

LEGAL ASPECTS OF STATE CADASTRAL REGISTRATION OF LAND PLOTS FOR THE ALLOCATION OF LINEAR FACILITIES IN THE RUSSIAN FEDERATION

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Abstract

There are still many drawbacks in legal regulation of construction, cadastral registration of linear facilities, as well as land management in the above-mentioned aspects in the Russian Federation, therefore this study is a theoretical overview and analysis of the existing legal framework. The definition of linear facilities had been incorporated in the City Planning Code of the Russian Federation only in 2016, thus a legal regulation of the issue at stake is of great significance at the moment. The key issues in the area of state cadastral registration and surveying are developing, including cadastral registration and registration of linear facilities and land plots as a united (integrated) complex object of real estate. The results of the research indicate the necessity of developing specific rules for the allocation, construction and reconstruction of linear facilities in addition to determining the legal status of land plots, where such placement takes place.

Key words: linear facilities, registration, cadastre, land, real estate

Introduction

In previous studies on the issue, the authors paid attention to the process of identification of a linear facility and problems connected with regulation mechanism of real burden (Averina L., Myamina I., 2016; Averina L., Vasilieva A., 2017; Averina L., 2017).

The City Planning Code of the Russian Federation implies that linear facilities include engineering and technical support networks, communication lines, pipelines, roads and other similar structures (City Planning Code, 2016). Linear facilities also include bridges, tunnels, overpasses and other objects, all included in the category of “similar structures”. At the same time, the Civil Code of the Russian Federation states that linear facilities are: “railways, power lines, pipelines and other” (Civil Code, 2013).

So, there is no single approach in definitions in the legal federal acts of the higher rank (Codes), which causes practical problems in methodology of surveying and cadastral registration.

Indirect definitions of the concept of linear facilities are contained in other regulatory and legal acts, but there is no unambiguous definition in the Russian legislation, and therefore a wide range of issues arise regarding legal regulation relating to linear facilities.

There are no profound studies on the issue in Russian scientific literature, especially in English in international journals (Nikulina M., Gorobtsov D., Pendin V., 2017) and most of them have appeared recently.

At the same time, operation of linear facilities requires full ownership of the land (roads, parts of high pressure pipelines and power grids), which should be ensured by the right that excludes the right of using them by the third parties: lease, permanent (unlimited) usage or ownership. Besides, most linear facilities do not prevent the use of land for a designated purpose (underground pipelines and communication lines, aboveground cables and wires), although their presence on the site gives rise to certain inconveniences for an owner of the land. The degree of restrictions on the usage of land is different, which should be taken into consideration in deciding the issue of choosing the form of registration of rights on the occupied land: lease, property or easement as a type of land rights for allocation of linear facilities.

Methodology of research and materials

The paper is based on the analysis and summary of the scientific literature, the analysis of legal acts such as the Civil Law, City Planning Law, Cadastre Law, Real Estate Law (federal acts), methodological acts, instructions and recommendations of specialized federal agencies and bodies (such as the Real Estate Agency, Ministry of Economic Development, etc.), monographic, comparative, descriptive, and logical generalization.

Discussions and results

When deciding whether an object (facility) belongs to linear objects (facilities), it should, first of all, establish its correspondence to the main features of linear facilities (Letter of the Ministry of Economic Development of Russia, No 10571-PC / D23i, 2013):

- 1) the length of the object is much larger than its width;
- 2) the object is a structure (not a building, etc.);
- 3) the purpose and classification of the object depends on the connection with the land (aboveground (air), surface (surface), underground).

At present there is no legal act regulating issues of cadastral registration of linear facilities. However, the specific issues of such registration are explained in the following documents:

- 1) Letter from FGBU "FKP Real Estate Agency" of July 12, 2013, No. 08-2246-KL "On the direction of information";
- 2) Letter No. 10571-PK / D23 of the Ministry of Economic Development and Trade of the Russian Federation of May 29, 2013, "On the Procedure for Implementing State Cadastre Registration for Certain Types of Structures (Linear and Other)".

The cadastral registration of land plots under such facilities is characterized by certain features. The main problem in the formation of land plots under linear facilities is their long extension and passage through a large number of land plots.

Within the city area linear facilities are, as a rule, above or below another linear facility, they are located mainly along the streets. Besides, there can be several such objects on one street: the carriageway of the street, the sidewalk, tram tracks, the trolleybus line, the water pipe, the electric cable, the street lighting wires, the fecal and storm sewerage, communication cables, etc. In this case, there is no possibility to form a separate land plot for each of the linear objects in accordance with the requirements of land legislation. If someone tries to form and register such a land plot, then the whole land should be divided into many plots of shared ownership of the owners of different objects and a lot of plots that are rented by several persons in places where they coincide or intersect, which is practically impossible. As a result, it is practically impossible to resolve issues with all these entities uniformly and simultaneously aiming the purchase of land plots with linear facilities or making lease agreements for such land plots.

The need for mass land surveying of land plots occupied by linear facilities leads to a significant rise in the cost and time-stretching of the land surveying process. The lack of a real opportunity to formalize rights to above-mentioned land plots hinders the state registration of rights on them, because the existing procedure of state registration of rights on immovable property requires that all comprehensive data about all land plots on which the facility is located should be mentioned in documents applied for this purpose to the Real Estate Agency.

Registration of a land plot for the construction of linear facilities on land plots in private ownership or in leasing (on the rights of third parties) is carried out as follows.

It is necessary to issue a preliminary lease agreement (an offer) or sublease with the consent of the owner, where one should indicate the area of the land plot, the purpose of its formation and the location, that is, to form a part of the land plot for subsequent transfer to lease. Based on this preliminary contract, a land surveying plan is being prepared for setting up a land plot for cadastral registration. This is the simple and legally stipulated way, since the size of the land plot for construction, as a rule, does not correspond to the size of the land plot for its operation, and, after the linear object has been entered, it can be easily removed from the register after the termination of the lease agreement. Then land plots for operation of the facility should be further delimited from the original land plot.

Consequently, owners, tenants and users demand compensation for losses, which entails additional costs for developers, not only for the compensation itself, but also for payment of services for calculating the compensation itself (loss assessment).

Large developers pay only agreed amounts determined in accordance with the legislation, since the financing of construction, reconstruction or allocation comes from the federal or regional budget and requires an independent assessment, that is, the preparation of an assessment report, as well as determining the market value of the lease. The lease or sublease for a land plot under a linear facility is conducted only after determining the cost of rent and setting the part of land for state cadastral registration.

It is not uncommon for linear objects to pass through agricultural lands that are in common ownership. In this case, it is necessary to formalize the land plot allocation, register the right to it and only then

form a part on it and enter into a lease agreement (Federal Law of July 24, 2002, N 101-FZ (as amended on 03.07.2016) "On the circulation of agricultural land").

However, at present there are such "shared" lands, where the shares are not allocated, and there is no possibility to find an interest-holder. In this case, local authorities can recognize these lands unclaimed through the court, register the right of municipal property, and then lease for construction. Thus, several land plots are being drawn up for the construction of a linear facility, and, accordingly, several lease contracts.

It is possible to legislate a land plot for placing an existing linear facility in two ways: by a strip for the entire linear facility (on all its duration), regardless of the connection with the land or isolated areas, only to the elements above ground level (under supports). Most land users register land plots only to the above ground part of the structure (in order to save money on taxes, rent, cadastral engineers' services). From the point of view of the cadastre, this is a simple procedure, however, from the point of view of legal relations with rightholders of land plots, it is not entirely correct: conflicts between the parties arise quite often, because access is necessary for maintenance and repair of these elements.

In this case, the best option is to establish an easement, but in practice it is not always clear which easement is required to be established (private or public), as it is not always clear whose interests are more concerned.

In this case, a private easement is established in accordance with the civil law, i.e., an agreement on easement and a public easement - by law or other legal act.

The Department of the Ministry of Economic Development drafted the Federal Law "On Amending Certain Legislative Acts of the Russian Federation in Connection with the Improvement of the Regulatory and Legal Regulation of Easements" (2007). The principal innovation is the possibility of establishing public easements on land plots for the placement of communication lines and power lines, pipelines and other linear structures. It is also allowed not to form land plots (to produce cadastral registration) for the purposes of establishing a public easement; in this case, surveying will not be required.

It should be noted that issues with the definition of payment for easement are also resolved ambiguously. An easement cannot be established for the purpose of constructing linear facilities, but it is provided only for its repair and maintenance (Federal Real Estate Law, 2015). It is not necessary to consider easements as the only correct solution in the issue of optimal obtaining of land rights for placing linear facilities. However, in some cases they can remove existing problems.

The necessity of cadastral registration of land plots is indisputable. It is important to note the problems of cadastral registration of land plots under linear facilities. The process of their cadastral registration has some specific features. At present, it does not have a clear regulatory framework, therefore cadastral work is complicated, the terms of cadastral registration increase and problems arise with construction, reconstruction, deployment and operation of the linear facility itself.

Due to the fact that the majority of such linear facilities are elements of the infrastructure of populated areas and production, the time delays lead to a halt in the process of allocation, operation of the linear facility and other related problems, which generally reduce both the social and investment attractiveness of the territory.

Conclusions and proposals

1. It is necessary to develop specific rules for the construction and allocation of linear facilities at the federal level of the legal regulation instead of letters and instructions from different legal bodies of the state, concerning only specific matters of the process, related to the competency of such a legal body.
2. The status of land plots of different categories and formation procedures should be determined to reduce conflicts between people who use these land plots (house owners, landlords, tenants and others) and owners of linear facilities.
3. Analysis of the rules permits to conclude that an easement can be established not only for renovation and maintenance of linear facilities but also for construction purposes.
4. The Federal Real Estate Cadastre Law currently does not allow the linear facilities to be specified as an object of real estate, because the linear facilities are considered to be part of land and, thus, constitute complex (unique) real property. So, linear facilities are considered to be a real burden.
5. The definition of linear facilities should address several issues: the parameters of the facility, characteristics of connection with the land plots. The definition should be unique in all federal acts and, first of all, the Civil and City Planning Codes of the RF.

6. The degree of restrictions on the usage of land is different, which should be taken into consideration in deciding the issue of choosing the form of registration of rights on the occupied land: lease, property or easement as a type of land rights for allocation of linear facilities. The suggested at present abolishment of categories of land should decrease such difficulties in the registration procedure.

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