

## SOME ISSUES OF LAND DISPUTES RESOLUTION

**E. P. Philippenko**

*Belarusian State University, Minsk;*

*elizaveta.filippenko@bk.ru;*

*Research supervisors – I. S. Shakh-ray, PhD in Laws, Ass. Prof.*

*T. V. Kovalionok, Ass. Prof.*

In the paper, the author analyzes theoretical and practical regulations of land disputes resolution in the Republic of Belarus. The topicality of the problem is grounded by the fact that Belarusian legislation does not contain enough provisions to effectively resolve land disputes. The subject of the study concerns land disputes and mechanisms for their resolution, including mediation as an alternative way to settle disputes. The author identifies some deficiencies in legislation and introduces suggestions on legislation improvement. The results received can be used in Land Law Acts enforcement and professional legal activity.

**Key words:** land disputes specifics; land disputes resolution; land ownership; land ownership share; settlement by mediation.

Land disputes belong to a separate category of disputes as far as their resolving requires considering various factors. The main peculiarity of such disputes is defined by scholar N. K. Tolcheev. According to him, Civil and Land law do not view a land plot and constructions on it as a single unit as well as they are not related as a thing and belonging. However, the link between them does exist [1, p. 419].

At the same time, the norms of the Civil Code of the Republic of Belarus of December 7, 1998 (hereinafter – Civil Code), the Land Code of the Republic of Belarus of July 23, 2008 (hereinafter – Land Code) provide that in case the ownership to the permanent buildings is transferred, the ownership to the land plot on which the buildings are located is also transferred (art. 267 of the Civil Code and art. 55 of the Land Code). Land transaction without determining the fate of buildings on it is prohibited (art. 51 of the Land Code).

Carrying out research, we have identified the following problem areas that arise while resolving land disputes: a) compensation for the ownership share; b) the rights of co-owners; c) single land ownership opposing joint housing rights; d) obstacles to exercise land rights.

Let us consider the defined issues:

a) The first problem is connected with compensation payment. Article 255 of the Civil Code provides that if the ownership share is insignificant and cannot be allocated, the court may award compensation. The problem is that Land Law Acts give no explanation what factors allow recognition of an ownership share as insignificant. Similar mechanism is reflected in Housing Law (paragraph 19 of the Plenum Resolution of the Republic of Belarus Su-

preme Court of March 26, 2003 No. 2 ‘On courts application of the legislation on settlement of disputes related to the right of residential premises ownership’). While resolving housing disputes the court shall take into account the size of the owner’s share and the total premises area. Similarly, when determining whether the ownership share of the land plot is insignificant, it is necessary to compare the size of the share with the total land area. As we see, such clarifications should be formalized in the Plenum Resolution of the Republic of Belarus Supreme Court of December 2, 2011, No. 9 ‘On the practice of courts consideration of land disputes’ (hereinafter – Supreme Court Plenum Resolution ‘On the practice of courts consideration of land disputes’).

b) The issue of co-owners rights concerns the ways of resolving disagreements between the owners in the process of property division. The absence of provisions in land legislation to consider the opinion of co-owners in accordance with the size of co-owners’ shares or opinion of the majority requires supplementing Land Code with the relevant norms.

c) Another problem deals with resolving cases on single land ownership and joint housing rights. It is one of the most difficult categories of disputes when the plot belongs to one person, and constructions on it – to another. There are cases in judicial practice when one of the spouses files a claim to divide a house built jointly on a land plot owned only by one of the spouses [2]. The legislation provides that when housing rights are divided, it is necessary to determine the fate of the land plot, but in this case, the latter belongs only to one of the spouses. The opposing party is a co-owner of the house who has no rights to the land plot and thus cannot use the part of the house.

The possible ways to solve such disputes could be:

- Division of the property. But it is not always technically possible.
- Compensation payment for a share. It requires the owner’s consent.

Otherwise, it is prohibited by law (except for cases when the ownership share is insignificant and, in fact, cannot be allocated).

- The use of easement (proposed by A. M. Levkovich [2]).

We cannot agree with this opinion, as easement is the right of property owners to use another’s land plot for a specific limited purpose. In many cases, this is a neighboring land plot. But in this case, there is no neighboring plot, all land is the property of one of the spouses.

It is necessary to add that most land disputes can not be resolved without carrying out an expertise. However, the procedure is expensive and time consuming. Thus, the problem requires a legislative solution.

d) One more issue can arise when resolving cases on removing obstacles to exercise land rights. In this case, courts should evaluate the method of protection of the violated right from the point of view of proportionality, which is based on the parties’ interests. In judicial practice, there have been cases when

a plaintiff asks to demolish a permanent building belonging to a defendant only because its small part is on the plaintiff's territory. A. N. Minich notes that such a claim is clearly disproportionate. A similar opinion was expressed in a motion of the Deputy Chairman of the Supreme Court of the Republic of Belarus, the latter was the reason to cancel the first instance court decision to move a permanent building, 30 centimeters of which were on the plaintiff's land. When the case was reconsidered, the plaintiff's and defendant's land plots configurations were changed to compensate the plaintiff for the loss of some land occupied by the defendant's building [3].

Taking into consideration the above, the use of mediation in resolving land disputes appears to be promising. Among the advantages of mediation are confidentiality, a short period for resolving a dispute, an ability to independently choose a mediator with sufficient qualification.

At the same time, the mediation procedure is based on mutual concessions, and increases chances of maintaining good relations between the parties. Recently, law enforcement practice has experienced successful settlements of

land disputes by mediators. Here are some examples:

- division of jointly acquired property with a land plot (the mediation time – two sessions which lasted four hours) [4];
- allocation of the inherited property share with the land (one session, an hour and a half) [5];
- removal of obstacles to exercise land rights (the mediation agreement was signed after two sessions) [6], and others.

In conclusion it should be said that numerous issues arising in court practice are regulated by legislation acts, appropriate clarifications are contained in the corresponding Plenum Resolutions of the Supreme Court of the Republic of Belarus. However, the described above cases prove that there are also gaps and conflicts in legislation.

We believe that introduction of relevant amendments to the Land Code, Supreme Court Plenum Resolution ‘On the practice of court consideration of land disputes’, as well as courts taking into account the above-mentioned features of substantive law application will contribute to judicial practice uniformity and guarantee the citizens’ rights. In our opinion, mediation can be considered as one of the most promising alternative methods to settle land disputes.

#### References

1. Толчеев Н. К., Горохов Б. А., Ефимов А. Ф. Подготовка гражданских дел в судах общей юрисдикции: практическое пособие. М. : Норма Инфра, 2011.
2. Левкович А. М. Разрешение земельных споров: что необходимо знать при рассмотрении гражданских дел [Электронный ресурс] : [по состоянию на 10.12.2013 г.] // КонсультантПлюс. Беларусь / ООО «ЮрСпектр», Нац. центр правовой информ. Респ. Беларусь. – Минск, 2019.
3. Минич А. Н. Проблемы рассмотрения земельных споров (часть 3) [Электронный ресурс] : [по состоянию на 12.01.2017 г.] // КонсультантПлюс. Беларусь / ООО «ЮрСпектр», Нац. центр правовой информ. Респ. Беларусь. – Минск, 2019.
4. Обзор разрешения спора в процедуре медиации о разделе совместно нажитого имущества [Электронный ресурс] : [по состоянию на 30.09.2017 г.] / УПУ «Центр медиации и переговоров» ООО «Власова, Михель и Партнеры» // КонсультантПлюс. Беларусь / ООО «ЮрСпектр», Нац. центр правовой информ. Респ. Беларусь. – Минск, 2019.
5. Обзор разрешения спора в процедуре медиации о выделе доли в наследуемом имуществе [Электронный ресурс] : [по состоянию на 31.08.2017 г.] / УПУ «Центр медиации и переговоров» ООО «Власова, Михель и Партнеры» // КонсультантПлюс. Беларусь / ООО «ЮрСпектр», Нац. центр правовой информ. Респ. Беларусь. – Минск, 2019.
6. Обзор разрешения спора в процедуре медиации о вводе в эксплуатацию жилого дома и праве пользования земельным участком после расторжения брака [Электронный ресурс] : [по состоянию на 21.04.2016 г.] / УПУ «Центр медиации и переговоров» ООО «Власова, Михель и Партнеры» // КонсультантПлюс. Беларусь / ООО «ЮрСпектр», Нац. центр правовой информ. Респ. Беларусь. – Минск, 2019.