Trends and improving methods of assessing costs of land plots seized by the state

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Abstract. The study is analyzing the current Russian legal systems and practices of the evaluating process of seizing land for state and municipal needs. As a result, a number of conflicts of legislative norms were revealed. Most of them are caused by different interpretation of the terms of valuation the seized property and the type of recoverable value by legal acts. The main direction of improving this mechanism is the formation of an executive department to coordinate activities and eliminate conflicts.

1 Introduction

The trend of land resources management includes a system of measures of economic impact in implementing the state's land policy and ensuring the rights of land owners. This system of economic regulators, as well as technologies for assessing and organizing payment of compensation, varies from country to country, but in most cases it includes time-related land taxes, rent for land, market price, land, compensation payments for conservation, payments for improving the quality of the soil, fines for environmental damage, taxation for civil land turnover, payment for the right to lease [1,2,3]. This regulation is especially important when land parcels are taken for state and municipal needs. The relevance of the research topic is connected with the analysis of the current organizational, legal and information-methodological support in the field of seizure of land plots mainly for state and municipal needs, which is emphasized, as well as valuation activities (identifying market value and / or calculating losses). The available practical experience proves that in the Russian Federation with a full guarantee of the right of private property on the part of the authorities, the reasonableness of the appraisal of the seized land plots leaves much to be desired. The purpose of the study is to analyze the economic and legal interpretation (critical analysis, research and substantiation of possible prospects for improvement) and methodically develop a model for estimating the market value of land plots and real estate attached to them, as part of the exemption procedure for state and municipal needs.

2 Materials and Methods

In this research attributive-expert and quantitative-variational approaches, analytical and logical, systematic and comparative, deductive and inductive methods of knowledge, the concept of "general", "special" and "single", as well as methods of development and

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implementation of economic and legal decisions in the legislative sphere and the field of executive proceedings were used.

3 Results

The survey of normative legal acts and judicial practice in relation to the assessment of the market value of land plots withdrawn for state and municipal needs in the territory of the Russian Federation is allowed to identify the following two major blocks of problems requiring the development of methodological directions for improving this system and their further practical implementation.

The first issue is in conflict of norms of the Russian legislation in relation to the date of evaluation of the market value of the seized land.

Time frames in the system of economic regulators of the process of land acquisition for municipal and state needs are important, since the process of withdrawal is a long procedure. For example, until 2015, it was impossible to withdraw the land plot without the consent of the owner before the expiration of the year from the date of receipt by the owner of the notice of its withdrawal [4]. It is obvious that during this period the value of the property could seriously change due to objective market conditions, as well as a result of the actions (inaction) of the owner. In this regard, setting of the date on which the redemption price (market value and losses) is calculated was important, but not sufficiently regulated due to the uncertainty of interpretation of this date in various regulatory legal acts of the Russian Federation.

The Land code also has a similar rule, but it establishes several more: according to art. № 633, the costs incurred by the owners of the land plot for the implementation activities that significantly increase the value of the land — construction buildings, providing engineering systems, etc. — after notification of the upcoming seizure are not going to be compensated [5]. As a result, the critical point is no longer the day of registration of the decision to withdraw, but the moment of receipt of the notification about it.

For the purpose of land purchase legislators went further in the organization of the 2014th Winter Olympic Games: according to art. 15 of the Federal law, the amount of loss to be reimbursed is determined on the day of the decision to withdraw the land [6].

In addition to the date of the decision on the seizure and the date of registration of the decision on seizure there is the date of the decision to change the use of the land plot. The day of adoption of this decision precedes the other dates indicated earlier. It is significant because the cost of the seized lot changes in time, often just after this date and directly because of rumors about a decision to change use. For example, information about the expected withdrawal of a land plot can do both: reduce and increase its liquidity as well as change its market value. Such price fluctuations should not be taken into account while calculating the reimbursement. This requirement is contained in Art. 56.8 of the Land Code [5].

As a result, it is impossible to conclude the date on which the redemption price of a land plot is determined because of the current legal norms inconsistency.

The second block of problems is the conflict of norms of the Russian legislation with the type of value of compensation amount for the seized property.

Until 2015, the type of owner's rights to a land plot was of great importance when seized: is it in lifelong inheritable possession or in permanent (unlimited) use. The value was determined by a specific set of powers of the owner, who has a real right to real estate. As a result, the right of permanent unlimited use of the land plot by the owner of the real estate object on it does not give him the opportunity to receive compensation for the withdrawal of the land plot. Taking this into account, the legislator has established a procedure for calculating the amount of compensation not only for owners, but also for those who own land

for permanent use, lifelong inheritable possession, and also use land plots under a lease or free-of-charge agreement [7]. When assessing the amount of compensation, it includes the market value of the property and losses caused by the withdrawal, including lost profits [8]. Moreover, due to art. 57 of the Land Code, the calculation of the amount of losses is made on the date preceding the day of the decision to seize the land plot [5].

And as we started talking about assessing the amount of compensation, about solving the problem of assessing compensation for the seized land for state and municipal needs (redemption price) in Russia, it is worth discussing the issue of determining the market value of a land plot and the real estate objects to the withdrawal , as well as the calculation of the amount of losses.

The market value of a land plot under the Civil Code is determined based on the type of use [4] of this land plot permitted by Russian law on the day preceding the day of adoption of an administrative decision on its seizure in favor of state and municipal needs. In this case, in art. 56.8 [8] a number of objects and expenses are named, which, according to the legislator, should not be taken into account when determining the amount of compensation. They have special rules for determining compensation (they are indicated not only in articles 56.8-56.9 of the Civil Code, but also in Article 26 of Federal Law No. 499 [7].

In assessing compensation due to legislation of the Russian Federation, the general norms of the Civil Code related to compensation of damages [4] are applied, and special rules regulating this compensation regarding to the special regime of the land plot [5]. This regime, as well as the role of the state in regulating land rights, determined the specifics of calculating compensation while exemption operation in the sphere of land relations. Appraisers are involved in this evaluation. Although losses and lost profits are not subject to valuation under Russian law. All of them must be calculated according to certain rules, worked out exclusively by judicial practice.

In particular, according to Art. 2812 of the Civil Code [4] and art. 62 of the Land Code [5], the person, whose land plot is seized, has the right to receive a ransom price for it. It includes the market value of the land and real estate on it and all losses incurred by the owner of the withdrawal, including losses that it incurs due to early termination of its obligations to third parties, including lost profit, rent paid under the lease agreement for the period after the seizure of the land plot, as well as the cost of the right to conclude a lease contract for the land plot in case of its conclusion at the auction. [9]

While analyzing the term "redemption price" it should be noted that previously in the mandatory standards was a "value of the valuation object with a limited market", which corresponded to the problem of determining the redemption price of land plots when they were seized. However, the current Federal standards of valuation determine only market value, which is not truly valid in the conditions of compulsory, involuntary nature of the transaction for both parties - the owner is obliged to sell the land within a specified period; and the state is obliged to redeem it within the same period. The methodology [10], developed to typify the work of appraisers on the seizure of land in Sochi within the framework of the organization of the Winter Olympic Games, was controversial because it did not take into account all the features that existed in the land market, for example, autoregression price and corruption component. In addition, the situation was quite common when the owners changed the type of permitted use of the land before making a decision on seizure [11].

The state provides a mechanism for paying compensation to rights holders of land plots to be seized in the conditions of the market (art 306 of the Civil Code [4]). Assessment of the amount of such compensation is called an assessment for the purposes of compensation for losses in connection with the seizure of land for state and municipal needs.

According to the Federal Law No. 499-FZ [5], the composition of compensation for withdrawal is reflected in Figure 1.

Fig. 1. Estimation of the property of the complex upon seizure

The size of the redemption price should, on the one hand, cover the losses of the right holder, and on the other hand, save budgets from excessive spending. The latter means the desire of the authorized body to minimize the cost of valuation by the appraiser hired by him. To combat this, the right holder can use a number of quite legal measures contained in the regulatory and legal acts of the Russian Federation. Thus, the task of evaluation is to determine a value that would suit both sides.

In spite of the market value, the calculation of losses associated with the withdrawal, even after the appearance of the Federal Standard of Valuation No. 7, "Valuation of Real Estate," where losses were first mentioned at the legislative level, creates considerable problems for appraisers: losses are included in it to "other", therefore, not compulsory calculated values. That is why the correctness of their inclusion in the evaluation report raises certain doubts. However, the appraisers may include the calculation of losses in the valuation report for the purposes of withdrawal or issue two final documents: an assessment report and in expert opinion about the losses caused by the withdrawal of the land plot [12].

According to art. 15 of the Civil Code [6], a person whose right has been violated may claim full compensation for the caused losses, if the law (contract) does not imply their compensation in a smaller amount. Proceeding from this, the redemption price of the land plot includes: the market value of the land plot and the real estate objects located on it and the losses incurred by the owner of the land plot (actual and future), including the lost profit arising in connection with:

- a) restriction of his rights;
- b) withdrawal or temporary occupation of his land plot;
- c) deterioration of the quality of the land of its land.

Usually losses are divided into real damage and lost profits. Real damage includes loss of and damage to property, and all actual and future expenses (losses) incurred by the owner of the land plot. Typical types of costs (losses):

- 1) costs associated with relocation (costs of dismantling and removal of equipment and other movable property);
- 2) expenses related to state registration of rights to the real estate object;
- 3) expenses related to the payment of the services of realtors;
- 4) losses associated with land reclamation;
- 5) losses associated with the loss of perennial greenery.

Particular complexity is in the proofing of losses of lost profits. Loss of profit is the unearned income, which the owners of the rights to the land plot would have received on the condition that the withdrawal would not have been committed. Although the general principles for estimating such losses are set forth in art. 15 of the Civil Code [4], they are not enough. Therefore, art. 393 provides additional conditions for confirming the costs of reimbursing lost profits and obtaining the revenues that it intended to receive: "In determining the loss of profits, the measures taken by the creditor for its receipt and the preparations made for this purpose under normal conditions of civil traffic are taken into account" [13]. Moreover, the presence of these confirmations in the form of evidence on the documents of accounting of the economic activities of the organization is mandatory. In other words, it should be calculated taking into account the reasonable costs that the creditor should have incurred if the obligation were fulfilled [14].

However, as it was noted earlier, the seizure is impossible without the consent of the right holder before the expiry of the year from the date of receipt of the notification on the seizure of the land plot. As a result, the subject has in his stock a year to prepare for this event. In the

case of cash compensation, he has at least two possibilities: 1) to lease a land plot similar to the one seized, and until the payment of the compensation amount and the purchase (construction) for these funds, to carry out production; 2) take a loan for a period before payment of the compensation amount and acquire a land plot similar to the one seized. In the first case, the lost profit will be, as a matter of fact, expenses on payment of a rent, additional expenses for moving to a leased object (the cost of moving from a leased object to a newly acquired one after payment of compensation should be included in the composition of losses), as well as unearned income for periods of relocation. In the second, i.e. when making a loan for the amount of compensation, the lost profit will be the cost of paying interest on the loan, as well as the lost income for the period of relocation.

It follows from Methodology [10] that the calculation of the amount of lost profits is carried out by discounting the future cash flows that have not been received for the period of restoration of the disrupted production, which holders of rights to the land plot would have received under normal conditions of civil turnover, had their rights not been violated. At the same time, the income that the owner would receive without removing the land plot (if his rights were not violated) is reduced by the amount of the expected income that he could get if the land plot was withdrawn (in case of violation of rights) [15].

For compensated land parcels, compensation is determined not later than 60 days before sending to the owner the agreement on seizure (Article 56.8 of the Civil Code) that should be based on the amount of compensation [4] evaluated in the appraiser's report (Article 56.8 of the Civil Code).

In this case, the compensation of damages is assumed only in the event of a seizure of a land plot. Any payments related to restrictions on property rights and other proprietary rights caused by the reservation are not foreseen. The transfer of rights occurs only after the right holder receives the preliminary compensation in monetary form [16].

Finally, the cash compensation has an alternative - the allocation to the owner of another land plot (real estate object) of similar value. But this can only be used with the consent of the right holder (Article 281 of the Civil Code [4]).

4 Discussion

In connection with the above-mentioned results of the study, the possible directions of methodological development of the model for estimating the market value of land plots and real estate attached to them, within the framework of the seizure procedure for state and municipal needs should be pointed out.

Firstly, determining the date of the redemption value - it is necessary to distinguish three aspects: the state of the object, the market situation; date of evaluation of the amount of compensation. Operating with the concepts of the Civil Code, the assessment of market value and losses should be performed on the day preceding the registration of the decision to seize the land and the condition of the property should correspond to the state at that date. This position is based on the assumption of market stability in the period between the dates of the decision to change the use of the land plot, its withdrawal and compensation payment. This assumption is designed to take into account (smooth out) the effect of the seizure on the value of the land plot.

Secondly, the times lag between the date of assessment and the date of payment of compensation. For this period, because of market fluctuations, the growth of the real estate market and its fall under the influence of market factors, not related to the planned withdrawal or object of valuation, can occur. Till now the date, according to which the price of redemption is determined, and the date, in the prices for which it is calculated should both be divided. Then the first date, which determined the value, can be tied to the Civil Code and be the day before the registration of the decision on the seizure of the land plot; and the second

date, in the prices for which the redemption price is determined, is as close as possible to the actual day of payment of compensation, i.e., in effect, to make it the current date. This option allows the changes in the real estate market under the influence of factors not related to withdrawal.

Thirdly, in practice, it is possible to recommend to the expert-appraiser to calculate in each specific case the seizure of land for state and municipal needs and not only for them the lost profit in different ways, guided in advance by certain stages, and eventually choose the option that minimizes it, because in his calculations he proceeds from the prudence of the owner. The generalized list of steps for calculating the loss of profits includes: 1) determining the amount of cash flows that the rightholder would receive if his land was not withdrawn; 2) analysis of the financial and economic activities of the right holder; 3) analysis of the effect on the business of the seized land plot (real estate object); 4) determination of the period of restoration of disturbed production; 5) determination of the forecasted revenue stream; 6) determination of the forecast flow of expenditures (variables and constants); 7) calculation of cash flow; 8) determination of the discount rate; 9) discounting of cash flows. From the position of the economy, the real damage is described by the reduction (real or expected) of the owner's available property, in contrast to the lost profit, when his available property does not increase. Although it could increase if the property were not seized.

5 Conclusions

In conclusion, our study shows the current situation with the stated problem, as well as its dynamics urgently requires further development and implementation of a clear organizational and legal estimation algorithm value of land alienated for state and municipal needs. This gap in legal acts of the Russian Federation, in our view, could be explained by the lack of a specific public authority, which would carry out the removal of land.

Meanwhile it was a precedent, when the legislator specified the body - the administration of Krasnodar region supervised preparation for the Olympic Games, adopted a decision on withdrawal of land plots, as well as organized the withdrawal process itself for the specific purposes of locating Olympic facilities of federal significance to January 1, 2008; and the State Corporation for the Construction of Facilities and Development of the City of Sochi as a bugle climatic resort ("Olimpstroy") financed measures to seize these real estate assets into federal ownership [15,16].

As for the problem of justifying the redemption price, a number of organizational and methodical decisions should be implemented to solve it:

1) the subsequent development of the already established normative and technical basis, i.e. fixing principles for determining the redemption price (equivalence of value, balance of private and public interests, regulation of withdrawal procedures, transparency and flexibility);

2) maintaining high-quality methodological support for such work, as well as the possibility of their implementation in practice through the establishment of a reliable mechanism for resolving conflicts between the parties in the process of withdrawal of land plots, mostly related to the issues to determine the market value;

3) creation of a centralized land acquisition system for state and municipal needs, which provide for the possibility of forming a single public authority for the removal of, for example, a special commission under the Ministry of Construction and Housing and Communal Services of the Russian Federation or the extension function exists, for example, the Russian Register, which will provide a single process withdrawal in preparation for publicly significant events;

4) Establishment of the list of competencies of such a body, including permanent monitoring, collection and processing of data on land plots, preparation and conduct of the

seizure procedure. This will avoid situations related to absence of information in conditions of increased urgency;

5) fixing the methodology for determining the redemption value of land for state and municipal needs for the foreseeable future in order to ensure the unity of calculations and the comparability of their results. It is advisable, because one approach will give the necessary stable way for the work of expert assessors.

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