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Purchase of Property Plots Parcelled out for Roads by the State Treasury or Local Authorities under the *Real Estate Management Act***

1. Introduction

In the procedure of subdivision survey of real estate, a necessity to parcel out plots for roads whose ownership is subject to their transfer for the benefit of public law entities may emerge. In practice, there are many problems and ambiguities arising therefrom.

In this publication the author presents problems of legally enforceable transfer of plots parcelled out for the roads for the benefit the State Treasury and local government units, as well as the consequences of vague provisions of law in this regard, illustrated with an example of the area of the city of Cracow.

2. The Criteria for Acquiring Plots Intended for Roads by Public Law Entities

Pursuant to article 98 section 1 of the *Real Estate Management Act* [1] the plots of land parcelled out for public roads: the commune, district, provincial and national roads – from the property, the division of which was conducted upon the request of the owner, are legally transferred for the benefit of a commune, district, voivodship or the State Treasury respectively, on the day on which the decision approving the division has become final or the adjudication on the division has become legally binding.

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Acquisition of the plots of land parcelled out for public roads by public law entities takes place if the following conditions are met:

- the parcelled out plot of land is intended for a public road,
- property division is carried out upon the request of the owner,
- the decision approving the division of property is final or the adjudication on the division is legally binding.

Effects of property rights defined in the above mentioned provision of law shall also apply to plots of land parcelled out for public roads from the real estate designated as perpetual usufruct. Then, in case of an application for a division of such real property submitted by the user, the perpetual right expires with respect to the plot of land intended for a public road on the day on which the decision approving the division has become final or the adjudication on the division has become legally binding.

These rules also apply for the parcelling out of the plots of land for the purpose of widening of the existing public roads.

2.1. Designation of Parcelled out Plots of Land for Public Roads

In the *Public Roads Act* [2] the concept of a road has been defined as a construction together with road engineering facilities, equipment and installations, constituting the technical and utility whole, designed to manage traffic and located in a right-of-way (article 4 section 2). Pursuant to article 1 of that act, a road is considered to be a public road if it belongs to one of the following road categories listed below, which can be used by anyone in accordance with its purpose, limitations and exceptions specified in the above mentioned act as well as other legislation.

Public roads due to functions in a road network fall into the following categories:

- national roads,
- provincial roads,
- district roads,
- commune roads.

Having parcelled the road out in a survey, with reference to property rights and upon completing its construction, the assigning of a category to a public road is conducted by means of a separate act, i.e.

- for the national road – by virtue of the order of the Minister of Transport,
- for the provincial road – by virtue of the resolution of province government Assembly,
- for a district road – by virtue of the resolutions of the district Council,
- for a commune road – by virtue of the resolution of the commune Council.

As it is stipulated in article 98 of the *Real Estate Management Act* [1], parcelling out of the plots of land intended for a public road refers to the areas where the construction of public roads is being planned. However, since the wording of article 98 section 1 of the *Real Estate Management Act* refers to the category of the road, this category should be determined on the basis of a function assigned to a given road, as specified in the local plan, and since the act on assigning a category to the road does not exist yet.

Pursuant to article 15 section 2 clause 1 of the *Spatial Planning and Development Act* [3], the local plan sets out, inter alia, land designation and land demarcation lines for various purposes or various management principles. *Development Plan*, which is an act of the local law, contains local rules of law, which are mandatory on the territory covered by the plan.

Subject to paragraph 4 clause 9 of the *Minister of Infrastructure Regulation on the required scope of the draft local land development plan* [4], the principles regarding rules of modernization, expansion and construction of communication systems as well as technical infrastructure should include, inter alia, determination of the transportation system and technical infrastructure network, together with their parameters and the classification of streets and other transportation routes, as well as the specification of linking conditions of the transportation system and technical infrastructure network to an external system.

Thus, the intended use of land for a public road may be determined in the local development plan. In the absence of a local plan for a particular location, the planning permission conditions are specified by means of a decision on the location of a public investment, or in a planning permission. As far as public roads are concerned, the location is determined by means of a decision on the location of a public investment.

However, in the cases where the the location of the road is determined by means of a decision on the location of a public investment, article 98 of the *Real Estate Management Act* [1] does not not apply. According to the case law (Supreme Court Judgement of 27 June 2007, II CSK 127/07, Judgement of the SAC 31 January 2007 IOSK 327/06, Jurisdiction of SAC and CAC No. 42008, item 62) the legal consequences of the aforementioned article 98 relate only to the roads, the designation of which results from the local plan.

2.2. The Division upon the Request of the Owner

Legally enforceable transfer of plots parcelled out for the roads or for the purpose of the widening of public roads may only take place if the division of the property is conducted upon the request of the owner.

If the proceedings have been initiated *ex officio* (article 97 section 3) or upon the request of the road administration (article 22 section 3), an effect of the transfer of ownership rights with respect to the road plot does not arise. The plots parcelled out for a road remain the property of their owner and their acquisition for the benefit of a public entity may be carried out by means of an agreement or expropriation.

The acquisition of a plot of land designated for a road does not result in the construction of the road immediately after the approval of the subdivision survey of the property. This is due to the fact that the public entity acquires only a part of the land designated for a road and, additionally, it is not prepared for the investment to be carried out at the moment. This division is in fact conducted upon the request of the owner, regardless of the public entity intentions associated with the road investment, and parcelling out of the plot is a consequence of its inability to be utilized in a different manner.

2.3. Value of Finality of the Decision Approving the Division or the Legitimacy of Judicial Adjudication

The transfer of the purchased land ownership rights takes place upon the finality of the decision approving the division of the property. The decision of obtaining the value of finality also allows for the disclosure of the public entity as the owner of the plots in the land and mortgage register.

Subject to article 16 of the *Code of Administrative Proceedings* [6] the finality of the decision means that there is no appeal in administrative proceedings. The finality of the decision will be made in the absence of an appeal within the statutory final date (14 days from the date of notification of the decision to the parties) or when the appeal body determines to uphold the decision.

However, despite the finality of the decision approving the division of the property, its results may not always be revealed in the land and mortgage register and land and property register. According to article 9 of the *Real Estate Management Act*, the execution of decisions approving the real estate division is carried out after 14 days from the date on which the term to lodge a complaint to the administrative court against the decision has ineffectively expired. In the case of lodging a complaint, the authority which issued the decision suspends the execution *ex officio* by means of a resolution which shall not be a subject to a complaint. The exception are the decisions *ex officio* approving the division of a property for the purpose of parcelling out a plot of land necessary for the implementation of the public objective (article 97 section 3 clause 1 of the quoted act).

Article 9 of the act quoted [1] applies only to decisions issued by the appeal body, which is subject to a complaint to an administrative court within 30 days of

notifying the party of the decision (article 53 [7]). The wording of the above provision shows acceptability for implementation of the decision after 14 days from the date on which the term of 30 days to lodge a complaint to the administrative court against the decision has expired, and this consequently means that the decision of the appeal body can not be executed before the expiry of 44 days from the receipt of the decision by the party.

This legal standard does not apply in cases where a decision approving the division issued by the first instance body (the head of a commune, mayor, president) obtains the value of finality. Then the decision of the first instance is the basis for the disclosure of the changes resulting from the decision approving the division of the property in the land and mortgage register and land and property register. Parcelling out of a plot of land for a public road may also result from a civil court adjudication, where a decision in a civil case requires a prior parcelling out of a plot for a public road, e.g. in a case of dissolution of co-ownership in a way of determining the physical division or the acquisition by prescription of a part of the property. Then, appointed by the court expert surveyor shall draw up a division survey, resulting in a road plot being parcelled out.

In such case, legally enforceable transfer of ownership rights with respect to the plots parcelled out for the roads for the benefit of the State Treasury or local government unit will take place on the day the adjudication of the court has become legally binding.

3. Disclosure of Property Right Effects of Decisions Approving Division of Property in Land and Mortgage Registers

The application to the real estate court register for disclosure of changes in land and mortgage registers is submitted by an executive body of a local government unit or the governor acting in the name of the State Treasury. According to article 4 clause 9 of the *Real Estate Management Act* [1], the aforementioned authorities are competent in the matters of real estate management, constituting property of the aforementioned authorities or the State Treasury, respectively.

The subject of entries will be the exclusion of a plot of land designated for a public road construction or its widening, as well as its transfer to a separate entry in the land and mortgage register with a record of a new owner or perpetual user. This entry is not constitutive, but declaratory, since article 98 section 1 of the *Real Estate Management Act* stipulates that the property right effect is legally enforceable at the time of the finality of the decision on the distribution of property or of the adjudication becoming legally binding.

4. Problems Regarding Internal Roads Resulting from the Division of Property on the Example of the City of Cracow

As a result of the division of a property, internal roads necessary for communication services of a given location may emerge. These roads are not classified under any category of public roads, and in particular: in housing estates, access roads to agricultural lands and forests, access roads to premises utilized by entities engaged in economic activities (article 8 section 1 of the *Public Roads Act* [2]).

Pursuant to article 98 of the act [1], the procedure of the transition of ownership for the benefit of public law entities in the current legal status does not include plots parcelled out for internal roads.

However, until 15 February 2000, article 98 section 1 of the act did not include a condition that only plots of land parcelled out for public roads are transferred to public law entities. Therefore, the accepted practice was that if, as a result of a real estate division, a plot of land of a road type was parcelled out, and it served the purpose of communication, the commune (or other public entity) purchased such a plot of land for compensation. Such an interpretation of provisions relating to property division resulted in a number of decisions approving divisions of the property before the date of 15 February 2000 on the territory of the city of Cracow, which resulted in plots of a road type not being classified under any category of public roads (and therefore defined as internal roads) and becoming by law the property of Municipality of Cracow. The consequence of such actions was the obligation of the Municipality to pay compensation for the acquired lands, although designated for communication but not serving public purposes. As a result of numerous protests of many municipalities, including the Municipality of Cracow, the legislation developed a view that, despite the absence of specification of the term "road" in the wording of article 98 section 1 of the *Real Estate Management Act* (the version before 15 February 2000), the intent of the legislature was to include in the regulation public roads exclusively.

According to the Supreme Court verdict of 8th December 2005 (IICK 312/0, Jurisdiction of SCC No. 9/2006, item 156):

The plot of land parcelled out subject to art. 98 section 1 clause 1 of the quoted Act – in its original version, is transferred by law to the ownership of a commune, if it was intended for a public road organization within the meaning of the Act of 21st March 1985 on public roads.

Such legislation triggered actions undertaken by the Municipality of Cracow which were aimed at eliminating faulty decisions on division of land, issued be-

fore 15 February 2000, and which resulted in the transfer of internal roads and the payment of compensations.

These actions have not lead, however, to the annulment of the decisions approving such property divisions, as controlling authorities have not found any serious breach of law during the supervisory proceedings. The administrative court, assessing the correctness of the decision on division of property, which was underlying the acquisition of the plots which did not constitute public roads, stated that serious breach of law may apply exclusively to a provision which can be used within a direct meaning, i.e. which does not require interpretation of the law. However, in the wording of article 98 section 1 of the *Real Estate Management Act* [1], before the date of 15 February 2000, the term "road" was not specified.

The irreversible legal consequences that have occurred in relation to the plots parcelled out subject to this decision, i.e. sale of the land to third parties disturbed the annulment of the decision on the division of property.

The ambiguous wording of article 98 of the *Real Estate Management Act* [1] prior to the amendment of 15 February 2000, resulted in adverse effects for the Municipality of Cracow in form of an obligation to pay compensations for the plots of road type parcelled out in the result of subdivision surveys, although not all designated for public purposes. In addition, the acquisition of these roads also accounts for a need of their maintenance and management, generating additional costs.

5. Conclusions

The ambiguous wording of the regulations governing property division issues in the *Real Estate Management Act* resulted in the transition of the property rights regarding plots of land parcelled out for roads for the benefit of public law entities, irrespective of their category, including internal roads. Due to the loss of property rights, the hitherto owners were entitled to compensation. The amendment to the wording of article 98 of quoted the act, which came into force on 15 February 2000, in a precise manner stipulated that the acquisition of plots of land intended for roads by public law entities applies exclusively to public roads.

References

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- [2] *Ustawa z dnia 21 marca 1985 r. o drogach publicznych*. Tekst jedn. Dz. U. z 2007 r. Nr 19, poz. 115 ze zm.

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 - [4] *Rozporządzenie Ministra Infrastruktury z dnia 26 sierpnia 2007 r. w sprawie wymaganego zakresu projektu miejscowego planu zagospodarowania przestrzennego.* Dz. U. Nr 164, poz. 1587.
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 - [6] *Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego.* Tekst jedn. Dz. U. z 2000 r. Nr 98, poz. 1071 ze zm.
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