

Modern Aspects of Leasing Publicly Owned Land Plots

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Abstract. The paper presents a study of modern aspects and the legal regime of leasing land plots in the Russian Federation that are in public (federal, owned by the Subjects of the Russian Federation, municipal) ownership, since currently in Russia, the lease of land plots that are in public ownership is the most common way of using land plots. The study was conducted in order to identify modern aspects and the legal regime of leasing public land plots for subsequent practical application by tenants and landlords. To achieve this goal, an analysis of the main regulatory legal acts currently in force in Russia regulating the provision of land plots for lease for various purposes is carried out. The significance of the study lies in the fact that, despite the constant improvement of the mechanism for granting land plots for rent, the procedures for granting land for rent are contained in many regulatory legal acts and often have gaps in legal regulation associated with constant changes in these regulations. As a result of the study, it is concluded that the general procedure for concluding a lease agreement for a land plot that is in public ownership is regulated by civil and land legislation, taking into account regional and local regulatory legal acts, as well as regulatory legal acts adopted by regulatory authorities in this area independently. Previously, this body was the Ministry of Economic Development of the Russian Federation, and since 20.01.2020 – Rosreestr, which for 2020-2021 adopted more than 20 regulatory legal acts that are important in the design of land lease agreements. The results of this study are recommended to be taken into account in their activities by legal entities and individuals who use the procedures for leasing land plots that are in state or municipal ownership.

1 Introduction

Rent, being a special legal instrument of transfer from the owner, referred to in lease agreements as "lessor", for temporary use (*usus*) and possession (*possessio*) to the lessee for a certain fee (*merces*, *pensio*) of real estate, and, having its history since Roman law (contract of rental of things - *locatio-conductio rerum*), is quite significant, both in the Russian legal order and abroad.

Determining the relevance of this study, we note that, today in the Russian Federation, the lease of land plots that are in federal ownership, the property of the Subjects of the Russian Federation, municipal ownership or, in other words, public ownership is one of the main types of rights used for the purpose of granting land plots for various purposes to entities and individuals. The right to lease land plots is an independent mechanism with many restrictions that must be taken into account in order to legally use public land in accordance with the land legislation.

The relevance of this study is beyond doubt, because despite the constant improvement of the mechanism for granting land plots for rent, the procedures for granting land for rent are contained in many regulatory legal acts and often have gaps in legal regulation associated with constant changes in these regulations.

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After analyzing the degree of scientific development, it should be noted that many scientific works have been published on the topic under consideration, mainly by such authors as D. B. Aratsky, N. G. Aidarova, A. A. Varlamov, S. N. Volkov, S. A. Lipsky, V. A. Maltsev, R. A. Najarian and others.

The most interesting are thematic collections of the information and legal system "Consultant Plus", a scientific article by G. F. Ruchkina – "Legal regulation of relations on land lease in the course of entrepreneurial activity"[2], a monograph by I. G. Baranovskaya "Land lease agreement as a problem of the science of Russian civil law"[3], article Najarian R. A. "Actual issues of the practice of applying the land lease agreement" [4], as well as a scientific article by A. A. Varlamov, A.M. Kopysov, L. P. Podbolotova – "Provision of land plots for the construction of transport infrastructure in the light of changes in land legislation" [5].

This article examines the significant changes since 01.03.2015 of the Land Code of the Russian Federation related to the provision of land plots for rent for the capital construction projects. The authors analyze the procedure for granting land plots that are in state or municipal ownership, established by the new chapter of the Land Code V. 1., with the preliminary provision of land plots, as well as the issues of preparing the layout of the land plot on the cadastral plan of the territory, which

is necessary for the provision of the land plot document. Thus, "Article 39.17 (replacing the previous Article 32 of the Land Code) describes in detail the procedure for granting a land plot that is in state and municipal ownership, without bidding" [5].

2 Materials and methods

The object of research in this paper was the land that is in public (state and municipal) ownership of the Russian Federation.

The aim is to study the current aspects and the legal regime of leasing land plots in the Russian Federation that are in federal ownership, the property of the Subjects of the Russian Federation, and municipal ownership. The article provides an analysis of the main regulatory legal acts currently in force in the Russian Federation and regulating the provision of land plots for lease for various purposes. The empirical basis of the study is the legislative acts and regulatory documents adopted by state bodies in the analyzed period.

The methodology of this research includes methods of theoretical research that reveal the essence of the phenomena under study, identify the natural connections and relationships that are used in defining the problem and formulating the research tasks (analysis, synthesis, abstraction, deduction, induction), as well as methods of empirical research that serve as a means of collecting specific facts aimed at identifying them and describing phenomena (observation, conversation, interview). In addition, methods of comparison, economic and mathematical methods, etc. were used.

3 Results and Discussion

The concept of land lease is provided for in Articles 606 and 607 of the Civil Code of the Russian Federation (hereinafter referred to as the CC RF) [6]. The land plot, along with other real estate objects, is the object of rent. According to the statistical data of Figure 1, as of 01.01.2021, the main part of the land and land plots (92% of the land area of Russia) is in state or municipal

ownership. As mentioned above, the Civil Code of the Russian Federation, the Land Code of the Russian Federation and the law on the introduction of the Land Code of the Russian Federation are the main normative legal acts containing the norms of public law on leasing. In addition to the federal civil and land legislation, each subject of the Russian Federation has its own regional and local legal acts regulating lease issues.

Currently, the Russian Federation (hereinafter referred to as the RF) has the authority to manage and dispose of land plots owned by the Russian Federation (federal property), including the provision of land plots for lease, in accordance with paragraph two of Article 9 of the RF Land Code [7]. Similar powers (Articles 10, 11 of the RF Land Code) in relation to land plots owned by the subjects of the Russian Federation are held by the subjects of the Russian Federation that are in municipal ownership – by local self-government bodies.

The assignment of land plots in the differentiation of state ownership of land to federal property, the property of the subjects of the Russian Federation and municipal property is contained in Article 3.1 of the Federal Law of 25.10.2001 N 137-FZ (ed. of 31.07.2020) "On the introduction of the Land Code of the Russian Federation" [8]. Article 3.3 of this Law establishes the powers of local self-government bodies to grant land plots to which State ownership is not delimited, except in cases of granting land plots:

- for placement of highways of federal significance (Rosavtodor);
- placement of highways of regional or inter-municipal significance (executive authority of the subject of the Russian Federation);
- executive authorities of the subjects of the Russian Federation - the cities of federal significance of Moscow, St. Petersburg, Sevastopol in relation to land plots located within the boundaries of these subjects;
- the federal executive authority performing functions on management of federal property in the order which is provided by the Federal law of July 24, 2008 N 161-FZ "About assistance to development of housing construction" [9].

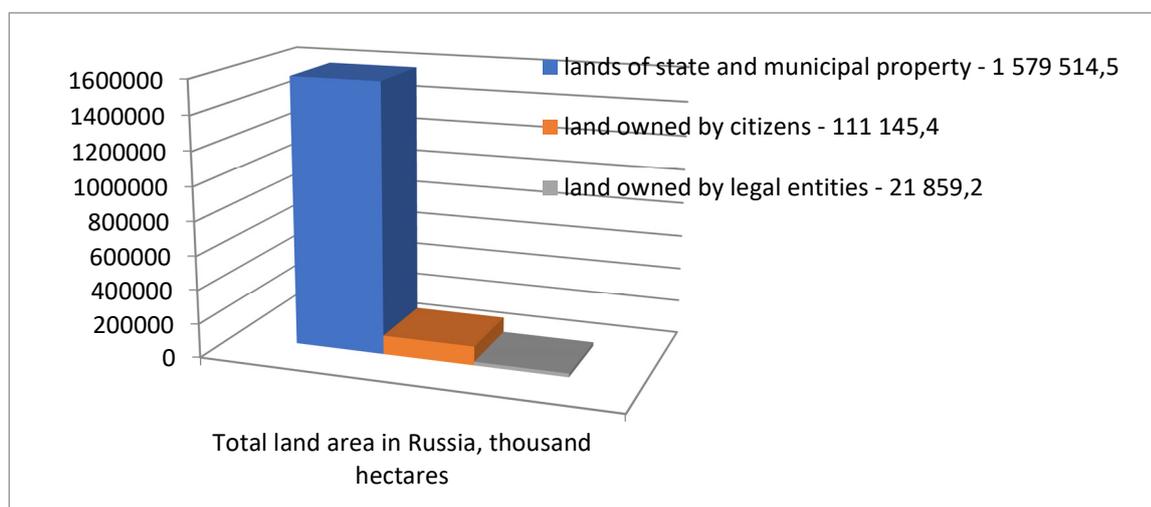


Fig. 1. Distribution of the land fund of Russia by form of ownership as of 01.01.2021

Rent is the most common way of using land plots of public ownership, especially for the land of settlements, industrial land, transport, communications and other purposes, where the land of state and municipal ownership account for 75% and 98%, respectively, of the total land area of these land categories. Since a land plot is both an object of civil turnover, a natural object and a natural resource, the general rules on the lease of land plots are divided based on this understanding.

Article 22 of the Land Code of the Russian Federation provides rules on the use of a land plot as an object with characteristics that allow "it to be described as an individually defined thing", namely as a real estate object, and it can be leased according to the rules of civil law.

The lessee "has the right to transfer the leased land plot to sublease within the term of the lease agreement of the land plot without the consent of the lessor, subject to his notification", and within the meaning of paragraph 3 of Article 5 of the Land Code of the Russian Federation, the same rights, obligations, and restrictions of rights apply to subleaders, as well as to tenants.

An important essential condition of lease agreements is the amount of rent, which for public land plots is regulated by Article 39.7 of the Land Code of the Russian Federation, taking into account the decree of the Government of the Russian Federation of 16.07.2009 No. 582 as amended on 07.09.2020, which establishes that before the Rosreestr approves the rental rates, the rent for public land plots is determined in accordance with the rental rates approved by the Ministry of Economic Development of the Russian Federation.

These changes occurred in connection with the adjustment of the regulations on the Rosreestr, since "in 2020, the functions and powers of the Rosreestr were significantly supplemented by the previously performed functions of the Ministry of Economic Development of the Russian Federation, since the Rosreestr was transferred from the jurisdiction of the Ministry of Economic Development of the Russian Federation to the direct subordination of the Government of the Russian Federation when changing the structure of the executive authorities of Russia" [10]. Rosreestr in 2020-2021 adopted more than ten regulatory legal acts (Table 1) that are important for the registration of land lease agreements.

Table 1. List of regulatory legal acts adopted by Rosreestr independently

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1) requirements for the accuracy and methods of determining the coordinates of the characteristic points of the boundaries of the land plot, the contour of the building, structure or object of unfinished construction, requirements for determining the area of the building, structure, room or parking space;
2) a list of documents confirming the applicant's right to purchase a land plot without bidding;
3) the form of the layout of the land plot on the cadastral plan of the territory;
4) the procedure and methods for submitting an application for approval of the layout of the land plot on the cadastral plan of the territory and an application for holding an auction for the right to conclude a lease agreement for a land plot that is in state or municipal ownership;
5) the procedure and methods for submitting an application for preliminary approval of the provision of a land plot that is in state or municipal ownership;
6) the amount and procedure for charging fees for the preparation of the layout of the land plot on the cadastral plan of the territory;
7) requirements for the form and content of the application for the withdrawal of land plots for state or municipal needs, the composition of the documents attached to it;
8) the procedure and methods of filing a petition for the seizure of land plots for state or municipal needs and the documents attached to it;
9) classifier of types of permitted use of land plots;
10) the procedure for the preparation and conclusion of lease agreements for land plots located within the boundaries of the biosphere landfill sites of the state natural biosphere reserve;
11) features of the preparation of lease agreements for land plots that are federally owned and located within the boundaries of the corresponding functional zones of national parks.

In the period from 2012 to the present, several orders of the Ministry of Economic Development of the Russian Federation on the approval of rental rates in respect of land owned by the Russian Federation have been adopted and are in force (until the adoption of new regulatory legal acts by the Rosreestr). It should be noted that the provision of land plots from agricultural land that are in public ownership to individuals and legal entities for lease is considered in Article 10 of the

Federal Law of 24.07.2002 N 101-FZ (as amended on 06.06.2019)"On the turnover of agricultural land" [11].

There are also features of granting to citizens of the land plots which are in state or municipal ownership and located in the territories of the subjects of the Russian Federation which are a part of the Far Eastern Federal District, defined by the federal law of 01.05.2016 N 119-FZ with the same name taking into account the recently adopted federal law of 15.10.2020 N 318-FZ "On recognition as invalid of certain provisions of legislative

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acts of the Russian Federation in connection with changes in the procedure for leasing land plots which are in state or municipal ownership to residents of the free port of Vladivostok".

The rights of foreign citizens and stateless persons in relation to the lease of land plots on the territory of the Russian Federation are established in accordance with paragraph 1 of Article 22 of the Land Code of the Russian Federation. Foreign citizens «may have land plots located within the territory of the Russian Federation on the right of lease, except for the cases provided» for by the specified Code [7].

One of the most important provisions in the legal regulation of the lease of a land plot is the grounds for granting land plots for rent.

As follows from paragraph 1 of Article 25 of the Land Code of the Russian Federation, the rights to land plots provided for in Chapters III and IV of the Land

Code of the Russian Federation arise on the grounds established by civil legislation, federal laws, and are subject to state registration in accordance with Federal Law No. 218-FZ of 13.07.2015 "On State Registration of Real Estate".

Public land plots may be granted both on the basis of the conducted auctions, and also, according to paragraph 2 of Article 39.6 of the Land Code of the Russian Federation, without bidding and on the basis of a court decision. Despite the periodic replenishment of the list of cases provided for in paragraph 2 of Article 39.6 of the Land Code of the RF, it is exhaustive.

Article 39.14 establishes the procedure for leasing a land plot that is in state or municipal ownership, without bidding (Figure 2), and Article 39.16 "explains in detail the grounds (in the number of twenty-six) for refusing to grant a land plot that is in state or municipal ownership, without bidding" [7].

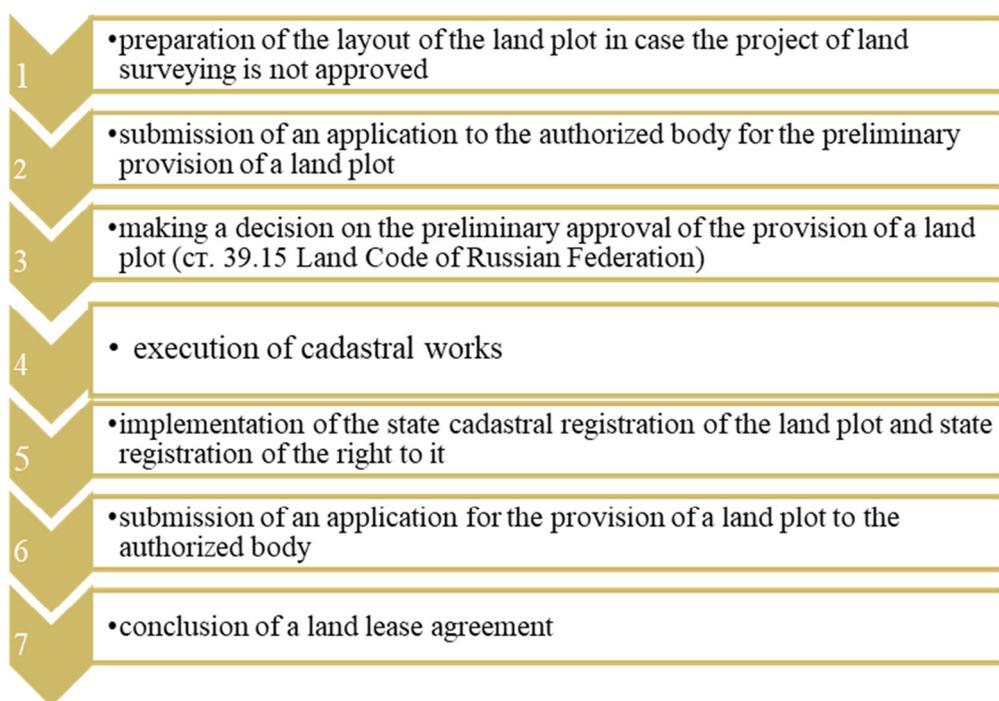


Fig. 2. The procedure for granting land plots for lease for the capital construction projects.

The specifics of the lease agreement for a land plot that is in state or municipal ownership are established by Article 39.8 of the Land Code of the Russian Federation. In particular, this article describes the obligation to carry out work on the reclamation of a land plot provided for the use of subsurface resources, the obligation to demolish an unauthorized building when making a decision on its demolition, and also determines the lease terms for various cases.

4 Conclusion

Based on the above, it can be said that the general procedure for concluding a lease agreement for a land plot that is in public ownership is regulated by civil and land legislation, taking into account regional and local

regulatory legal acts, as well as regulatory legal acts adopted by regulatory authorities in this area independently. Previously, it was the Ministry of Economic Development of the Russian Federation, and since 20.01.2020 – Rosreestr, which for 2020-2021 adopted more than 20 regulatory legal acts that are important in the design of land lease agreements.

The above information together allows us to formulate a conclusion that a comprehensive approach is required to the study of land lease, including, among other things, an analysis of the mechanism for leasing land plots that are in state or municipal ownership.

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