

THE ECONOMIC FUNCTIONS OF PROPERTY RIGHT

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Abstract

This article analyzes the economic functions of property right, strictly from the point of view of the administrative measures that need to be taken by the Local Commissions for Land Fund, in light of the introduction of Article 591 in Law 18/1991 on the land fund, following the publication of Law 219/2012 for the approval of Government Emergency Ordinance 81/2011 on the transfer of the National Agency for Cadastre and Land Registration from the Ministry of Administration and Interior to the Ministry of Regional Development and Tourism, as well as for the amending of certain laws.

Key words: property right, administrative reform, economic function

Property right, from the author's point of view, is the foundation of economic stability of any form of state organization. The revolution of 1989 intended to have a reparative character in this matter, but it seems it has not been achieved, since an extraordinarily high number of litigations on property right are brought before court in the Romanian society.

MATERIAL AND METHOD

In the elaboration of this article, the author has studied the specific legislation on the matter, legal doctrine and judicial practice.

RESULTS AND DISCUSSION

Law no. 18/1991 intended, on the one hand, the restoration of property right to natural persons who had been forced one way or another to hand over their property rights over agricultural land and forestry to Agricultural Production Cooperatives and State Agricultural Enterprises at the beginning of the new socialist form of organization of the state.

On the other hand, the law intended to give 5000 sqm out of the reserve of the communal commissions to the members of Agricultural Production Cooperatives who had not relinquished lands to these forms of organization.

The mechanism created by Law no. 18/1991 was apparently very accessible as it was to be set in motion through a simple application of the holder of the registration document issued by the Agricultural Land Register or by his inheritors, who would prove their descentance with civil

status documents (birth and marriage certificates and death certificate of their ascendant).

In addition, if one requested retrocession of the parcel of land in the original location, one had to supply the notarial testimonies of two witnesses representing the holders or their heirs of the parcels of land adjacent to that whose retrocession was requested.

The law itself also ensured the mechanism of jurisdictional review by the mere fact that the invalidation of the request by either of the two committees (the Local or the County Commission of Land Fund) allowed for this decision to be challenge in court, namely in the courts in whose territorial jurisdiction where the pieces of land were, without payment of the stamp duty.

The jurisdictional procedure implied a certain celerity as the hearing date had to be fixed every two weeks.

The reality in the matter of the land fund was entirely different, given that the Local Commissions had issued property titles for lots of land in litigation, fact which generated a wave of unexpected litigation. Thus, there were numerous situations where the original owner's heirs have obtained by court decision the restitution of the land in the original location, but for that location property titles had already been issued to other persons.

The lack of a national cadastral plan, that would reflect the reality of the land fund, led to instability in the civil circuit of land.

This was one of the reasons for which in 2000, it was decided by mandatory rule that one could not transfer property right over a piece of land without recording its transfer with the Land

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Register within the County Office for Cadastre and Land Registration or one of its territorial offices.

The condition to record with the Land Register any transfer of the property right concerning land in the civil circuit actually revealed the more or less deliberate errors of the Local Commissions of Land Fund:

- Property titles having cadastral indicators that did not exist in the county cadastral plan approved by the Office for Cadastre and Land Registration;

- Property titles having incorrect cadastral indicators that physically placed the substance of the property right in other parcels or lots;

- Transactions before 2000 based on property titles with incorrect cadastral indicators, recorded with the Land Register based on documents issued by the territorial administrative units confirming the real indicators.

Based on the ECHR practice, the decisions ruled by courts in litigations for recovery or delimitation of land property intended to support the principle of legal certainty of civil acts and to give the rightful owner of the land the benefit of compensation from the first person who alienated the land and was not entitled to previously receive it under the provisions of Law no. 18/1991.

Law 247/2005 concerning reform in property and justice, as well as some additional measures, tried to institute remedial measures by attempting to restore a balance of justice through absolute nullity for those who did not meet, under any circumstances, the conditions for the restoration of the property right. This goal could not be completely achieved as some of the land parcels had been transferred to buyers in good faith, who, at the time of the conclusion of the purchase agreement, had thought they entered a lawful contract since the seller had a valid property title, whose validity was confirmed by the approval of the Local Commissions of Land Fund for registration of the property right with the Land Register.

Currently, in order to relieve the courts of litigations on rectification of property titles for material errors affecting the substance of the right itself, by amending Law no. 18/1991, the legislator moved this aspect under the jurisdiction of the Local Commissions for Land Fund.

CONCLUSIONS

We conclude that the declaratory goal of the legislative measures of not only relieving the courts' caseload, but also expediting the procedure by introducing this aspect under the administrative jurisdiction of the authority that issued the property title, namely the Local Commission of Land Fund (which has jurisdiction under Art. 5 of Government Decision no. 890 of 2005 granting jurisdiction to

County Commissions of Land Fund to correctly determine the physical location of the land), has not been achieved.

Actually this law generated inconsistent practice and its retroactive application.

From the author's point of view, the courts were wrong to grant administrative jurisdiction to the Local Commissions of Land Fund, in whose territorial jurisdiction was located the land the property title referred to, in the context of the case being already on the docket of the court and the plaintiff, entitled to rectification of property title, having already paid expenses generated by the topographical surveying approved by Iasi County Commission of Land Fund.

In the context of the administrative procedure, the applicant had to present a new technical report issued by a cadastral engineer, authorized and approved by the County Commission of Land Fund at the expense of the applicant, in addition to the notarial affidavit that rectification of the placement is formal and generates a physical change of the location and that implicitly he is not involved in court litigations for recovery or delimitation of land property.

Moreover, the celerity of the administrative procedure for rectification of property titles hardly existed, given that the local committees were used to comply with court decisions in litigations to which they were not party, but only submitted the documents based on which they had issued the property title.

Administrative rectification, as mentioned before, involved errors of cadastral indicators, of last names or first names and definitely not the overlapping of property titles. Furthermore if the property title implicitly entered the civil circuit by inheritance division before a notary, proved with the certificate of inheritance, this is also a case involving a property title that falls under the jurisdiction of a court and not of an administrative authority.

Our final conclusion is that not dividing inheritance and the errors in cadastral indicators concerning property titles will make impossible a proper registration of the proved property right and, starting with 2018, it will also be impossible to receive subsidies from the Agency for Payments and Intervention in Agriculture.

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