

The Application of Classification of Land Disputes in Judicial Practice

Nadezhda Alekseeva¹, Elena Syrykh¹, Vladislav Panchenko^{2,3,4,5,*},
Valerii Vlasenko¹, Ivan Makarchuk^{2,3}

¹Russian State University of Justice, 117418 Moscow, Russia

²Siberian Federal University, 660041 Krasnoyarsk, Russia

³Krasnoyarsk State Agrarian University, 660049 Krasnoyarsk, Russia

⁴Federal Siberian Research and Clinical Center FMBA, 660037 Krasnoyarsk, Russia

⁵Research Institute of the Federal Penitentiary Service of Russia, 125130 Moscow, Russia

*Corresponding author. Email: panchenkovlad@mail.ru

ABSTRACT

This article studies land disputes and judicial practice which is diverse in this area. Thus, land disputes are classified in order to systematize them. It is of practical importance and can be applied by courts in land disputes resolution. When classifying land disputes by objects, there are four types: disputes on land plots; disputes on land as a natural object and natural resource; disputes on a part of a land plot; disputes on a share in the right of common property. This classification takes into account the features of land, land plots, parts of land plots, and shares in common land ownership of land plots in the resolution of disputes and can be recommended to the courts for use in determining the range of circumstances relevant to the case. The second classification of land disputes by types of relations allows distinguishing four types: general land use, disputes over private land plots and private land use, management land disputes, property land disputes. This classification allows us to identify all the relationships that exist in a disputed situation and to apply rules of law governing them. The classifications of land disputes (by objects of land disputes and the relations regulated by the land law), proposed by the authors, have practical value, and their use by courts can increase the efficiency of the resolution of land disputes.

Keywords: *land tenure, land law, land plot, land disputes, justice, resolution of disputes*

1. INTRODUCTION

It is difficult to overestimate the importance of land, which is both a human environment (natural object) and a source of useful properties such as fertility and suitability for buildings (natural objects), property, and other rights (estate items). According to Art. 9 of the Constitution of the Russian Federation among the foundations of the state system, the status of land is fixed as the basis of life and activity of the peoples inhabiting the corresponding territory (acc. to Art. 9 par.1); land and other natural resources can be in private, state, municipal and other forms of property (acc. to Art. 9 par. 2) [1].

Land disputes may arise in the process of exercising the right of citizens and their associations to land. Justice can be carried out in order to protect the rights, freedoms and legal interests of persons in the field of land use as "...a special type of state activity, the essence of which consists in the consideration and resolution of cases by the courts in accordance with the principles and rules of law contained in a single, developing and multilevel system of forms of national and (or) international law, implemented in the state...".

According to court statistics, 54,400 economic disputes arising from civil law relations related to the application of the land law were considered by the arbitration tribunals of the constituent entities of the Russian Federation in 2017 and 28,500 on land ownership and other disputes on the tenure of district courts of general jurisdiction were appealed against [2, 3].

Thus, there is, clearly, a wide range of issues related to land disputes.

2. MATERIALS AND METHODS

Research on various issues and problems of classification of land disputes in judicial practice requires a comprehensive methodological approach and the use of relevant legal frameworks and concepts. Therefore, in this paper, the authors employed special juridical methods (such as the method of interpreting the norms of land and natural resources law, normative dogmatic and formal legal methods) in order to investigate the application of the classification of land disputes in judicial practice. A broad methodological approach and the use of an extensive regulatory framework allowed us to reach scientifically sound conclusions and enabled us to make inferences that

have practical and predictive potential. A thorough review of the relevant literature discusses some fundamental studies on land and environmental law, as well as cases and examples from international judicial practice.

3. RESULTS

Legal classification is necessary for its legal qualification for different reasons (as “an independent and critical stage of law enforcement and, of course, the condition that ensures the quality of implementation of legal regulations in practical life”) because one is based on another [4].

It was proposed to classify and to systematize land disputes in legal science (according to the order of consideration, the subject of the dispute, the object, the content, participants, controversial legal relations, the objectives of the dispute, etc.), and also some types of disputes have been described already. Such classifications appear to be of great practical importance and can be used by courts in judgments. From this point of view, most potential and urgent is the division of land disputes by objects and by types of land relations.

When classifying land disputes by objects, there are four types of disputes: disputes on land plots; disputes on land as a natural object and natural resource; disputes on a part of a land plot; disputes on a share in the right of common property.

This classification can be used by the courts because according to Part 1 of Art. 196 of the Code of Civil Procedure, Part 1 of Art. 168 of The Arbitration Procedure Code of the Russian Federation, the question of circumstances relevant to the case is one of the necessary issues that are mandatory when making a decision [5].

Perhaps the most common in judicial practice are disputes, the object of which is the land - the main object of property rights. According to Par. 3 of Art. 6 of The Land Code of the Russian Federation a land plot is an immovable thing that is part of the land's surface and has characteristics that allow it to be defined as an individually determined thing. Thus, it becomes an object of rights only after receiving characteristics that allow it to be identified as an individually specific thing [6].

Nevertheless, the institution of land plots had a long way in the process of land reform, during which the order of its formation changed. Taking into account main characteristics of a land plot and the order of its formation the following types of land plots can be distinguished: 1) land plots registered in the State Real Estate Cadaster after March 1, 2008 under the Russian Federation Act of July 24, 2007 No. 221 "On the State Real Estate Cadaster" (in terms of formation, allocation and registration such land plots comply with all the requirements of current legislation); 2) land plots registered in the State Real Estate Cadaster before March 1, 2008 (the procedure of their formation, information in the State Real Estate Cadaster, particularly about the location of the borders, may not comply with the requirements of the current legislation to some extent); 3) land plots not included in

the State Real Estate Cadaster, but the rights to which were registered and not terminated (conditional numbers were assigned to such plots as established under the Russian Federation Act of July 21, 1997 No. 122 “On State Registration of Rights to real estate and transactions”); 4) land plots that are not recorded in the State Real Estate Cadaster, plot rights are not registered (they were formed at the first stages of land reform, before the introduction of the State Land Cadaster and State Registration of Rights to Real Estate, and still exist, because the state registration of previously arisen rights is not required [7, 8].

The object of the dispute may be the land plot of each of these types. At the same time, even for one category of disputes, the establishment of circumstances relevant to the case will have its own characteristics depending on the type of a land plot. For example, in disputes about the boundaries, determining the location of the boundaries of a plot of the first type is not difficult - the data from the state register of real estate will be sufficient. At the same time, the location of the borders of the third and fourth types of land plots repeatedly caused difficulties in judicial practice. These difficulties were explained by the Supreme Court of the Russian Federation. Courts have to be guided by the information contained in the document confirming the right to a land plot, and in the absence of such a document - by the information contained in the documents defining the location of the boundaries when the land plot was formed. This summary of the Supreme Court is included in Section 2.9 of the Review of Judicial Practice on Issues arising from Consideration of Cases Related to Horticultural, Gardening, and Dacha Non-Profit Associations, approved by the Presidium of the Supreme Court of the Russian Federation on July 2, 201 [9].

Thus, if the object of a land dispute is a land plot, then it is recommended to resort to additional classification and assign the resolved dispute to one of the following types:

- 1) land disputes concerning land plots recorded in accordance with the current legislation;
- 2) disputes concerning land plots recorded before March 1, 2008;
- 3) land disputes concerning land plots with conditional numbers that were assigned while registering rights;
- 4) land disputes with land plots that have not passed cadastral registration and registration of rights to them [10].

The usage of this additional classification in judicial resolution of a land dispute is focused on taking into account the peculiarities of the formation of a land plot and the related features of establishing the relevant circumstances. Disputes of the two following types are encountered in court practice less frequently than disputes with land plots.

Here are examples of disputes when land is the center of the conflict as a natural object and natural resource: disputes over the conversion of forest land to other categories, disputes over the release of illegally occupied land under government ownership before its delimitation (separation of land ownership), disputes arising from the environmental legislation (as a result of a violation of land use and protection, for example, in case of appeal for

recovery within soil damage and land damage), when challenging the fact of an offense, the grounds of imposing a fine or the sanction itself, the amount of the fine imposed for an administrative offense arising from land tenure.

Unlike the disputes where the object is a land plot, for this type of disputes the circumstances that are relevant to the case will not include any information about the location of the borders of a land plot, or information about the date of registration in the State Real Estate Cadaster, etc. [11].

Disputes with a part of the land plot as an object may arise as a result of the implementation of The Land Code of the Russian Federation, according to its Par. 1 of Art. 35, the owner of the building, construction, located on someone else's land plot, acquires the right to use the relevant part of the land plot, occupied by the object if it is necessary for its use. For example, there are disputes over determination of the order of use of the part of such a land plot.

Another reason for disputes where the object is a part of the land plot may be the lack of consent of the owner of the land plot to establish land easement - the right of limited use of the land plot, for example, an easement to provide the operating organization the possibility of servicing a gas pipeline or power line located on the disputed land plot.

The area of the location of the part of the land plot and its configuration are among the circumstances relevant to the case in disputes where the object is the part of the land plot. The establishment of the location of the border of this part is the result of dispute resolution [12].

Shares in the right of common ownership are another object of land disputes. In this type of disputes, it is necessary to distinguish two subtypes: disputes over the shares in the right of common ownership of land plots, and disputes over the land shares.

Disputes of the first type may arise when the spouses divide the joint property, which includes a land plot, with the allocation of a share in the right of common ownership of land plots in kind, etc. Such relations are regulated by Chapter 16 of The Civil Code of the Russian Federation.

The object of the second subtype of disputes is the land share. Assets can be held under the right of common property with defining shares (share property) or without defining shares (joint property), simultaneously to two or several persons, regardless of the type of property. The land share is the share in the right to common property within the agricultural land plot in an agricultural-use land category been privatized till January 28, 2003. The peculiarity of land shares is a significant number of co-owners, that could be, for example, 300 people, so the relations require special regulation - within The Russian Federation Act of July 24, 2002, № 101 "On the Turnover of Agricultural Land" [13].

When resolving disputes of this group, the circumstances that are important for resolving the case will differ significantly from the circumstances of disputes, the object of which are "material" objects — lands, land plots, parts of land plots [14].

Such circumstances would relate to the size of the shares, the established order of use of the land plot, observance of

the order of allocation in kind, etc. When determining the range of circumstances relevant to the case it has to be considered a subtype of disputes: the circumstances should be determined in accordance with the Russian Federation Act of July 24, 2002, № 101 "On the Turnover of Agricultural Land" if the dispute is over land shares, or if the dispute is over other shares in the common property the circumstances should be determined in accordance with the Civil Code of the Russian Federation.

Thus, the classification of land disputes by its object focuses on taking into account the features of land, land plots, parts of land plots and shares in common ownership of land plots when resolving the disputes and could be recommended to the courts for use in determining the range of circumstances relevant to the case [15].

2. The second type of classification, which has practical importance for courts in resolving the land disputes, is the classification by types of relations. It serves the court as a benchmark determining the legal relationship of the parties, as well as choosing the law that should be applied in this case, and its interpretation.

This classification is based on the relations that make up the subject of land law. In legal science there is no uniform understanding of the subject of land law, therefore, the proposed classifications of land disputes differ from each other. This article will consider only one of these classifications, consisting of four types of disputes: 1) disputes over public lands and public land use; 2) disputes over private land plots and private land use; 3) management land disputes; 4) property land disputes.

Disputes over public lands and public land use and disputes over private land plots and private land use arise from land relations — relations on the land use and protection of land, the basic relations regulated by land law.

Disputes over public lands and public land use arise within the use and protection of land as one of the most important components of the human environment: for a free stay on land, traverse, and passage, etc. [16, 17]. Such land use is carried out for free and does not require registration of property rights of land users on specific land plots, but imposes on the subjects of such relations the obligation not to cause harm to the lands. Disputes of this type include such disputes as due to illegal restrictions on the rights of citizens to have a free traverse and passage on land plots; disputes over the establishment of public easements for the needs of the local population; disputes due to the excess of citizens' right to common land use, for example, by the construction of unauthorized construction (without authorized permits); disputes due to damage to the land within the implementation of general land use of public lands [18].

Disputes over private land plots and private land use arise within the use and protection of land for economic activities. The subjects of such relations should have property rights to land plots, their rights and obligations on the use and protection of land are limited by the boundaries of their land plot, but the volume of their rights and obligations are much wider in comparison with the rights and obligations of the subjects of general land use of

public lands. Among the disputes of this type are such disputes as on determining the order of use of land.

The third type of disputes - management land disputes - arise from the relations in the sphere of state and municipal management of the land fund. Those are disputes, related to the collection of land tax, disputes on the transfer of land from one category to another; disputes within the state registration of real estate; disputes over land supervision, etc. [19].

The fourth type of dispute is property land disputes. Perhaps it is the most common category of disputes. These are disputes arising from the relations of the acquisition of ownership, obstacles to the implementation or termination of ownership and other rights to land, for example, disputes on the recognition of the contract of sale invalid (or declaration of the contract void), on the legal recognition of ownership to the land, etc.

One of the features of land disputes is that there are several types of legal relations at the same time. For example, not only property relations take place in a dispute over the boundaries of the land plot (as been related to the boundaries of the land and depending on the characteristics of the land as an object of ownership), but also management relations associated with the entry of data on the boundaries of land in the State Real Estate Cadaster [20].

4. CONCLUSION

The proposed classification reflects all the types of relations regulated by land law, so its application in practice will help, first, to identify all the relations that take place in a disputed situation, and, second, to identify correctly those that have become the cause of the dispute. Judicial practice shows that both of these issues can cause difficulties not only for the plaintiffs but also for courts. So, for example, the requirement to the owner of the adjacent land plot about the restoration of the violation of land boundaries (arising from the property relations) can be replaced with the requirement to the Federal Service of State Registration of Cadaster and Cartography about changing the data in State Real Estate Cadastre (arising from the administrative relations).

The correct definition of the disputed legal relations allows us to solve other difficulties court faces in practice: to choose the law that has to be applied.

For some categories of disputes, the solution to this problem (of choosing the law that has to be applied) may cause difficulties, as in the following case.

The owner of the vineyards appealed to the court with the requirement of compulsion to conclude a contract – a lease agreement with the owner the land plot occupied by the vineyards. The owner of the vineyard was the subject of two types of relations: relations on the lease of a land plot and land relations on the use and protection of land plot occupied by the vineyard.

If we examine property relations as contentious relations and apply the rules of law governing them, the court should reject the claim of the owner of the vineyard

because the vineyard is not a real estate object, and only the owners of real estate stated on the land plot have the priority right to conclude a land lease agreement. The court chose correctly the land relations been applied in the disputed relations and applied the principle of accounting of the value of the land as a basis for life and activity of the person and recognized the priority right of the owner of the vineyard to the conclusion of the lease agreement of the land plot.

Thus, the use of the classification of land disputes by courts, according to the types of relations, governed by land law, allows us to identify all the existing relations, to choose disputed relations, as well as to select the law that has to be applied in this case, and if necessary — to give its interpretation based on the principles of land law.

The considered classifications of land disputes (on objects of land disputes and the relations regulated by the land law) have practical value, and their use by courts can increase the efficiency of the resolving and resolution of land disputes.

ACKNOWLEDGMENT

This article was prepared with financial support from the grant of the President of the Russian Federation No. MD-721.2018.6.

REFERENCES

- [1] The Constitution of the Russian Federation. Retrieved from: <http://www.constitution.ru/en/10003000-01.htm>
- [2] The Review of Judicial Statistics on the Activities of Federal Arbitration Courts in 2017. Retrieved from: <http://cdep.ru/index.php?id=80&item=4761>
- [3] The Review of the Activities of Courts of General Jurisdiction in Civil and Administrative Cases at First Instance in 2017, Moscow. Retrieved from: <http://cdep.ru/index.php?id=80&item=4755>
- [4] E.V. Syrykh, On the issue of classification of land disputes resolved by courts of general jurisdiction, *Russian justice* 5(13) (2007) 24-29.
- [5] The Civil Code of the Russian Federation. Retrieved from: <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru083en.pdf>
- [6] The Land Code of the Russian Federation. Retrieved from: <http://www.unece.org/fileadmin/DAM/hlm/prgm/cph/experts/russia/documents/Legislation/landcode.doc>

- [7] The Federal Law of July 24, 2007 No. 221 On the State Real Estate Cadastre, *Rossiyskaya Gazeta*, 165.
- [8] The Federal Law of July 21, 1997 No. 122 On State Registration of Rights to real estate and transactions, *Rossiyskaya Gazeta*, 145.
- [9] N.A. Alekseeva, *Legal Difficulties of Land Law Application in the Resolution of Land Disputes in the Russian Federation*, unpublished PhD thesis, Moscow State Academy of Law, Moscow, 2010.
- [10] U.E. Budnikova, O.V. Senyukova, E.V. Strykh, S.E. Tronin, I.O. Krasnova, *The Practice of Resolving Certain Types of Land Disputes by Courts: Scientific and practical guide*, Russian State Academy of Justice, Moscow, 2010.
- [11] G. Feder, D. Feeny, *Land-Tenure And Property-Rights - Theory And Implications For Development Policy*, *World Bank Economic Review* 5(1) (1991) 135-153.
- [12] A. Gobin, P. Campling, J. Feyen, *Spatial analysis of rural land ownership*, *Landscape and Urban Planning* 55(3) (2001) 185-194.
- [13] The Federal Law of July 24, 2002 No. 101 On the Turnover of Agricultural Land, *Rossiyskaya Gazeta*, 137.
- [14] V.V. Ershov, *Legal and Individual Regulation of Social Relations*, Moscow, 2018.
- [15] E.V. Strykh, *Land law: textbook for universities*, 3rd ed., Moscow, 2006.
- [16] E. Ostrom, *How types of goods and property rights jointly affect collective action*, *Journal of Theoretical Politics* 15(3) (2000) 239-270.
- [17] J. Rognes, P.K. Sky, *Intervention methods in land disputes*, *European Planning Studies* 11(8) (2003) 965-978.
- [18] V.N. Vlasenko, *Legal Qualification as a Logical Method of Cognition*, *Journal of Siberian Federal University Humanities & Social Science* 9(1) (2016) 210.
- [19] M.J. Soule, A. Tegene, K.D. Wiebe, *Land tenure and the adoption of conservation practices* 82(4) (2000) 993-1005.
- [20] G.A. Volkov, *Legal problems of elimination of register errors at consideration of disputes on land plots*, *Property Relations in the Russian Federation* 11 (2017) 81-87.