варто також зазначити, що у всі часи для лісового господарства виділялися землі, які не мають цінності для сільського господарства, засолені або такі, що не підлягають рекультивації чи відновленню. Тут ми бачимо, що землі, які вже не були придатні для сільського господарства знову віддають для таких потреб. Крім того, на спірних землях були ліси 1-ої категорії, які є основною категорією лісів.

Рішення про зміну цільового призначення земель лісогосподарського призначення не погоджувалося з центральним органом виконавчої влади, що реалізує державну політику у сфері охорони навколишнього природного середовища, що вже має системний характер і має звернути увагу правоохоронних органів.

Ключові слова: Конституція України, розмежування, повноваження, приватне, публічне, власність, користування, оренда, землі, сільськогосподарські землі, лісові землі

made unauthorized decisions regarding the registration of ownership rights and the use of land plots.

The actions of the local district and regional state administration are traced to a phased, purposeful and pre-planned change in their intended purpose in order to obtain material benefits. This is evidenced by acts of gradual transfer of forestry lands from one category to another (forestry lands - agricultural lands - industrial lands) to achieve the set goal. It is also worth noting that at all times, lands that have no value for agriculture, are saline or are not subject to reclamation or restoration have been allocated for forestry. Here we see that lands that were no longer suitable for agriculture are again given for such needs. In addition, the disputed lands contained forests of the 1st category, which are the main category of forests.

The decision to change the purpose of forestry lands was not agreed with the central executive body that implements state policy in the field of environmental protection, which is already systemic in nature and should attract the attention of law enforcement agencies.

Keywords: The Constitution of Ukraine, demarcation, powers, private, public, property, use, lease, land, agricultural land, forest land

In modern conditions, when the powers of local state administrations and local self-government bodies in the field of land relations have already been delimited at the legislative level, in general, there cannot be a question of the right to dispose of (within the limits of ownership) certain land plots. However, situations of excess of powers by state administrations of various levels arise all the

time, due to the land legislation still in force before 01.01.2013, to which courts of various levels cannot give an unambiguous answer.

Let us analyze civil cases (hereinafter referred to as case No. 1 and case No. 2) that were considered by local courts of Ukraine and in respect of which decisions were rendered that have entered into legal force [1, 2].

The main link of the executive vertical are local state administrations. They exercise executive power in the regions (regional state administrations), districts of the regions, as well as in the districts of the Autonomous Republic of Crimea (district state administrations), the cities of Kyiv and Sevastopol (city state administrations), as well as in the districts of the city of Kyiv. In accordance with Art. 119 of the Constitution of Ukraine, local state administrations in the relevant territory provide:

1) implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and other executive bodies;

2) legality and law and order; respect for the rights and freedoms of citizens;

3) implementation of state and regional programs of socio-economic and cultural development, environmental protection programs, and in areas of dense population of indigenous peoples and national minorities - also programs of their national and cultural development;

4) preparation and implementation of relevant regional and district budgets;

5) report on the implementation of relevant budgets and programs;

6) interaction with local government bodies;

7) implementation of other powers granted by the state, as well as delegated by the relevant councils [4].

In accordance with clause 7 of Article 119 of the Constitution of Ukraine, in clause "a" of part 1 of Article 13, clause "a" of part 1 of Article 16, clause "a" of part 1 of Article 17 of the Land Code, it was determined that local state administrations perform the functions of land owners, that is, they manage state-owned lands [4].

According to Article 3 of the Law of Ukraine “On Local State Administrations” The principles on which the activities of local state administrations are based are the rule of law and legality, and clause 2, part 1, article 21 determines that local state administrations have the right to dispose of state-owned lands in accordance with the law [5].

Both in case No. 1 and in case No. 2, there is a disposal of lands intended for cultural, health and recreational purposes (case No. 1) and forestry purposes (case No. 2).

Let's consider what situation arose in case No. 1.

On June 6, 2003, a lease agreement was concluded and notarized by a private notary of the Obukhiv district notary district, according to which the village council provided, and citizen N. accepted for urgent, paid possession and use, a land plot measuring 36,193 sq. m in the village for cultural, health and recreational purposes for a period of 49 years. The specified agreement was registered in the district land resources department. This land plot with a total area of 3,6193 га, which is in the use of citizen N., was assigned cadastral numbers. The lease agreement is being performed by the parties, the tenant has no rent arrears under this agreement, and therefore, by decision of the village council, the tenant was allowed to develop design and estimate documentation for the improvement of the territory and the improvement of the above-mentioned leased land plot.

The land plot provided for use is located within the boundaries of the settlement in accordance with the general plan of the settlement from 1998, approved by the decision of the district council. There is an urban planning justification for changing the boundaries of the settlement, developed in 2001 and approved by the decision of the district council. At a time when the tenant is carrying out his activities in good faith and openly, these land plots were transferred into the ownership of a group of individuals in accordance with the orders of the district state administration in 2009. Based on the specified orders of the head of the district state administration, state acts of ownership of the land plot were issued and entered into the database.

As it turned out during the court hearing, technical documentation regarding the land plots of all individuals is missing from the archive of the State Committee for Land Management in the district. During the court hearing, no evidence was submitted to challenge, cancel or invalidate the decision of the executive committee of the village council, on the basis of which the disputed land plot was leased to citizen N.

Well, let's turn to the legislation.

According to Art. 41 of the Constitution of Ukraine, citizens may use objects of state and municipal property in accordance with the law to meet their needs. Article 125 of the Land Code of Ukraine provides that the right of ownership of a land plot, as well as the right of permanent use and the right to lease a land plot arise from the moment of state registration of these rights. The plaintiff's right to use the above-mentioned land plot was acquired by the tenant lawfully, namely on the basis of the relevant notarized agreement, the grounds for concluding which are currently valid, this right of use was not terminated, the proper administrator of the land (Kozyn Village Council) was not challenged, thus the illegality of its acquisition does not follow from the law and was not established by the court. The state registration of the right to lease was carried out in the proper manner. Under such circumstances, the right to own and use the land plot by citizen N. was acquired lawfully.

According to Part 5 of Article 116 of the Land Code of Ukraine, the provision of land plots owned or used for use shall be carried out only after their withdrawal (redemption) in accordance with the procedure provided for by this Code. In accordance with the procedure established by law (Article 149 of the Land Code of Ukraine), the disputed land plot was not withdrawn from the use of citizen N., and the corresponding right of use was not terminated, which is confirmed by the case materials and not disputed by the parties.

According to clauses "a", "b" of part 1 of article 81 of the Civil Code of Ukraine, citizens of Ukraine acquire the right of ownership of land plots on the basis of purchase under a contract of sale, donation, exchange, other civil law agreements, free transfer from lands of state and municipal ownership. According to part 1 of article 154 of the Civil Code of Ukraine, executive authorities and local self-government bodies, without a court decision, do not have the right to interfere in the exercise by the owner of powers regarding the possession, use, disposal of the land plot belonging to him or to establish additional obligations or restrictions not provided for by legislative acts.

According to clause 12 of the Transitional Provisions of the Civil Code of Ukraine in the version in force at the time of the emergence of the disputed legal relations, until the demarcation of lands of state and municipal ownership, the powers to dispose of lands within settlements, except for lands transferred to private ownership, are exercised by the relevant village, settlement, and city councils, and outside settlements - by the relevant executive authorities.

According to Part 2 of Article 155 of the Civil Code of Ukraine, if an executive body or a local self-government body issues an act that violates the rights of a person to own, use or dispose of a land plot belonging to it, such an act shall be declared invalid. According to Part 2 of Article 43 of the Law of Ukraine “On Local State Administrations”, orders of the head of the state administration that contradict the Constitution of Ukraine, laws of Ukraine, decisions of the Constitutional Court of Ukraine, other acts of legislation, or are impractical, uneconomical, ineffective in terms of expected or actual results, shall be canceled by the President of Ukraine, the Cabinet of Ministers of Ukraine, the head of a local state administration of a higher level or in court.

According to Article 50 of the Law of Ukraine “On Local State Administrations”, orders of heads of local state administrations, acts of other officials appointed by them, may be appealed in court in accordance with the law.

Thus, the land plot was leased to citizen N. by the duly authorized body, the duly lessor (the village council), since the authorized and duly administrator of land within the boundaries of settlements in this case is the local council. At the same time, the order to allocate the land to private ownership and issue state acts for the right of ownership of the land plot to a group of individuals was not adopted by the duly authorized body (the district state administration).

Let's consider what situation arose in case No. 2.

In September 2011, the prosecutor in the interests of the state appealed through the court to the regional state administration and a group of individuals in order to declare illegal and cancel the order of the head of the regional state administration from 2007 on the withdrawal, change of purpose and transfer of the land plot into ownership. Land management projects were approved to terminate the use of the land plot by the state enterprise, land plots with an area of 0.99 hectares each (group 1 forests), located on the territory of the village council, were withdrawn from the permanent use of the state enterprise.

In addition, the purpose of the lands was changed from forestry to agricultural, and these lands were transferred to the ownership of a group of individuals who were issued state acts of ownership of land plots for personal farming in 2007. In 2009, the regional state administration issued an order approving land management projects for the allocation of land plots with a change in purpose from agricultural land to industrial land (for the construction and maintenance of hotel, restaurant and shopping complexes).

When making the decision, the court concluded that the land plots had illegally been removed from state ownership without the knowledge of the administrator, and the regional state administration was not authorized to take such actions. That is why it was logical to return to the state enterprise permanent use of "land plots on the territory of the village council with an area of 10.89 hectares, to declare invalid the purchase and sale contracts of land plots for conducting personal farming on the territory of the village council, to declare invalid the state acts on the right of ownership of the land plot, to recognize the state represented by the Cabinet of Ministers of Ukraine as the owner of the land plots, and to return to the state enterprise permanent use of the land plots on the territory of the village council.

Well, let's turn to the legislation.

The Forest Code of Ukraine [6] provides that forestry lands include forest lands on which forest plots are located, and non-forest lands occupied by agricultural lands, waters and swamps, structures, communications, low-productive lands, etc., which are provided in accordance with the established procedure and are used for forestry needs (Part 1 of Article 5). Citizens and legal entities of Ukraine may acquire ownership of closed land forest plots with a total area of up to 5 hectares as part of the lands of peasant, farm and other farms, free of charge or for a fee. This area may be increased in the event of inheritance of forests in accordance with the law (Part 1 of Article 12). The Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations in the field of forest relations, within the limits of their powers on their territories, exercise control over compliance with legislation in the field of forest relations and transfer into ownership, provide for permanent use for forestry land plots that are in state ownership, in the relevant territory (Part 1 of Article 31).

The change of the purpose of forest land plots for the purpose of their use for purposes not related to forestry management is carried out by executive authorities or local self-government bodies, which make decisions on the transfer of these land plots into ownership or provision for permanent use in accordance with the Land Code of Ukraine. In the event of a decision to change the purpose of forest land plots by regional, Kyiv, Sevastopol city state administrations, such a decision is approved by the central executive authority that implements state policy in the field of environmental protection. The change of the purpose of forest land plots by the Cabinet of Ministers of Ukraine does not require approval from other bodies (Article 57 of the Forest Code of Ukraine). According to the Land Code of Ukraine, the change of the purpose of land plots is carried out according to land management projects for their allocation. The change of the intended purpose of land plots of state or municipal ownership is carried out by the Supreme Council of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea, executive authorities or local self-government bodies, which make decisions on the approval of land management projects for the allocation of land plots and the transfer of these plots into ownership or provision for use in accordance with their powers (Article 20). Violation of the procedure for establishing and changing the intended purpose of lands is a basis for invalidating decisions of state authorities, the Supreme Council of the Autonomous Republic of Crimea, the Council of Ministers

of the Autonomous Republic of Crimea and local self-government bodies on the provision (transfer) of land plots to citizens and legal entities.

In general, having studied the materials of both cases, we can reach the following conclusions:

1. Despite the clear definition of powers in the field of delimitation of state and municipal lands, there are always corrective actions by the heads of local district and regional state administrations, who, contrary to the legislation, issued: a) orders to transfer land plots used on a long-term lease to other individuals; b) orders to withdraw certain lands from the massif of forestry lands.

2. According to clause 1 of article 124 of the Land Code of Ukraine "…the lease of land plots that are in state or municipal ownership is carried out on the basis of a decision of the relevant executive body or local government body…" Therefore, if the district state administration had doubts about the legality of the land lease agreement concluded between citizen N. and the village council, it could simply re-register such a lease agreement.

3. Employees of land resources bodies and the state land cadastre, either due to lack of qualifications or intentionally, made unauthorized decisions regarding the registration of ownership rights and use of land plots.

4. The actions of the local district and regional state administrations are characterized by a gradual, purposeful and pre-planned change in their purpose in order to obtain material benefits. This is evidenced by the acts of gradual transfer of forestry lands from one category to another (forestry lands - agricultural lands - industrial lands) to achieve the set goal. It is also worth noting that at all times, lands that have no value for agriculture, saline or those that cannot be rehabilitated or restored have been allocated for forestry. Here we see that lands that were no longer suitable for agriculture are again given for such needs. In addition, the disputed lands contained forests of the 1st category, which are the main category of forests.

5. The decision to change the purpose of forestry lands was not agreed with the central executive body that implements state policy in the field of environmental protection, which is already systemic in nature and should attract the attention of law enforcement agencies.

Посилання:

1. Decision of the Obukhiv District Court of Kyiv Region in Case No. 2-877/10 dated 07/28/2010. Unified State Register of Court Decisions. URL: http://www.reyestr.court.gov.ua/Review/11139401 (application date 02/15/2025).

2. Decision of the Obukhiv District Court of Kyiv Region in Case No. 2-1558/11 dated 12/06/2011. Unified State Register of Court Decisions. URL: http://www.reyestr.court.gov.ua/Review/23698068 (application date 02/15/2025).

3. Constitution of Ukraine dated 06/28/1996. Bulletin of the Verkhovna Rada of Ukraine. 1996. No. 30. Art. 141.

4. Land Code of Ukraine dated 10/25/2001. Bulletin of the Verkhovna Rada of Ukraine. 2002. No. 3. Art. 27.

5. Law of Ukraine "On Local State Administrations" dated 09.04.1999 No. 586-XIV. Bulletin of the Verkhovna Rada of Ukraine. 1999. No. 20. Art. 190.

6. Forest Code of Ukraine dated 21.01.1994 No. 3852-XII. Bulletin of the Verkhovna Rada of Ukraine. 1994. No. 17. Art. 99.

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