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### **About the ways of protection of violated rights previously granted, but not finalized, the land plots of agricultural purpose**

*In this article the authors have tried to perform in time the legislation previously regulating the allocation of land plots of agricultural purpose in the context of its application at the present time. The presence of judicial practice allowed analyze analogical situations and methods of permission of legal questions arising up in a case of bringing to conformity of rights on the before given lands of the agricultural setting. Peasant (farmer) economy came forward a research object as a form of economic (by an enterprise) activity in agriculture that is impossible without lands. A problem consists in that absence properly processed document, certifying the primordial grant of land, or the presence of already existent rights on the lands frequently induces a declarant at first to appeal to the organ of local self-government (or executive branch of state power), and in case of receipt of refuse - to appeal to the court about the protection of the broken rights. Thus a legislator does not limit a term during that official farmer can additionally call to the manager of land with the purpose of the further proper registration of rights. Impossibility of producing of documents serves as founding for a refuse in satisfaction of requirements of the government about bringing to conformity of before arising up rights, including, by confession of such rights or by the appeal of actions of managers by the lands.*

**Keywords:** *lands, agricultural setting, peasant (farmer) economies, questioning the right, organ of local self-government, court, manager of the lands.*

### **О способах защиты нарушенных прав на ранее предоставленные, но не оформленные до конца, земельные участки сельскохозяйственного назначения**

*В статье авторы предприняли попытку проанализировать во времени законодательство, ранее регламентировавшее предоставление земельных участков сельскохозяйственного назначения в контексте применения его в настоящее время. Наличие практики как судебной, так и правоприменительной, позволило проанализировать аналогичные ситуации и сформулировать способы разрешения правовых вопросов, возникающих в случае приведения в соответствие прав на ранее предоставленные земельные участки сельскохозяйственного назначения. Объектом*

*исследования выступили крестьянские (фермерские) хозяйства как формы экономической (предпринимательской) деятельности в сельском хозяйстве, которые невозможны без земельных участков. Проблема заключается в том, что отсутствие надлежащим образом оформленных документов, удостоверяющих изначальное предоставление земельного участка, либо наличие уже существующих прав на земельные участки зачастую побуждает заявителя сначала обратиться в орган местного самоуправления (или исполнительный орган государственной власти), а в случае получения отказа – обратиться в суд о защите нарушенных прав. При этом законодатель не ограничивает срок, в течение которого официальный землепользователь может дополнительно обращаться к распорядителю земель с целью дальнейшего надлежащего оформления прав. Невозможность предъявления документов служит основанием для отказа в удовлетворении требований крестьянского (фермерского) хозяйства о приведении в соответствие ранее возникших прав путем признания таких прав либо путем обжалования действий (бездействий) распорядителей земельными участками.*

**Ключевые слова:** *земельные участки, сельскохозяйственное назначение, крестьянские (фермерские) хозяйства, оспаривание права, орган местного самоуправления, суд, распорядитель земель.*

Maintaining peasant farm (further – PF) as a form of economic (enterprise) activity in agriculture is impossible without the land plots. The article is aimed at finding possible permission of the legal questions arising in the case of reduction in compliance of the rights for the earlier provided land plots of agricultural purpose (on the example of land plots under PF) by the means of conducted researches, the analysis of similar situations and also the law-enforcement practice.

According to the article 36 of the Constitution of the Russian Federation [1], condition and order of use of the land are determined by the Federal law, art. 55 of the p. 2 and 3 of the Constitution of the Russian Federation excluding derogation of the rights and freedoms of the person and allows their restriction only in the constitutionally approved purposes on the basis of the Law.

Owing to the article 81 of LC of the Russian Federation (in edition till 01.03.2015) are provided to the citizens [5] who showed willingness to have peasant farm, the land plots from the lands of agricultural purpose according to this Code, the Federal law of 11.06.2003 No. 74 – FL "About peasant farm" are provided [7].

The lack of properly processed documents certifying initial granting the land plot or certifying existence of already existing rights for the land plots often induces the applicant to address at first to the local government (or executive body of the government) – further also "the manager of lands" with a request to finish the earlier begun procedure of granting, and in case of receiving refusal – to appeal to the court about protection of the violated rights. At the same time the legislator doesn't limit the term during which the official land user can address in addition the manager of lands for the purpose of further appropriate registration of the

rights. Meanwhile, the impossibility of presentation of the specified documents, as a rule, forms the basis for refusal in meeting requirements of peasant farm about reduction in compliance of earlier arisen rights, including, by recognition of such rights or by the appeal of actions of managers by the land plots.

Having analyzed changes of the current legislation in the considered aspect, the following features were revealed. Since holding the first land reforms of the beginning of the 90<sup>th</sup> years of the 20<sup>th</sup> century, and then about introduction of the Land code of the Russian Federation in 2001 [5] one of the most widespread ways of acquisition of the land plots for farming is granting it from the lands which are in the state or municipal ownership.

Owing to the article 29 of LK of the Russian Federation (acting to 3/1/2015) granting the land plots from the state (municipal property) was carried out only on the basis of the decision of the local governments having the rights of granting the land plots within their competence in compliance with the article 9, 10, 11 of LK of the Russian Federation [5]. At the same time the person who isn't the owner of the land plot carries out the rights of possession and use of the land belonging to him on the conditions and in the limits set by the law or the contract with the owner [11] (with reference to the item 2 of the art. 264 of the Civil Code of the Russian Federation).

Before entry into force since 01.03.2015 the federal law of 23.06.2014 No 171 – FL "About modification of LK of the Russian Federation and separate acts of the Russian Federation" [8] these relations were governed contradictory. The federal law of 24.07.2002 No 101 – FL "About land turnover of agricultural purpose" [6] in former edition (item 1 – 3 of the art. 10) as the general rule provided that the land plots of agricultural purpose which are in the state or municipal ownership are provided both in the property, and for rent at the auction. At the same time the Federal law "About peasant farm" [7] didn't mention any auction, and determined that the land plots for creation of farm are provided to the citizens according to their statement.

The Federal law from 6/23/2014 No 171 – FL called above complemented LC Russian Federation with a number of new chapters, including the chapter V.1 "Granting the land plots which are in the state or municipal ownership" which as it was noted above, came into force since 01.03.2015. So, as a rule, carry to granting the land plots only the cases of their free granting in the property and also on the right of continuous (termless) use (sub-item 1 of item 1 of the art. 39.1 of LC Russian Federation). In all other cases (sub-item 2 – 4 of item 1 of the art. 39.1 of LC Russian Federation) and also in interrelation with the general principle of availability at a price [10] the land plots are provided on the basis of contracts of purchase and sale, rent, is more rare than the free use, i.e. on the basis of civil transactions though these transactions are carried out with the features established by the Land code of the Russian Federation. In particular, proceeding from the sub-item 8 of the item 2 of the article 39.3 of LC of the Russian Federation, farmers can assume that the land plots unambiguously in all cases are provided to them in property without tendering; but it not absolutely so as the similar order works only for the cases listed in the Federal Law "About the Land Turnover of Agricultural

Purpose" [6]. Similar provisions were provided also when granting the land plots for maintaining peasant farm in rent (sub-item 12 of item 2 of the art. 39.6 of LC of the Russian Federation). Thus, there is a speech or about renewal of the earlier arisen right or about acquisition of the land plots which the farmers anyway already use.

In turn the order of formation of the land plots of agricultural appointment for peasant farm was regulated by the specialized rule of the law: article 12 of the Federal Law "About peasant farm" only by the means of submission of the corresponding statement. The list of data which have to be specified in such statement is formulated in the item 1 of the article 12 of the Federal Law "About peasant farm" in an exhaustive way. Therefore the bodies to which applications are submitted had no right to demand any additional data, besides listed in the specified rule of the law.

The manager of lands or on his assignment the relevant land management organization on the basis of such statement or the appeal of executive body of the government taking into account zoning of the territories within a month provided production of the project of borders of the land plot and a statement it. Means, only the statement of the interested person to the manager of lands could be the basis for formation of such land plot (its emergence as a real estate object). No independent formation of the land plot with a type of the allowed use for maintaining peasant farm, the current legislation was provided.

Besides, the mechanisms of formation of borders, the statement of borders of the land plot which were carried out under the Federal Law "About peasant farm", demanding without fail the address of the interested person (which list was established by the federal legislation), besides granting lands from the fund of redistribution of lands (FRL) was provided. The legal regime of such funds is set by the art. 80 of LC of the Russian Federation [5] for redistribution of lands for agricultural production, expansion of peasant farms, mowing, cattle pasture as a part of lands of agricultural purpose. Use of lands of the fund was carried out according to the article 78 of LC of the Russian Federation in the order established by the law and the other regulations of the Russian Federation. Funds of redistribution of lands were created in Russia when holding the land reforms. By the time of enforcement of LC of the Russian Federation and also the Federal Law "About Enforcement of LC of the Russian Federation" the legal regime of funds was reconsidered. The lands of the fund of redistribution of lands according to the article 18 of LC of the Russian Federation were carried to the lands which are the property of the territorial subjects of the Russian Federation. Lands from the fund were provided, first of all, to the subjects of the land relations specified in the article 78 of the Land code to which including the peasant farms were carried. Granting the land plots was carried out on the bases and as it should be, land rights provided. Features of granting lands, including from the funds of redistribution, were established to the article 81 and 82 of LC of the Russian Federation (in edition till 01.03.2015). According to the destination and to the structure the fund of redistribution of lands is a special fund of lands of agricultural purpose, for the reasons defined in the article 80 of LC of the Russian Federation not used for

designated purpose and not provided till certain time to the subjects of agricultural activity.

When examining the matters it is necessary to consider that owing to p.1 of the article 6 of the Civil Code of the Russian Federation [2] in cases when the relations provided by the points 1 and 2 of the art. 2 of the Civil Code of the Russian Federation are directly not settled by the legislation or the agreement of the parties and there is no custom, applicable to them, to such relations if it doesn't contradict their being, the civil legislation governing the similar relations (analogy of the law) is applied. Proceeding from what, owing to the paragraphs 3 – 5 of the article 12 of the Federal Law "About peasant farm" result of consideration of the same statement for granting the land plot for maintaining peasant farm was granting a set to the applicant from the following documents:

- 1) approved project of borders of the land plot;
- 2) decisions (resolution) on granting the land plot into the property;
- 3) contracts of purchase and sale of the land plot.

In this connection, absence at the time of renewal of registration of the rights, both at the land users, and in the archives of manager of the lands of initial statements for formation (granting) of the land plot and also its granting the peasant farm can't be the unconditional basis for refusal by the last in protection of their rights (restriction of a possibility of further execution of the claimed documents), in a type of the fact that it is necessary to estimate systemically the standards of earlier existing legislation and also the legal consequences of legal relationship which arose between the actual land user and the manager of lands. Therefore if by the results of consideration of the application (according to the Federal law on peasant farm) it was transferred only a part of the listed above documents (is issued), then all reasons to believe are had that other actions which are (actually not carried out) have to be complete up to the end, including the manager of the land. This position is proved by the fact that registration of one part of documents could be carried out only taking into account the obviously resolved future of such land plot. The current legislation (about peasant farm) didn't provide the intermediate statement of borders of the land plot by the local government, for example, the approval of the scheme of the land plot only for implementation of its cadastral registration.

We consider that special standards of the article 12 of the Federal Law "About peasant farm" in regulation of the relations with participation of farms possessed a priority on the attitude towards the general standards of the Federal Law "About the land turnover of agricultural purpose". So the subsequent followed from execution of the first documents indisputable execution of other documents (on the basis of the same first statement). That is only to the applicant (on an initiative and in favor of which formation and allocation of land of purpose was carried out) granting a complete set of documents was the state with guarantee! We consider that the art. 12 of the Federal Law "About peasant farm" was agreed with the general norm of LC of the Russian Federation establishing the order of granting the land plots from the lands which are in the state or municipal ownership for the purposes which aren't connected with construction (Art. 34 of LC – acting till

01.03.2015). This article determined the general order of granting to the citizens of the land plots which are in the state or municipal property for the purposes which aren't connected with construction. According to this article managers of lands were obliged to provide management and the order of the land plots which are in their property. All got applications to a certain term of granting the land plots specified by the procedure were a subject to consideration. Decisions of managers of the lands had to conform to the general requirements which are determined by the art. 12 of the Federal Law "About peasant farm" and also shouldn't contradict the other norms of LC of the Russian Federation, the other federal laws first of all directed to settlement of the relations on emergence of the rights for the land plots.

The decision of the manager of lands on granting the land plot was not only the first legally significant action upon transition of the right for the land plot which is in the municipal property to a private property, that is expression of will of the owner on alienation of the site; at the paid alienation – the basis for signing of the contract, but also at the same time was the basis for approval of the project of borders of the land plot, as a result of further implementation of its cadastral registration. The head (representative) of peasant farm couldn't address to the body which is carrying out the cadastral registration for a lack of the confirmed circumstance of belonging to the again formed land plot. Violation of the specified order provided by the Federal Law "About peasant farm" would deprive of the land user of a possibility of further registration of the rights for it.

Meanwhile, in compliance with the "Approximate recommendations about assistance to the citizens and the regional (city) committees on land resources and land management about implementation of the purchase and sale of the land plots" (approved by the protocol No 5 of the State Committee on Land Resources and Development of 22.06.1993) [9] was established that after acceptance of the materials of land management case and the certificate of plan of the land plot the land management case is given in the land archive of the committee, and the plan of the land plot is given to the buyer for execution of the contract of purchase and sale (bill of sale) of the land plot. According to the article 19 of the Federal Law "About the State Land Registry" (acting till 16.05.2008) [4] the state cadastral registration of the land plots was carried out in the place of their stay without fail in all territory of the Russian Federation by a uniform technique. The body which is carrying out activities for maintaining the state land registry during granting the land plot in 2005 was created at 3/12/2004. The federal agency of the inventory of real estate objects (the Russian real estate) founded from the transformed Federal service of the land registry of Russia (the Russian land cadastral). The main objective of creation in 2004 the federal agency of inventory of the real estate objects (further – FAIRE) implementation through the territorial authorities of functions on rendering public services and management of the state property was. Besides, among the powers of the agency a number of law-enforcement functions in the field of cadastral registration and inventory of the real estate objects, the state cadastral evaluation of lands and the real estate objects, land management and the state monitoring of lands was legislatively fixed. Since 01.03.2009 the Russian real estate is abolished, its functions are given to the Federal Registration Service

(FRS) renamed from the Federal registration service which is under the authority of the Ministry of Economic Development of the Russian Federation. The Federal Registration Service is an assignee the Russian real estate. In compliance with the order of March 11, 2010 No P/93 of the head of service of the chief registrar of the Russian Federation Sergey Vasilyev (About investment of the federal state institutions with powers of body of the cadastral registration) the Federal Registration Service declared that transfer of function of the Territorial Departments of the Russian real estate to the cadastral chambers was carried out. In 2005 the Federal agency of inventory of the real estate objects (the Russian real estate) on an equal basis with the local governments carried out through the territorial authorities of function on rendering public services and management of the state property, including on:

- to check and the approval of the documents submitted by the applicants (documents of title, land management cases),
- to drawing up descriptions of the land plots in the Unified state register of lands, to formation of the cadastral cases, production of cadastral cards (plans), assignment of cadastral numbers of the land plots.

At the same time it would be desirable to pay attention that according to the Federal law on peasant farm [7] the duty on providing peasant farm and assistance in their development lies on the public authorities. So p.1 of the article 2 of the Law on peasant farm establishes: federal public authorities, public authorities of the territorial subjects of the Russian Federation, the local governments promote creation of farms and implementation of the activity by them, give support to the farms, including by the means of formation of economic and social infrastructures for ensuring access to the farms, to the financial and other resources and also according to the legislation of the Russian Federation on small business.

In this connection, on a set of the given norms, it is possible to draw a conclusion that the "negative" tendency of managers which developed recently the land plots in the solution of questions of further continuation of paperwork (owing to the land plots of the provisions of the law operating at the time of actual granting): about granting in the property (rent) of the land plots.

We consider that the local governments (the other executive authorities – managers of lands) unreasonably "nullify" the earlier arisen relations with the official land users who performed to some extent procedures of registration of the land, and carry them as to the again arising, regulated exclusively the current land legislation, including regarding granting the land plots through the auction.

Using long time of the land plots, the rights for which for one reason or another so weren't issued properly in compliance with the law, with the full confidence can tell about exclusiveness of possession of such land plots, including in the cases of their actual granting and also providing the documents to start the procedure of formation of the land plot for maintaining peasant farm. These circumstances directly indicate the initial correct application of order of registration of the rights that, in turn, has to give an opportunity to such land users on implementation of the specified procedure of granting the land plots up to the end.

We believe that the applied way of protection of violated rights of the actual land users – the appeal of not doing of the managers of lands according to which now there is also a negative tendency in turn is unique and directed to permission of the arisen conflicts between the parties, in comparison with the requirement about recognition of a certain right. The complexity of establishment of such right is caused by confirmation from the land user of the right existing at it or confirmation of a set of the legal significant facts necessary for investment of the claimant with such right. Need of the simultaneous statement for such cases of requirements about compulsion to signing of the contracts (purchase and sale, rent) it is also aimed at implementation till the end (as final actions) the duties assigned to the parties, in particular at the manager of lands within the powers provided to it.

The presumption of the state (municipal) ownership on the land plots means only that the land can't be the ownerless property. But if the state (municipality) is a bad owner, then it, as well as any citizen or the legal entity, has to bear adverse effects of the illegal behavior. The absence in the Russian legislation of resolution of fate of the land plots which order of granting (transfer) corresponded to the law can't be the reasons for restriction of the rights and freedoms of the citizens (economic entities) which aren't allowing realize finishing registration up to the end.

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