

ASPECTS REGARDING CADASTRE IN ROMANIA

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Abstract

Cadastre represents a bridge from terminology to practice of the principles of law, rules and provisions found in the Law on cadastre and real estate publicity no.7/1996, as revised by Government Emergency Ordinance no.41/2004, approved by Law no.499/2004. Maybe, cadastral measurements have not represented and do not represent a purpose in itself, but they have established the first steps in the procedures of tax levies, having as main purpose the setting of limits to the land properties.

Keywords: cadastre, law, land register, right,

1. INTRODUCTION

As a result, the records system of cadastre aims at recording in the real estate publicity registry, the basic entities of this system being the plot, the building and the owner.

Considering the three elements, we can establish the functions of cadastre, namely: the technical function performed by the determination, based on measurements, of the position of configuration and size of the areas of plots of land and buildings per destinations, categories of use and owners, the economic function, which underscores the technical elements necessary to establishing the taxation value of the buildings and the calculation of taxes on the income made from real estate transactions and the legal function, which is performed by the identification of the owner based on the title deed and by recording in the Land Registry. This recording in the Land Registry represents the object of real estate publicity which comprises the legal documents and facts referring to the buildings in the same administrative area and which is performed by the local offices (Office for Cadastre and land Registration.) for the buildings located under their jurisdiction.

2. MATERIAL AND METHOD

Considering the basic element of cadastre, namely the area, we put forth into discussion and for scrutiny the case subject to judgment where it is pointed out that any recording in the land registry can be made only on the basis of an authentic document or by a court decision, in law being applicable the provisions of art.17 of Law no. 115/1938, which states that: The real rights on buildings can be acquired if and only if between the giver and the taker of the right it is an agreement of intention on the set-up or alienation, based on an indicated case and the set-up or alienation was recorded in the land registry.

Real rights shall be extinguished only if the write-off has been recorded in the land registry with the consent of the holder of the tile deed; the consent shall be of no use if the right is extinguished by the elapsing of the term stated in the registration or by the death of the holder.

If the right to be written off has a lien in favour of a third party, the write-off shall be made by keeping the right of the respective person.

The court decision, or, in the cases provided for by the law, the decision of the administrative authority shall replace the agreement of intention or consent.

In such a case, it is pointed out that the area of the claimant's building has not be altered, but its shape has been, thus being amended a mention in the land registry page, which has a correspondent in the cadastral map accompanying and also completing the land registries.

As provided for by the law, such a change can only be made with the consent of the owner listed in the land registry or by a court decision replacing such consent, which cannot be found in this case.

3. RESULTS AND DISCUSSIONS

Under civil ruling no. 2149/2007 of Oradea Courthouse, it has been allowed the action formulated by the claimant H.D. in contradiction with the Romanian State by C.L.N., H.I., D.D., G.P. and S.P. The court has ascertained that the dismemberment was null and void as made in the case by the defendants of row 2-5 on the plots of land listed in Land Registry 1681 Nojorid , no. top. 482/3 and in Cf 1 Nojorid no. top.482/17, operated in the Land Registry by decision no. 15.166 /19999 (civil ruling no.2149/2007 of Oradea Court).

It has also ascertained that the subsequent acts were null and void, respectively the subsequent concession contracts no. 1105, 1106 and 1108/1999, according to the principle *accessorium sequitur principalem*- the item or accessory contract follows the legal path of the main item or contract and it has been ordered that the Land Registry should restore the previous status.

In order to settle the case, the first instance court noted that with the Land Registry decision ruled by Oradea Court it has been ordered that plot no. top. 482/13 should be dismembered into two plots with top. nos. 482/16 and 482/17, and the latter has been further dismembered into five plots of land with new topographic nos., namely 482/18, 482/19, 482/20 , 481/21, 482/22 .

As a result, it has been ordered that top. no. 482/18 should be recorded in Land Registry 1840 Nojorid, having as owners the Romanian State over the land under B.1 and the said D.D. and D.D. owners of the stables under B.3-4, with right to use the land for a period of 49 years, as concession recorded under C.1.-C.2.

The newly formed top. no. 482/19 representing land with stables has been recorded in Land Registry. 1841 Nojorid, the property right over the land being registered for the Romanian State and the property right over the stables in the name of the defendant G.P., having the right to use the land for 49 years as concession.

The newly formed top. no. 482/21 representing land with stables has been recorded in C.F.1842 Nojorid, the property right being registered in the name of the Romanian State and property right over the stables in the name of the defendant S.P., having the right to use the land for 49 years as concession.

Meanwhile, the property right over top. no. 482/3 representing pastures with animal stables, grains warehouse, scale, rotating bridge, water drilling, the land with the area of 7790 sq.m. Has remained recorded in Land Registry 1681 Nojorid, in favor of claimant H.D., with buyback right, being registered under B.5.

In this case, a topographic expert appraisal has been ordered.

The conclusions of the Report have determined the Court to note that under the challenged dismemberment layout, the status of the claimant property has been altered, so that in accordance with the provisions of art.797 Civil Code, the defendants could not commence the dismemberment of the immovable asset with top. no. 482/3 unless with the consent of the owner of the later immovable asset, respectively, of the claimant.

As a result, the Court noted that both the dismemberment act and the subsequent acts are null and void.

This decision was appealed by the defendant S.P., who requested that the challenged decisions should be changed in full, in the sense of overruling the service of process, as ungrounded.

Under civil decision no. 739/A of September 12, 2007 ruled by Bihor Oradea Courthouse in brief no. 4480/271/2000, it was overruled as ungrounded the civil appeal made by the appellant S.P. in contradiction with the respondents-in-appeal H.D., the Romanian State through C.L.N. , H.I., D.D. and G.P. against civil decision no.2149 of March 26, 2007 ruled by Oradea Courthouse, which was fully maintained, obligating the appellant to pay court expenses in amount of RON 600 in favour of respondent-in-appeal eH.D..

In order to rule this decision, the court of appeal noted that the land registry decision no. 15166/1999 by means of which there were dismembered the topographic numbers subject to this case was based merely on a certificate issued by Nojorid Town Hall, the concession contract, the report of auction sale and the dismemberment layouts nos.10531/1995 and 8929/1998 endorsed by OCOT Oradea, without the existence of any authentic act of dismemberment and sharing concluded with all the co-owners in front of a notary public.

However, the necessity of concluding an authentic dismemberment act, under the conditions where the immovable asset represents in kind land, is an "ad validitatem" form provided by the law, reason for which, in the absence of this authentic act, a mere dismemberment layout, even if signed by all co-owners, cannot stand in place of a title deed able to be registered for the purposes of Law no.7/1996.

In respect of the subsequent acts, in the case there are applicable the provisions of art.38 of Law 7/1996, according to which the operations of adjusting the records in the Land Registry have effects also on the subsequent documents within 3 years, irrespective of the good or bad faith of the sub-acquirers in exchange for consideration.

This decision was subject to a second appeal by the defendant S.P., who requested that the second appeal should be allowed, the decisions should be amended and the claimant's action, overruled as ungrounded.

In grounding the second appeal, it was claimed that the courts had erroneously noted the inexistence of authentic documents able to be registered as long as in the registration, there had been used the concession contract, the report of selling in auction, the certificate issued by Nojorid Town Hall and the dismemberment layouts endorsed by Office for Cadastre and Land Organization Oradea, all these being able to amend the records in the Land Registry.

At the same time, it was claimed that by the annulment of the concession contracts and subsequent acts, the courts had ruled unlawful decisions, as the claimant being a third party to them had had no interest to request the cancellation of the concession contracts.

After analyzing the decisions subject to the second appeal from the point of view of the reasons invoked, Bihor Court of Appeal noted that such decisions are legal and grounded in all respects.

The courts had been fair in noting that any record in the land registry could be done only on the basis of an authentic act or by a court order, the provisions of art.17 of Law 115/1938 stating that the real rights recorded in the land registry could be amended only with the consent of the holder or by a court decision replacing such consent.

Even if the area of the immovable asset owned by the claimant, identified under top. no. 482/3 Nojorid, was not changed in respect of the area, its shape was changed, being thus amended a mention in page of the Land Registry, sheet A, which has a correspondent in the cadastral map accompanying and completing the land registers.

The dismemberment act registered with Land Registry 1681 Nojorid is not legally enforceable against the claimant, but prejudiced a real right of the claimant, therefore the courts fairly ordered the annulment of the registration decision and the corresponding rectification of the Land Registry.

Also, the courts fairly ordered on the basis of art.327 of Law 115/1938 /(art. 38 of Law 7/1996) the cancellation of the subsequent acts concluded between the defendants, as they prejudice the property right of the claimant as long as they regard the immovable assets resulting from the dismemberment declared null and void by the courts.

For these reasons, based on art. 316 with reference to art. 296 of Civil Procedure Code, the second appeal of the defendant was overruled as ungrounded.

Based on art. 274 of Civil Procedure Code, the Corut obligated the second appellant to pay RON 600 as trial expenses in favour of the respondent-in-appeal H.D.

4. CONCLUSIONS

In conclusion, cadastre, as a unitary and mandatory system of technical, economic and legal record of all immovable assets on the administrative area represents a meeting point, the cadastre and real estate publicity requiring the knowledge and analysis of all that means the interpretation of several fields by an inter-dependence but also by a convergence in the sense of a subtle knowledge of everything that means patrimony, real rights, private property, land, regulations of the Civil Code in the field, cadastre and cadastral legislation, land measurements etc.

5. REFERENCES

- *** Cadastre and real estate publicity Law no. 7/1996 wich regulates the system of record of all land and other real estate throughout the country
- *** Civile code 2011
- *** Government Emergency Ordinance no. 41/2004 amending and supplementing the Law on cadastre and real estate advertising 7/1996