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**IMPERFECTION OF CIVIL LEGAL REGULATION OF SEIZURE  
THE LAND PLOT THAT IS NOT USED OR IMPROPERLY USED IN  
ACCORDANCE WITH THE INTENDED PURPOSE**

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In the article is argued that the lack of adequate state control over land resources condition, the decline of the land, agrochemical, phytosanitary and other services have led to alarming degradation of soil cover, which attributes it to the category of the most important socio-economic and environmental problems that threaten the national security of Russia. It is noted that the civil and land legislation do not provide for forced termination of land ownership without a court decision.

The author suggests a thought that bringing to administrative responsibility for violations in the sphere of land legal relations is a necessary condition for the deprivation of landowners or land users their rights for a land plot.

Presents the experience of solving the problem of non-use agricultural land plots in the legislations of CIS countries.

**Keywords:** land legislation, land plot, seizure of a land plot, agricultural land transactions, State control over land plots use and protection, administrative responsibility for violation of the land legislation.

In consideration of the critical importance of such an object of civil law as land plot, our legislation proceeds from the target-oriented nature of land use and the need to use it really [13].

Because of the special social significance of agricultural land plots the right to private ownership of them undergoes a number of legal restrictions in the public interest [12]. The amount and composition of such sites are objectively limited by the obvious natural causes, and their use always, one way or another, affects the interests of society as a whole [12].

Justly observes academician I. N. Buzdalov, that main function of the state in land and agrarian relations is “to ensure that every piece of land is in the hands of a skilled, “natural-born” owner. Way to achieve this is an effective, economic, i.e., market regulation of these relations, without violating the rights of property and by adding the market mechanism direct legislative regulation in the issues of environment, sanitation, targeted use of land, etc.” [11, 14].

Obligation of land owners and non-owners, on the use of land in accordance with its targeted purpose, is established by article 42 of the Land Code of the Russian Federation.

In accordance with article 44 of the Land Code of the RF ownership to a land plot ceases upon transfer of the owner of the land to other persons, owner’s refusing of the ownership to the land, due to forced seizure from the owner of the land in accordance with civil legislation.

According to V. A. Ershov a land plot can be seized from its owner by force [14, 65].

Article 284 of the Civil Code of the RF stipulates that a land plot may be withdrawn from the owner in the cases, when it is purposed for agricultural production or for housing or other kind of construction, but is not used for the corresponding purpose in the course of three years, unless a longer term has been stipulated by the law. Within this period shall not be included the time, which is necessary for the development of the land plot, as well as the time, during which the land plot could not have been put to its purported use because of the natural calamities or of the other circumstances, precluding such use.

Thus, the Civil Code of the RF defines the following terms of forced withdrawal of a land plot:

- a site is designed for agricultural production;
- a land plot is not used for this purpose in the course of three years, with the exception of land reclaiming, failure to use due to certain circumstances precluding such use.

Provisions of article 284 of the Civil Code of the RF, which specificate part 3 of article 35 of the Constitution of the Russian Federation about the possibility of eminent domain, provide for possibility of withdrawing a land for agricultural purposes from its owner, as one of the grounds for termination of the right of property, and do not assume arbitrary seizure of land, but require investigation of the factual circumstances and the proof for the necessity of such a withdrawal.

Given the above, the rules of article 284 of the Civil Code of the RF itself cannot be considered as violating any rights of citizens [6].

In accordance with paragraph 3 of article 6 of the Federal Law No. 101-FL from 24.07.2002 "On Agricultural Land Transactions" [2] a land plot of agricultural lands can be forcibly withdrawn from its owner through the court in the event if the land is used in violation of the land legislation requirements on efficient land use, which resulted in a substantial loss of productivity of agricultural lands or significant environmental degradation. Criteria of significant reduction in the fertility of agricultural lands, and the criteria of significant environmental degradation are determined by the Russian Government (in edition of the Federal Law No. 435-FL from 29.12.2010).

According to the Land Code of the RF, control over protection and use of agricultural lands includes state, municipal, public and production control.

According to paragraph 1 and 2 of the Decree of the Government of the Russian Federation No. 689 from November 15, 2006 state land control is performed by the following authorized agencies:

1. Federal Immovable Property Cadastre Agency and its regional bodies.
2. Federal Service for Supervision in the Sphere of Natural Resource Use and its regional bodies.
3. Federal Veterinary and Phytosanitary Monitoring Service and its regional bodies.

This decree stipulates that called authorities at the state land control interact in a prescribed manner with federal executive bodies and their territorial bodies, with the executive bodies of the constituent entities of the Russian Federation, local self-government bodies, law enforcement agencies, organizations and citizens.

Control functions of these bodies separated so that each of them is responsible only for their areas of supervision. However, the order of interaction and exchange of information between the Rosnedvizhimost' (Federal Immovable Property Cadastre Agency), Rosprirodnadzor (Federal Service for Supervision of Natural Resource Usage) and Rosselkhoznadzor (Federal Veterinary And Phytosanitary

Monitoring Service) is not defined, which adversely affects the conduct of state land control in general.

According to the Decree of the Government of the Russian Federation No. 846 from November 28, 2002 state land monitoring in the Russian Federation is part of the state environmental monitoring. However, the order of interaction between the specially authorized bodies to monitoring of lands is not defined.

It should be noted that there is usually one government body that that is fully responsible for the management of land resources in most countries. Only one control body can be neutral, and impartially and in a balanced manner simultaneously take into account the interests of the state and all parties in interest. Allocation the issues of state land management, keeping of state land cadaster, agricultural regulation and state control over the use and protection of land between many ministries and departments adversely affects the use and protection of land in the country, leads to uncontrolled land degradation, inhibits the transition to the system of environmentally sound land tenure and land use, creates significant obstacles in achieving food security in the country [10, 5].

Thus, one of the causes of the present problem of non-use or improper use of agricultural lands is the lack of proper control and supervising over land use and effective measures to preclude inefficient use.

Non-use of agricultural lands by intended purpose leads to reduction of arable land and is part of the problem of inefficient use of land resources in general.

Currently, the use of land and resource potential of Russia, particularly arable land, is in crisis. With 10% of the productive land in the world, Russia's share in agricultural production is only about 2%. Russian land resources have become to be redistributed; this process looks peacefully in form, but it is aggressive in essence.

The lack of adequate state control over land resources condition, the decline of the land, agrochemical, phytosanitary and other services, extensive nature of economy management have led to alarming degradation of soil cover, which attributes it to the category of the most important socio-economic and environmental problems that threaten the national security of Russia.

According to expert estimates, the total annual crop production shortfall due to the deterioration of the land use is not less than 120 million tons in grain equivalent, or about 350 (and now even more) billion rubles per year [10, 5].

System's analysis of the norms of the Civil Code and Land Code of the RF and the Law "On Agricultural Land Transactions" shows that common in the legal regulation of forced seizure of an agricultural land plot is the fact that neither

the land nor the civil legislation provides for the possibility of forced termination of land ownership without a court decision.

So in one case the Supreme Court of the Republic of Komi gave a ruling that since the contested decree by the head of the Administration of municipal formation "City of Syktyvkar" to terminate the rights to a land plot had been taken in the absence of an appropriate court decision, without prior notification of "N." about elimination the violation of proper land plot use and taking administrative measures, such a decree cannot be recognized lawful [9].

The Law "On Agricultural Land Transactions" introduces an additional, in comparison to the Civil Code of the RF, ground for the termination of the right of ownership to a land plot - the use of a land plot in violation of the land legislation requirements for efficient land use, which has resulted in a substantial reduction in the fertility of agricultural lands or significant deterioration of ecological situation. Criteria of significant reduction in the fertility of agricultural lands, and the criteria of significant environmental degradation are clearly determined by the Decree of the Russian Government No. 612 from 22.07.2011 [4] and No. 736 from 19.07.2012 [5].

With respect to the right of permanent (unlimited) use, the right of lifetime inheritable possession and the right of gratuitous use in article 54 of the Land Code of the RF there is an indication of the fact, that the forced termination of these rights to a land plot in the case of its improper use is carried out on the grounds provided for in paragraph 2 of article 45 of the Land Code of the RF.

Paragraph 2 of article 45 of the Land Code of the RF provides for a list of cases of termination of the right of permanent (unlimited) use of land and the right of lifetime inheritable possession of a land plot.

This list includes not only an indication of the specific types of offenses that can result in termination of the right to a land plot, but contains independent grounds for termination of the right such as: requisition, confiscation of land for state and municipal needs, etc. In this regard, the unreserved applying of this list to determine the grounds for involuntary termination of ownership to an agricultural land plot by the rules of article 284 of the Civil Code of the RF and article 6 of the Law "On Agricultural Land Transactions" is not possible. Moreover, applying the ground provided for by subparagraph "d" of paragraph 2 of article 45 of the Land Code of the RF "Systematic failure to pay land tax", as a ground for involuntary termination of ownership to a land plot, is unacceptable and disproportionate to this tax violation. In this case, should be used procedural measures to collect the amount of tax arrears through the court, and only if tax authorities cannot get



satisfaction from the owner's property it may be possible to seizure the land plot. However, in this case, the ownership of an agricultural land plot must be ceased by a standalone ground – seizure of the debtor's property for its obligations.

According to article 286 of the Civil Code of the RF a state power body or a local self-government body, authorized to take decisions on the withdrawal of land plots on the grounds, stipulated by article 284 of the Civil Code of the RF, as well as the procedure for an obligatory advance warning of the land plot owners on the violations, committed by them, shall be defined by the land legislation [7]. This rule finds its way also in paragraph 6 of article 6 of the Law "On Agricultural Land Transactions", which provides for, that forced withdrawal of a land plot from agricultural lands from its owner on the grounds provided for in this article may be carried out upon the condition of non-removal specified in paragraphs 3 and 4 of this article evidences of improper use of the land plot after the imposition of an administrative penalty.

Today, the responsibility for the use of lands in violation of the rules of article 42 of the Land Code of the RF and the Law "On Agricultural Land Transactions" is enshrined in article 8.8 of the Code on Administrative Offences of the Russian Federation [1]. Committing of an administrative offense of this kind is possible when the right to a land plot is duly completed; there are land title documents that contain information about the date of assignation.

Bringing to administrative responsibility, so, is a necessary condition for the deprivation of a landowner or a land user the right to a land plot. In addition, this person shall be cautioned about the possibility of forced termination of the right to a land plot in the event of failure to eliminate of a land offense.

Legislator establishes different legal regime on the grounds, procedure of forced land seizure, depending on the powers of a person performing the use or non-use of agricultural lands in relation to a land plot (the owner or tenant of land or another user) [8].

It can be stated that the norms of articles 44, 49-51 of the Land Code of the RF determining grounds for termination of the right of ownership to a land plot do not provide for termination of the right of ownership to a land plot as a sanction for a land offense. Rules of article 54 of the Land Code of the RF, which provide for the procedure of forced termination the right of lifetime inheritable possession, the right of permanent (unlimited) use and gratuitous fixed-term use of a plot of land because of its improper use, are aimed at protecting the rights of a land owner and against not owners. Provided for in this norm rules cannot be applied to a land owner.

It should be noted that the lack in the Law "On Agricultural Land Transactions" of mechanism of forced land plot seizure, which used to be criticized earlier, has been corrected by the legislator. Federal law No. 435-FL from 29.12.2010 [3] introduced paragraphs containing such a mechanism to article 6 of the mentioned law. With all the positivity of the Law, in our view, there are some negative points, which we shall discuss below.

Paragraphs 4-11 of the article establish, that the land plot from agricultural lands can be forcibly withdrawn from its owner in court, if for three or more consecutive years from the date of the owner's right of ownership to the land plot it has not been used for agricultural production, or performing other activity related to agricultural production. Signs of non-use of lands in accordance with the features of agricultural production, or performance other activities related to agricultural production in the subjects of the Russian Federation are determined by the Russian Federation Government.

In the period specified in paragraph 4 of this article shall not be included the period, during which the land could not be used as intended due to natural disasters or due to other circumstances precluding such use, as well as the period of land development. Term of development a land plot from agricultural land cannot be more than two years.

In the case of failure to eliminate the offenses mentioned in paragraphs 3 and 4 of this article, within the period prescribed by a warning issued simultaneously with the imposition of an administrative penalty, authorized executive body of state power to implement the State Land Supervision, which has issued the warning, sends the materials on this case to the body of executive power of the subject of the Russian Federation.

Executive authority of a subject of the Russian Federation by the results of the review of materials specified in paragraph 7 of this article, may apply to the court for the seizure of a land plot and selling it at a public auction due to its improper use under one of the grounds provided for in paragraphs 3 and 4 of this article.

Within six months from the date of entry into legal force of the court's judgment to withdraw a land plot and sale it at public auction due to its inappropriate use under one of the grounds provided for in paragraphs 3 and 4 of this article, an executive authority of the subject of the Russian Federation with respect to such land plot ensures, if necessary, conducting of cadastral works and holds public auction for selling it in accordance with the civil legislation.

If a public auction for the sale of a land plot are declared void, such land can

be purchased to state or municipal ownership at the initial price of the auction, within two months from the date of recognizing of trades as failed

The proceeds from the sale of a land plot at public auction or purchase a land plot to the state or municipal property are paid to the former owner of the land, less expenses of preparing and holding the public auction.

While the systemic analysis of this norm of the law may be concluded that at present there is still a gap in the legal regulation of the procedure of the forced termination of ownership to agricultural land plots.

In this context, the experience of solution to the problem of non-use agricultural land plots in the legislation of CIS countries is of interest.

Code of the Republic of Belarus on Land No. 226-Z from January 04, 1999 contains a separate article 52, which defines the grounds and procedure for forced termination of the right of ownership to a land plot. According to paragraph 2 of article 52 of the Code of the Republic of Belarus on Land forced seizure of land plots owned by individuals and legal entities is exercised by the decision of court in the cases:

- 1) systematic non-payment of land tax within deadlines
- 2) when using a land plot not for the intended purpose
- 3) when not using a land plot intended for private farming for its intended purpose within one year, and within two years – in other cases
- 4) when fail to fulfill the requirements of environmental protection regime of land use
- 5) when using a land plot in ways which lead to a decrease in soil fertility, soil chemical and radioactive pollution, environmental degradation
- 6) upon termination by legal entities their activities, for which a land plot was acquired in the property.

The decision on forced withdrawal a land plot for violation of land legislation is made based on the evidence of the fact that after receiving a written warning from the authorized person a land plot owner within the prescribed period has not taken steps to eliminate the violations.

Under Kazakh legislation, in accordance with article 92 of the Land Code of the Republic of Kazakhstan, in the cases, where a land plot intended for agricultural production or housing or other construction is not used for appropriate purposes for two years (unless a longer period is provided for by the laws of the Republic of Kazakhstan), such land is subject to forced withdrawal from the owner and the land user. This period does not include the time required for the development of such land and the time during which a given plot could not be used for its intended



purpose due to natural disasters or due to other circumstances precluding such use. Conditions and terms of the development of land plots are determined in the order defined by the Government of the Republic of Kazakhstan.

As seen Kazakh and Belarusian legislation provides for an abridged in comparison to Russian law time terms of non-use a land plot for intended purposes.

This position deserves support for the following reasons.

A key principle of the land legislation, enshrined by article 1 of the Land Code of the RF, is the principle of priority of protection of land as the most important component of the environment and the mean of production in agriculture and forestry to the use of land as real estate, under which the possession, use and disposal of land is implemented by a land owner freely, if it is not detrimental to environment.

In some regions of the Russian Federation and especially in the Krasnodar territory we have a situation where agricultural lands become the property of persons, who do not use these lands for agricultural production. These persons, acquiring land plots, hold them for resale, expecting a rise in prices, or for subsequent transfer to the settlement land for construction.

It seems that in order to prevent the reduction of the area of agricultural land, its use not in accordance with the intended purpose, it would be appropriate to establish in article 284 of the Civil Code of the RF, as well as in article 6 of the Law "On Agricultural Land Transactions" the reduced period of non-use a land plot intended for agricultural production, which is necessary for termination of ownership right, in comparison with land designated for housing or other construction, through reducing this period from three or more years to two years. Here also should be changed paragraphs 4 and 5 of this article of the Law, through removing of them reference to the fact that the period of development of a land plot is included in the term during which the land can be forcibly withdrawn from the owner, if it is not used for agricultural production or performing other related to agricultural production activities. Otherwise it means that the inception of the forced withdrawal may be delayed up to five years or more.

In our opinion, to the rules of article 284 of the Civil Code and article 6 of the Law "On Agricultural Land Transactions" it is also necessary to add the norms governing the procedure of the forced termination of ownership to agricultural land plots.

These rules must comply with the following essential requirements:

First, it is necessary to specify rules for the sale of a land plot by auction. According to paragraph 2 of article 286 of the Civil Code of the RF, an authorized body

applies to the court for the sale of seized land. The norms on the termination of the right of ownership to land plots belonging to individuals on the right of permanent (unlimited) use and lifetime inheritable possession (article 45 of the Land Code of the RF) provide for termination of the right of ownership on the basis of a court decision. Paragraph 3 of article 45 of the Land Code of the RF provides for that the decision to terminate the rights of ownership to land plots in cases provided for in paragraph 2 of this article is taken by court in accordance with article 54 of the Land Code of the RF. At the same time, the norms of article 286 of the Civil Code of the RF talk not about the termination of the right of ownership on the basis of a court decision, but about the possible adoption of a court decision on the sale a land plot by auction. Thus, the right of ownership of a land plot will cease from the date of occurrence of such right of the successful bidder. Paragraph 9 of article 6 of the Law "On Agricultural Land Transactions" stipulates that, within six months from the date of entry into legal force of the court decision to withdraw and sale a land plot at public auction due to its inappropriate use an executive body of a subject of the Russian Federation in respect of such land plot ensures, when needed, conducting of cadastral works and holds public auction to sell it in accordance with civil legislation. Article 448 of the Civil Code of the RF establishes organizations and procedure of an auction, but the legislator does not provide for the grounds on which the auction may be declared as void. We believe that such grounds should be prescribed.

Not excluded cases where, for whatever reasons, the auction may not take place and a land plot cannot be realized at auction. In such situations paragraph 10 of article 6 of the Law "On Agricultural Land Transactions" establishes the rule that such land plot may be acquired to state or municipal property. The term of "may be", in our opinion, is not comprehensive, since it is not clear about the fate of a plot at a situation where neither the state nor a municipal formation wants to exercise their right. We believe that it is appropriate to include in the paragraph of the Law and article 286 of the Civil Code of the RF the rule that such land plot must be purchased by the state or a municipal formation.

In this connection, is proposed to add to norms of article 286 of the Civil Code of the RF the rules on determining the redemption price of a land plot, seized on the grounds stipulated by article 284 and 285 of the Civil Code of the RF. These rules must provide for that in the case when bidding for the sale of a seized land plot has failed three times within six months, then in relation to the said articles of the Civil Code of the RF, as well as to article 6 of the Law "On Agricultural Land transactions" in the price of the land plot should be included its market value and

the market value of the immovable property located on the plot, minus any losses caused by the owner to the seized land plot.

At the withdrawal of an agricultural land plot under the rules of article 286 of the Civil Code of the RF shall not apply norms of article 80 of the Land Code of the RF, which provides for forming the fund of redistribution of land through land plots from agricultural lands coming to the fund at forced withdrawal of a land plot. In combination with article 44 the Land Code of the RF and article 6 of the Law "On Agricultural Land Transactions" the norms of article 80 the Land Code of the RF would mean that the land plot as a result of withdrawal is not put up for auction, and immediately transferred to the land redistribution fund, that is contrary to article 286 of the Civil Code of the RF.

Second, these norms of the law should include rules governing the content of a document - warning of an agricultural land owner about forthcoming withdrawal of the land plot.

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