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Research paper

Phenomenology of Collective Will in the Management of Shared Agricultural Land Plots

Victor Aleksandrovich Mayboroda[1]*

[1]Northwestern Institute of Management (branch of RANEPA), Sredny Avenue of Vasilievsky Island, 57/43, Saint Petersburg, 199178, Russia

**Corresponding author E-mail: mayboroda.v.a@list.ru*

Abstract

This paper addresses the advent of a new stage in the development of relationships associated with the management of agricultural land plots that are in shared ownership. The social group that emerged based on principles of the initial privatization, which was characterized by value-based unity based on collective labor in agricultural production, has, in the course of time, been supplanted by a new type of owners – those not characterized by value-based unity. The method for managing a common property – through general meetings – remains the same. There has yet to be put in place a legal instrument for dealing with the socially inhomogeneous makeup of the owners group that would make it possible to form the collective will of general meetings in accordance with the objectives for managing a property, as the very inhomogeneity of the makeup precludes the possibility of unity of management objectives. In this situation, the phenomenon of collective will lacks proper legal protection from usurpation by an economically strong entity. In this regard, the author proposes carrying out a differentiation of the types of disputes and procedural methods for resolving those disputes.

Keywords: *Agricultural land plot; Civil/legal society; Collective will; General meeting; Shared ownership.*

1. Articulation of Issue

Since 2002, following the implementation of institutional reform on land relationships, there has been in effect Federal Law No. 101-FZ On Agricultural Land Turnover of June 24, 2002 (hereinafter 'Law'). The reform was focused on changing the form of ownership of and allocating agricultural land plots among collective farm participants and state farm workers proportionate to their length of service at a collective farm or a state farm, respectively. Afterwards, to the group of persons entitled to obtain a land allotment they added workers of the social sphere in the countryside – healthcare, education, culture, etc. As a result of the privatization carried out in the period 1991–1993, there emerged a class of owners of land allotments who collectively possessed the right of ownership of agricultural land plots. The right of ownership means that the owner possesses the powers to exercise control over their property [1]. With that said, with the same persons the right of ordinary property privatization, just like with participants in voucher privatization, implied a transformation to shared ownership of the means of production: immovable property, agricultural machinery, etc. [2]. The subsequent dynamics of the development of social relations led to the preservation of shared ownership of land – but it also led to the actual loss of the shared form of ownership of the assets of privatized collective and state farms [3]. The very passage of time has led to a change of generations – thus, today those in shared ownership of land plots are persons other than participants in the initial privatization – mainly heirs – in a manner established for inheritance in civil legislation. New owners of land allotments are not carriers of the consciousness in which the value of the collective form of agricultural production was enshrined. A result of the lack of a dominant value in mass consciousness – the advantage of employing the collective form of economic management in agricultural production – is differentiation among the social group of owners of land allotments, which is what is taking place today. In the author's view, this kind of differentiation is a new social relationship regulating which is a legislative issue in the present-day development of the system of regulating agricultural land turnover.

In a legal sense, the above Law in its current form equates the concepts of land allotment and a share in the right of common ownership of a land plot. This approach makes it possible to employ not only special rules for the management of land plots that are in shared ownership in the event there are more than five owners but also employ some of the rules from the civil legislation of the Russian Federation, not regulated in part by the above law.

The aforesaid makes it possible to conclude that, firstly, present-day proprietors of land allotment are not equated with owners of a different type of immovable property or a share in the right of ownership of a different type of immovable property. The land is in shared ownership, while the means of tillage are owned by the agricultural producer – and those are two different groups of owners. With that said, the assets (both the actual land and the means of tillage) were obtained by the above groups not as a result of labor-based participation but based on other civil/legal grounds and constitute for them asset-related, not labor-related, value. Secondly, owners of land allotments do not constitute a homogeneous group in a social sense, which they were in the early 1990s. These are not persons who were creating a collective property together, but persons characterized by evident asset-related, social, and educational inequality, which is evident to themselves as well. Thirdly, dissimilar fundamental values inevitably have impact on decision making in managing a shared property, which, in turn, substantiates the need for proper analysis of and relevant proposals on changing the management mechanism, which is represented by general meetings of the owners of a land plot.

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2. Autonomy of the Individual Will of Participants in the Relationships and the Commonality of Collective will

Pursuant to Article 1 of the Civil Code the Russian Federation, a key principle in Russia's civil legislation is that citizens (natural persons) and legal persons obtain and fulfill their civil rights through their own will and in their interests. They are free to establish their rights and obligations based on an agreement and determine any terms of the agreement that do not contravene legislation.

Article 2 of the Civil Code of the Russian Federation provides that relationships in civil legislation are based on the participants' equality, autonomy of will, and material independence. Relationships being predicated on the equality of physical and legal persons are aligned with the constitutional tenet on the equality of all before the law and the judiciary, as stated in Part 1 of Article 19 of Russia's Constitution. The very idea of autonomy of will, in establishing the arrangements, is accepted a priori [4].

However, the constitutional principle of equality by itself does not rule out the possibility of establishing different legal conditions for different categories of persons at law. What is important is that such differences must be enshrined in the law and be based on the objective characteristics of relevant categories of entities.

Parties to a relationship dealing with agricultural land turnover have been named in Item 1 of Article 2 of the Law, whereby the group of participants in relationships regulated by the above federal law includes citizens, legal persons, the Russian Federation, the constituent entities of the Russian Federation, and municipal units.

Foreign citizens, foreign legal persons, persons without citizenship, as well as legal persons in whose authorized (share) capital the share of foreign citizens, foreign legal persons, and persons without citizenship constitutes over 50% are, in actual fact, an isolated group of entities – with the equality of their rights relative to the ordinary circle of entities not guaranteed. These persons are not empowered to own agricultural land plots as a property. In fact, they cannot own a share in the right to ownership of those land plots either, based on established practice in applying the above law [5].

In actual fact, the Russian Federation, compared with other public/legal entities, follows the principles of English law in that the owner of land owns everything up to the sky and down to the center of the earth [6], dividing the earth's depths and the air into separate objects of regulation.

Other ordinary entities – natural and legal persons – are restricted by the Law in ownership rights with regard to the volume of rights in relation to other types of immovable property. These restrictions deal with not just the impossibility of changing the type of permitted use of parcels of arable land within agricultural land plots but also with the establishment of limit in the size of land property owned by a single person [7]. With that said, a public/legal entity enjoys a set of advantages relative to a private one (e.g., a preferential right to acquire a land plot [8], a right to seize a land plot for public needs [9], etc. That is the entity-related makeup of these relationships has distinct properties which distinguish it from the ordinary legal standing of participants in civil turnover. Based on this, the articulation of the issue about the existence of immanent properties in the formation of the will of entities involved in these relationships is not only of an economic nature in terms of substantiation but also provides the regulatory/legal preconditions for separating these properties into a separate subject for study.

The law establishes a special regulation on that the possession, use, and disposal of a land plot owned by 5 or more participants are governed by decisions by participants in shared ownership that are made at their general meeting. Among the general regulations with respect to this special rule is Item 1 of Article 246 of the Civil Code of the Russian Federation and Item 1 of Article 247 of the Civil Code of the Russian Federation, pursuant to which the possession, use, and disposal of a property that is in shared ownership are governed by an agreement among all of the participants. In the event the owners fail to reach an agreement, the possession and use of property that is in shared ownership are governed in a manner established by the court.

The Law's special regulation joins all the powers of the owner of a share in the right to shared ownership into a single fulfillment procedure – through decisions by the general meeting of participants in shared ownership.

For the purposes of this study, it is worth noting that the Law provides two mechanisms for fulfilling the powers of possessing, using, and disposing of a land plot that is in shared ownership:

1) powers under the ambit of the general meeting, which are fulfilled in accordance with the procedure for conducting a general meeting and if there is a quorum sufficient for conducting it;

2) other powers on the possession, use, and disposal of a land plot through entering into an agreement on the procedure for the possession, use, and disposal of a land plot. In entering into this kind of agreement, there must be expressed the positive will of each of the participants in shared ownership, as opposed to expression of will on issues under the ambit of the general meeting of participants in shared ownership.

A person who does not agree to the terms of an agreement has a right to separate irrespective of the consent of a lessee of the land plot. That is collective will in this rule is combined with individual interests (will) through an exception from the general rule for a lessee of the land plot who, with his consent (or nonconsent) to separation, preserves the conditions of certainty in relation to the site leased by him – the land plot. The dichotomy of collective/individual will (interests) toward the lessor's deal is resolved by the legislator through the lessee.

Thus, the above method of regulation is indicative of two forms of will expression: individual (interests) and collective will. In the context of individual interest there is enshrined in law its freedom in terms of entering into an agreement by the above method for regulating the key principles of civil legislation, while in the context of collective will, the procedure for its formation, and the expression of an explicit provision on its autonomy and freedom in terms of entering into an agreement, we will not find any rules about it either in the general principles or in special regulations.

Of a similar nature is speculation about autonomy of will. An individual owner of land allotment owns it in full measure, while in the case of collective expression of will personal autonomy of will is superseded by the collective expression of the will of the majority of participants in the general meeting, the fate whereof should be followed by the minority, with one single exception that is based on the fulfillment of the principle about the freedom of contract – nonconsent to the terms of the lease agreement.

Collective will in managing a shared property (an agricultural land plot) is formed through the restriction of the individual autonomy of each of the participants in shared ownership of a land plot. This structure is a doctrinally developed one in corporate law but not in the context of civil/legal communities, which include participants in shared ownership of a land plot. In corporate law, this kind of supersession of autonomy of will by collective will is explained by economic viability in managing a company [10]. However, participants in a corporation voluntarily make a sacrifice of autonomy of will, losing material independence in terms of contributing to authorized (share) capital with their will. The participants in shared ownership of a land plot are deprived of the attribute of autonomy of will by the very law regulating relationships on agricultural land turnover in the event of the minority following the will of the majority.

In this regard, it is also especially worth noting the circumstance that participants in shared ownership of a land plot, unlike a corporate community, are not based on the universal value of deriving profit using a property they own. As was noted above, it is now an inhomogeneous group of persons without a single value platform for unifying the will-based association at the general

meeting. If there were a unity of values, it would be fair for the minority to follow the will of the majority, the way it is fair in a corporate association. However, in the case under examination participants in shared ownership may pursue different objectives: some are attracted by the worth of the size of rent, while others, on the contrary, may view the rate of rent, the regularity of its payment, and other circumstances in a negative light, as they are pursuing the objective of buying land allotments and then separating into a separate land plot. And everybody knows the less stable is the rent, the lower is the price of the land allotment. The third group deems a plot in shared ownership to disproportionately combine crop lands, hayfields, pastures, fallows, and other acreage and may pursue the objective of separating the most valuable part out of the commonly owned property, beating others to it.

Thus, in relations of shared ownership belittling the autonomy of the will of the minority in favor of the will of the majority is not characterized by a unity of unifying values and cannot be fair in relation to the entire association.

3. Procedure for the Formation of Collective Will

The law provides two major forms of formation of collective will: the general meeting of participants in shared ownership of a land plot *and* opposition to a project for demarcating the land plot proposed by a participant (a group of participants). With that said, the issue of renting out a land plot that is in shared ownership cannot be resolved in any way other than through the general meeting of participants in shared ownership.

The general meeting of participants in shared ownership cannot be subsumed under corporate relations for an obvious reason: there is no corporation [11]. In this regard, general meetings must be viewed as an organizational element in the legal standing of one of the parties to the deal in the lease agreement – the lessor. General meetings are characterized by organizational unity but not unity of objectives [12].

Pursuant to Subitem 1.1 of Item 1 of Article 8 of the Civil Code of the Russian Federation, civil rights and obligations can also emerge out of decisions made by the general meeting in cases provided for by the law. With that said, based on Item 2 of Article 181.1 of the Civil Code of the Russian Federation, a decision made by the meeting, with which the law associates civil/legal consequences, engenders legal consequences at which the meeting's decision is directed for all persons who had a right to take part in the meeting (participants from a legal person, owners, lenders in bankruptcy, and other participants in a civil/legal community), as well as for other persons if that is provided for by the law or follows from the essence of the relationships. Thus, civil legislation provides that one of the mandatory conditions for recognizing the meeting's decision as a basis for the emergence, modification, or termination of civil rights and obligations is that the law should stipulate a set of mandatory civil/legal implications for all those authorized to take part in a meeting.

Item 5 of Article 14 of the Law provides that a participant in shared ownership who expresses disagreement at the general meeting of participants in shared ownership over the renting out of a land plot that is in shared ownership or over certain terms of the agreement for renting it out is empowered, in the event it is going to be rented out, to allot a land plot against land allotments the participant owns without a general meeting getting conducted. With that said, the consent of a lessee of the land plot or a mortgagee holding the right of renting the land plot to allotment against land allotments within the land plot is not required and the lease agreement or the pledge of rights to lease in respect of the allotted land plot is discontinued.

The aforesaid makes it possible to conclude that, by its nature, the general meeting of participants in shared ownership of a land plot differs from corporate meetings or other types of meetings by civil/legal communities, as in the context of the lease of a land plot and the pledge of rights to lease by itself it not only acts as a basis for the emergence of civil rights and obligations, but the procedure for conducting it, too, is a basis for the emergence and (or) discontinuation of civil rights and obligations.

Therefore, this type of meeting, as no other type of meeting, requires the voting method, as a way to form collective will.

Pursuant to Item 8 of Article 14.1 of the Law, decisions are made by the general meeting by open voting. With that said, the Law provides that a decision is considered as made if it has been voted for by general meeting participants who in the aggregate own over 50% of all shares owned by owners attending the general meeting (provided that the method for determining the size of a land allotment permits juxtaposing the shares in the right of shared ownership of that land plot) or by the majority of general meeting participants.

Open voting is an antithesis to secret voting, which implies the use of means of concealing the process of individual will expression, i.e. voting cards, voting booths, etc. The openness of voting means that there takes place a consolidation of voters at the physical level. Persons authorized to take part in a general meeting jointly express their will with a common movement – raising a hand, raising a registration document, etc. That is during the process of open voting general meeting participants are in unity – they can either approve an item on the day's agenda or reject it [13]. In fact, it is the general meeting that is the only possible way to achieve consensus over the strengths and weaknesses of a land plot, including with respect to an allotted land plot in the context of a parcel of land that remains in common ownership. Often, account is taken of the following factors: quality of the arable area, availability (lack) of infrastructure, how long ago fertilizers were used and their quality, availability and quality of windbreakers, size of the crop cage in the context of available agricultural machinery, etc. All these circumstances must be grouped based on the 'for' or 'against' principle, which inevitably helps foster short-term social community, predicated on the unity of interests [14].

Summing the aforesaid it may be concluded that the legal nature of general meetings with regard to resolving the issue of renting out a land plot, which combines the formation of collective will and the possibility of opposition on the part of individual will, is of a dual nature. The meeting's decision on this kind of issue is concurrently a basis for the emergence of rights and obligations on a lease deal between lessors and lessees and a basis for the emergence of a property right to a future land plot, which is assumed to form out of the land allotment (land allotments) of a person who voted against entering into a lease agreement or some of its terms.

In the context of resolving issues related to allotting a land plot, the general meeting is exclusively a basis for the emergence of rights and obligations.

The second form of formation of collective will is provided for by Item 14 of Article 13.1 of the Law and represents entering opposition with regard to the size and location of the boundaries of a land plot allotted against a land allotment. In this case, in a formal sense, opposition is individual. But in actuality these objections are aimed against the belittlement of shared ownership through allotting shares out of it, i.e. they apparently also act as an expression of collective will, even if they are raised in an individual manner. A person who raises objections is a proponent of shared ownership and is for the existing system of justice on managing a shared property. Participants in shared ownership are united not by physical unity in voting but by common value. And this community is of a permanent – not short-term – nature.

The aforesaid helps conclude that, irrespective of the manner in which collective will is formed, it has dominant significance with respect to the making by the owners of land allotments of a deal with a land plot they own and in that sense is a basis for the emergence of rights and obligations. Collective will in this case is a property of an obligational relationship. In the event of the owner of a land allotment (land allotments) voting against the terms of the lease agreement, this kind of decision, made by them at the general meeting, is a basis for the emergence of rights to a future

thing – a land plot that is subject to formation. And this kind of individual will is a basis for the emergence of a proprietary legal relationship.

From a standpoint of civil regulation, this kind of division is wholly aligned with the economic essence of the above decisions. The first ones may be characterized as decisions by economically dependent entities which are relying on the use of a property they own by a third party via payments by way of rent. The second group is, normally, represented by decisions by economically strong entities which are relying on their ability to conduct agricultural production on a land plot allotted. In essence, these are two differently directed positions: in the first case, it is about preserving the traditional socialist paradigm, while in the second one we can trace the realization by land allotment owners that they have a right to take possession of what they can exercise control over, deriving a benefit from it [15].

4. Conclusion

The aforesaid makes it possible to state with confidence that decisions by participants in shared ownership must be differentiated across a set of issues included in the agenda.

Firstly, economic issues that are based on the need for separation can be viewed based on an existing procedure but with the establishment of arbitral jurisdiction over this category of cases, as it is evident that it is not the makeup of the group of participating entities that are a determining factor but the merits of a dispute, a dispute about the separation of a land plot out of a shared property. Separation may entail economic consequences for those staying and for those who want to separate [16].

Secondly, issues related to renting a shared land plot represent a format of making decisions on managing a shared property and can be considered through a local government authority, by means of delegating to it the power to provide a land plot in shared ownership on the same terms and in the same manner as in the case of leasing out a land plot in public ownership, i.e. by way of auctions [17].

Thirdly, issues related to determining the fate of unclaimed land allotments, being, in essence, issues related to inheritance law, must be freed of economic pressure on the part of a person who uses the land plot, in which regard the rights of persons taking part in shared ownership must be protected through the notarial system, which will ensure the legitimacy of holding general meetings and forming collective will with regard to resolving that kind of issues [18].

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