

Artículo de investigación

Role of judicial organs in providing the stability of land legal relations

Papel de los órganos judiciales en la provisión de la estabilidad de las relaciones legales de la tierra

Papel dos órgãos judiciais no fornecimento da estabilidade das relações jurídicas terrestres

Recibido: 16 de enero de 2019. Aceptado: 06 de febrero de 2019

Written by:

Zavdat F. Safin (Corresponding Author)¹³⁵

Anas G. Nuriev¹³⁶

Abstract

In the submitted article the following is analyzed: a concept of the land right taking into account the available doctrinal views in domestic science. The possibility of protection of the rights in the field of land legal relationship as by means of the state jurisdiction represented by judicial authorities, and public jurisdiction, represented by the arbitration courts is established. Separate types of land disputes proceeding from law-enforcement practice are separately analyzed.

Keywords: land disputes; judicial authorities; receivership proceeding; law-enforcement practice.

Resumen

En el artículo presentado se analiza lo siguiente: un concepto del derecho a la tierra teniendo en cuenta los puntos de vista doctrinales disponibles en la ciencia doméstica. Se establece la posibilidad de protección de los derechos en el campo de la relación legal con la tierra como por medio de la jurisdicción estatal representada por las autoridades judiciales, y la jurisdicción pública, representada por los tribunales de arbitraje. Se analizan por separado los tipos separados de disputas de tierras derivadas de la práctica de aplicación de la ley.

Palabras claves: disputas por la tierra; autoridades judiciales; procedimiento judicial; Práctica policial.

Resumo

No artigo submetido, analisa-se o seguinte: um conceito do direito à terra, tendo em conta as visões doutrinárias disponíveis na ciência doméstica. A possibilidade de proteção dos direitos no campo da relação legal da terra como por meio da jurisdição estatal representada por autoridades judiciais, e a jurisdição pública, representada pelos tribunais de arbitragem é estabelecida. Tipos separados de disputas de terra procedentes da prática de aplicação da lei são analisados separadamente.

Palavras-chave: disputas de terra; autoridades judiciais; processo de concordata; prática de aplicação da lei.

¹³⁵e-mail: zsafin@rambler.ru, Tel. 8432337213

¹³⁶e-mail: anasnuriev@yandex.ru, Tel. 89872250255, Kazan Federal University

Introduction

Realization of material legal relationship is reached by means of will of the parties on the basis of the current legislation or the agreement of the parties. Achievement of desirable legal result is reached thanks to the system of the legal safeguards established proceeding from specifics of a subject of the regulating influence of this or that branch of the right (Viktorovna & Fajzrahmanovich, 2016) (Khodzhiiev & Nuriev, 2015) (Valeev & Golubtzov, 2014).. At the same time, regulatory legal relationship cannot always be to provide the normal course of realization of material legal relationship, for example, owing to violations of one of the parties of conditions of the obligations legal relationship which developed between the parties.

Methods

The methodological basis of a research was made by general provisions of science of the land right and civil procedural law. At a research the following methods of scientific knowledge were used: interindustry, dialectic, sociological, historical method.

Results

As a result of the conducted research features of land disputes proceeding from materials of law-enforcement practice are established.

Discussion

In these cases a possibility of realization of material legal relationship it is put into dependence on activity of various jurisdictional bodies first of all of judicial authorities. In twelve months 2017 231 345 cases connected with the property right to the earth and land use from 14 517 997 civil cases of the vessels of the first instance which arrived for consideration that made 1,6% of total number of the considered cases came to the Russian Federation in courts of law.

According to Art. 64 of ZK Russian Federation, land disputes are considered in a judicial proceeding. D.S. Smakovsky notes evidence of the fact that definition of a uniform and unambiguous concept of a land dispute problematic. Also there is nothing surprising the fact that today there is no legal concept land it is time; any normative legal act, not with holds given definition in spite of the fact that it is

applied in the Land code of the Russian Federation [5, S. 182]. In the existing Russian doctrine there are various approaches to definition of a concept of "a land dispute". N.A. Alekseeva understands the special type of legal relationship representing the disagreement of the parties of a dispute over an occasion of emergence, implementation or the termination of land rights and other related rights and duties arising at submission of the claim in court and excitement of the civil case resolved by its consideration in a judicial proceeding at reclamation by court of proofs, specific owing to features of an object, and adoption by court of the judicial resolution (Alekseeva, 2010) as a land dispute. D.A. Totochenko suggests to differentiate the concepts "land dispute" and "the receivership proceeding arising from the land relations" as the general and private. At the same time the term "land dispute", being patrimonial in relation to the concept "the receivership proceeding arising from the land relations", includes also disputes on the rights for the land plots. At the same time it is necessary to understand not settled property issues between participants of the land relations whom it is stated in court of law, arbitration court or the arbitration court arising together with disagreements about the rights for the land plot or in the absence of a dispute on the rights for the land plot (Totochenko, 2017). as the receivership proceeding arising from the land relations.

At the same time it is necessary to differentiate land disputes over jurisdiction between courts of law and arbitration courts. By the general rule all land disputes, except for land disputes of economic character, are considered by courts of law (the p. 3 of Art. 22 of the CCP of the Russian Federation). Land disputes of economic character, that is arising in connection with implementation of business or other economic activity is considered by arbitration courts. Practice of consideration of land disputes by arbitration courts is generalized in the Resolution of the Plenum of the Supreme Court of Arbitration of the Russian Federation of March 24, 2005 No. 11 "About some questions connected with application of the land legislation".

The norm granting to the parties the right before acceptance of business to production by court is represented interesting, the land dispute can be transferred to permission of the arbitration court

(the p. 2 of Art. 64 of ZK Russian Federation). However, this situation is in a conflict with the current legislation therefore this norm needs to be interpreted broadly, in particular, and after initiation of proceedings in court before removal of court to the consultative room, the parties have dispositive right on the order a dispute subject, including the right to conclude the arbitration agreement. Before initiation of business by court of the party can change only territorial jurisdiction (Art. 32 of the CCP of the Russian Federation, the Art. of 37 agrarian and industrial complexes of the Russian Federation). It should be noted that the corresponding practice of consideration of land disputes by the arbitration courts up to today fully did not develop.

In ZK Russian Federation the approximate list of land disputes which can be a subject of judicial proceedings is defined. Proceeding from the studied materials of jurisprudence it is possible to mark out three categories of affairs, First, it cases on establishment of the right for the land plot. On this category of affairs, the main burden of proof is assigned to the applicant who is obliged to submit to court the corresponding documents of title. So, by the Resolution of Federal arbitration court of the Volga region district No. A49-6199/06-294a/17 it was established that "as the defendant did not observe a refusal order in the state registration of the rights, the provided paragraph 2 of item 3 of Art. 19 of the Federal law "About the State Registration of the Rights for Real Estate and Transactions with It", arbitration court granted the application for recognition illegal inaction of the registering body which was expressed in refusal of the state registration of the property right to the land plots".

It is possible to refer to similar category of the affairs connected with establishment of the facts which are indirectly influencing realization of competences of the property right also the affairs connected with recognition of results of land surveying. So according to the Decision of Laishevsky district court of the Republic of Tatarstan of May 10, 2018 results of land surveying of the land plot in connection with identification of crossing of borders of the specified land plot with cadastral number No. with borders of the land plot with cadastral number No., location of borders and which area correspond to land surveying materials that demonstrates existence of a register mistake

concerning location of borders of the land plot with cadastral number were recognized invalid.

Secondly, recognitions by court invalid the act of executive body of the government or the act of local government which caused violation of the right for the land plot. It agrees, to the Resolution of Federal arbitration court of Ural federal district

from No. F09-4418/05-S6 administration of Perm, executing the decision of Arbitration court of the Perm region of 16.12.2003 in the matter of N A50-28812/2003, it was obliged not only to repeal the provisions of the substandard act recognized invalid, but also to take measures for real restoration of the violated rights of NPO Professional School N 15 Public Educational Institution for the land plot.

Thirdly, unauthorized occupation of the land plot. In particular, No. A74-4884/2004-F02-2508/05-S2 the proof subject of business was defined by the Resolution of Federal arbitration court of the East Siberian Federal District taking into account provisions of Art. 222 of the Civil Code of the Russian Federation which included questions of obtaining the corresponding permissions to installation of disputable mini-shop, existence of withdrawal of the land plot under installation of mini-shop, about violation by preservation of unauthorized construction of the rights and the interests of the claimant protected by the law and other persons. Court dismissing claim requirements pointed to presence at the defendant of allowing documentation on installation of disputable mini-shop on the land plot allocated for these purposes. In total with other evidence produced in business by the court considered the expert's conclusions that the mini-shop is not a real estate object and existence of a possibility of its movement without disproportionate damage to its appointment and also lack of illegal actions from the defendant. Considering absence of proof of violation of legitimate rights and the interests of the claimant, also in view of provisions of Art. 222 of the Civil Code of the Russian Federation, the court came to a valid conclusion about refusal in the satisfaction of the claim.

Summary

Thus, as law-enforcement practice of cassation instance, the correct definition of a subject of proof of each business following from land legal relationship shows promotes removal by court,

arbitration court of the lawful and reasonable decision.

Conclusions

The available doctrine views in domestic science is taken into account to investigate the rights in the fields of land legal relationship, in order to analyze the separated types of land disputes proceeding from law-enforcement practice. To study the mentioned goal, a research by general provisions of science of the land right and civil procedural law was implemented. However, the features of land disputes proceeding from law-enforcement practice is carefully studied. Having the given outputs of studies, it was concluded that to overcoming a gap regarding legal definition of a concept of a land dispute the available interindustry communications of the land right and procedural branches should be noted.

Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

References

- Alekseeva N.A. (2010). Legal problems of use of standards of the land right at permission of land disputes in Rossy-sky Federation: PhD Law Thesis. M, 195 pages.
- Alkhateeb, M. (2018). Multiple Representations in 8th Grade Mathematics Textbook and the Extent to which Teachers Implement Them. *International Electronic Journal of Mathematics Education*, 14(1), 137-145.
- Khodzhiyev, A. R., & Nuriev, A. G. (2015). Procedural Guarantees of Rights of Citizens of the Russian Federation in the Foreign States. *Research Journal of Applied Sciences*, 10(12), 832-834.
- Smakovsky D.S. (2016). Definition of the concept "land dispute" of scientific and law-enforcement practice//*Progress of modern science and education*. -- No. 10 - Page 180-182
- Totochenko D.A. (2017). About a ratio of the concepts "land dispute" and "the receivership proceeding arising from the land relations"//*the Property relations in the Russian Federation*, No. 11, Page 88-92.
- Valeev, D. K., & Golubtzov, V. G. (2014). Modernization of the Russian law: a review of the laws on enforcement proceedings. *Life Science Journal*, 11(8s).
- Viktorovna, L. E., & Fajzrahmanovich, S. Z. (2016). Legal Issues Supporting Production and Distribution of Biotech Products.