

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 13 December 2001 No. 16-II

in the case concerning the review of the constitutionality of Article 16 of the Law of Moscow “On the Basics of Paid Use of Land in the City of Moscow” in connection with a complaint of T. V. Blizinskaya.

Moscow, 13 December 2001

The Constitutional Court of the Russian Federation composed of Presiding Judge G. A. Gadzhiev and Judges N. S. Bondar, N. V. Vitruk, A. L. Kononov, T. G. Morshchakova, Yu. D. Rudkin, A. Ya. Sliva, O. I. Tiunov, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of T. V. Blizinskaya, who submitted her constitutional complaint to the Constitutional Court of the Russian Federation, and her representatives, the attorneys A. I. Ignatenko and O. V. Krasovskaya, representative of the Moscow City Duma A. V. Krylov, PhD in Law, representative of the Mayor’s Office of Moscow A. V. Dmitriyev, PhD in Law,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 2 and 3, Article 3, Subsection 3, Section 2, Article 22, Articles 36, 96, 97, 99 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provisions of Section 2, Article 16 of the Law of Moscow “On the Basics of Paid Use of Land in the City of Moscow”.

The reason for the consideration of the case is a complaint of T. V. Blizinskaya about violation of her right to use and possess a land plot provided to her by the mentioned provision.

Having heard the report of Judge-Rapporteur V. G. Yaroslavtsev, statements by the parties, the expert opinion of I. A. Ikonnitskaya, PhD in Law, N. A. Syroyedov, PhD in Law; interventions of the representatives invited to participate in the hearings: T. S. Glazkova for the Commissioner for Human Rights of the Russian Federation, Judge V. P. Vasilevskaya for the Supreme Court of the Russian Federation, V. S. Fomichev for the Office of the Prosecutor General of the Russian Federation; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. T. V. Blizinskaya lives in the settlement of Kosino of the City of Moscow in a house located on a land plot with an area of 0.2291 ha. As follows from the submitted materials, the proprietary rights of her family to this land plot has existed since 1824 and documented since 1913. In 1963 T. V. Blizinskaya inherited the title and thus legally obtained the title to the house and the right to permanent use of the land plot.

In the course of re-registration of the land use rights, the right of life inheritable use was granted to T. V. Blizinskaya with regard to 0.06 ha of the land plot by the decision of the Working Commission of the Moscow Vostochny Administrative District Prefecture dated 6 June 1996, whereas the remaining part of the land plot was offered to her for a 49 years lease. T. V. Blizinskaya filed with the Preobrazhensky Inter-Municipal Court of Moscow an action for recognition of the right of life inheritable use of the whole land plot, which was rejected by the decision of 9 September 1997, *inter alia* with reference to the Law of Moscow “On the Basics of Paid Use of Land in the City of Moscow”. The cassation and supervisory complaints filed by T. V. Blizinskaya were rejected. The City Commission for Allocation of Land Plots and City Planning Regulation of the Moscow Government recognized the right of life inheritable use of T. V. Blizinskaya with regard to 0.12 ha of the land plot by its decision of 28 April 1999. The issue of the remaining part of the land plot was left unresolved.

In her complaint filed with the Constitutional Court of the Russian Federation T. V. Blizinskaya challenges the constitutionality of Section 2, Article 16 of the Law of Moscow “On the Basics of Paid Use of Land in the City of Moscow” of 16 July 1997 (as amended on 29 September 1999). The applicant believes that on the basis of its provisions a part of the land plot belonging to her was “seized”, which contradicts Article 36 (Section 3) of the Constitution of the Russian Federation stipulating that the conditions and rules for the use of land shall be prescribed by a federal law and Article 55 (Sections 2 and 3) precluding denial or derogation of the rights and freedoms of man and citizen and permitting their limitation only on the basis of a federal law fulfilling the constitutionally significant aims.

Accordingly, the subject matter of this case is the provision of Section 2, Article 16 of the Law of Moscow “On the Basics of Paid Use of Land in the City of Moscow” (Article 15 at the moment of enforcement) prescribing that the owners of the houses located in Moscow who have permanent registered residence in their houses are to be granted the right of life inheritable use to the land plots under these houses. At the same time, the area of such land plots is limited to 0.06 ha within the Moscow Ring Highway, and 0.12 ha outside the Moscow Ring Highway, and the land plots exceeding these limits are subject to lease.

2. Before 1990, under the condition of exclusive state property to land the only form of exercising the right to use and possess land plots by the citizens was permanent (without term) use which aimed at guaranteeing stability of the rights to land plots and real property located on them. Recognition of the right to permanent (without term) use of the land plot of the owner of a house located on it excluded arbitrary disposal of such land plot by any third person. Later, in the course of a land reform, both before and after adopting the Constitution of the Russian Federation, which guarantees the right of private ownership of land (Section 2, Article 9; Sections 1 and 2, Article 36), and in parallel to the process of restoration of private property, the legislator provided citizens with a possibility (at their choice) to continue using their land plots on the basis of the right to permanent (without term) use, right of inheritable life possession, right of lease, or right of temporary use, or to re-register the existing legal title to any other title. In any case, automatic change of legal titles to land was excluded (re-registration was performed upon the initiative of citizens themselves), with the same principle applicable to any limitation of the right to use a land plot due to abstaining from re-registering the existing title to the land plot.

This trend of development of the land reform was consistently followed in the federal legislation regulating the issue of re-registering the rights to land plots. Pursuant to the Law of the Russian Federation “On the Right of Citizens of the Russian Federation to Acquire as Private Property and Sell Land Plots for Subsidiary Farming, Gardening, and Construction of Individual Housing”, all citizens who had in possession land plots with an area exceeding marginal limits on the day of entry into force of the said Law were allowed to maintain their right to life inheritable use or possession of the part of the land plot exceeding the respective limits. The Decree of the President of the Russian Federation “On Implementation of Constitutional Rights of Citizens to Land” of 7 March 1996 provided that land plots allocated to citizens before 1 January 1991 under the right of inheritable permanent use, including those exceeding the marginal limits, which were used as personal subsidiary farming plots, collective gardening plots, or plots for individual and country housing, should be maintained by citizens in full. The Decree prohibited obliging citizens who had such land plots in possession, to buy them out or to rent them. Thus, regardless of whether the possibility to re-register the right to permanent (without term) use as the right of inheritable life possession was used or not, the citizens kept their existing land plots (which was applicable without any reservations to the applicant).

Regulation of the respective relations by the Land Code of the Russian Federation in force from 29 October 2001, as well grants every citizen the right to acquire, once and at no cost, a property title to the land plot which they possess under the right of permanent (without term) use or right of inheritable life possession (Section 5, Article 20, and Section 3, Article 21). The same approach is reaffirmed in the Federal Law “On the Entry into Force of the Land Code of

the Russian Federation” of 25 October 2001, which establishes no time limits for granting property titles to land plots which were previously allocated to citizens under the right of permanent (without term) use or right of life inheritable possession.

3. The constitutional principle of the-rule-of law state imposes on the Russian Federation the obligation to recognize, observe and protect the rights and freedoms of man and citizen as the supreme value, and implies establishment of a legal order capable of guaranteeing everyone state protection of rights and freedoms (Section 1, Article 1; Articles 2, 17, 18, and Section 1, Article 45 of the Constitution of the Russian Federation).

The Constitution of the Russian Federation having the supreme legal force and direct effect (Section 1, Article 15) sets out the basics which guide the state in the promotion and protection of the citizens’ rights, *inter alia* proprietary rights. At the same time Article 55 (Section 1) of the Constitution of the Russian Federation, provides that the listing in the Constitution of the Russian Federation of the fundamental rights and freedoms shall not be interpreted as denial or derogation of other universally recognized human rights and freedoms.

In the light of the mentioned provisions of the Constitution of the Russian Federation, the right of permanent (without term) use or right of life inheritable possession of a land plot under previous legal regulation had the function of a title to immovable property and was simultaneously a guarantee of the citizen’s title to the house located on such land plot. It allowed compensating to certain extent the absence of private ownership of land, and therefore this right should be regarded as providing the foundation for the life of people and aiming at creating conditions for life and free development of the individual. Accordingly, there is an established constitutional mechanism protecting this right from voluntary derogation or limitation, and it implies state guarantees to individuals who lawfully possess land plots which are not subject to expropriation under federal law.

According to Article 35 (Section 3) of the Constitution of the Russian Federation no one may be deprived of property otherwise than by a court decision. The constitutional interpretation of the notion of “property” used in this Article by the Constitutional Court of the Russian Federation leads to the conclusion that it covers not only the right to property, but also rights *in rem* (Judgment of 16 May 2000 in the case concerning the review of the constitutionality of certain provisions of Section 4, Article 104 of the Federal Law “On Insolvency (Bankruptcy)”, and of 3 July 2001 in the case concerning the review of the constitutionality of certain provisions of Subsection 3, Section 2, Article 13 of the Federal Law “On Restructuring of Credit Institutions”, and Sections 1 and 2, Article 26 of the Federal Law “On Insolvency (Bankruptcy) of Credit Institutions”. Consequently, Article 35 (Section 3) of the Constitution of the Russian Federation guarantees not only the right to property, but also rights *in rem* such as the right of

permanent (without term) use or the right of life inheritable possession of a land plot. The land plot is for its possessor precisely “his property” (which should be recognized by all other parties) and as such may not be expropriated other than by a court decision and only under the condition of prior and equal compensation.

This constitutional guarantee primarily designed for owners in no event may be interpreted as denying state protection of other recognized proprietary rights of citizens or impairing in any manner the possibility of such protection for lawful possessors of land. This is a basis of current civil law regulation: pursuant to the Civil Code of the Russian Federation property as an object of the right *in rem* is under legal protection according to the rules applicable to the right to property. The same applies to persons who possess property, including land plots, under the right of permanent (without term) use or right of life inheritable possession (Articles 216, 279, 283, 304 and 305).

As was highlighted by the Constitutional Court of the Russian Federation in its Judgment of 16 May 2000, this approach corresponds to the interpretation of the notion of “property” by the European Court of Human Rights, which is the basis for application of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court of Human Rights assumes that everyone has the right to freely use and own his property, *inter alia* within the framework of exercising rights *in rem*, which are also subject to protection under the mentioned Protocol (*Sporrong and Lönnroth v. Sweden*, Judgment of 23 September 1982, *James and Others v. the United Kingdom*, Judgment of 21 February 1986, Judgment of 30 May 2000 in *Carbonara and Ventura v. Italy* referring to them).

Thus, within the meaning of Articles 17 (Section 1), 35 (Section 3) and 55 (Section 1) of the Constitution of the Russian Federation in their connection with relevant international provisions, the protection mechanism guaranteed by Articles 35, 45 and 46 of the Constitution of the Russian Federation is applicable to the right of permanent (without term) use or right of life inheritable possession of the land plot.

4. Pursuant to Article 55 of the Constitution of the Russian Federation, in the Russian Federation no laws shall be adopted denying or derogating the rights and freedoms of man and citizen (Section 2), and their constitutionally permitted restrictions are allowed only on the basis of a federal law (Section 3). In spite of that, the constitutionally protected right of a citizen to use and possess his property (land plot allocated to a citizen and subject to full grant of life inheritable possession or private ownership) is in fact derogated by a law of a subject of the Russian Federation.

The provision of Section 2, Article 16 of the Law of Moscow “On the Basics of Paid Use of Land in the City of Moscow” stipulating that the land plot possessed by a citizen in part

exceeding the marginal limits for granting life inheritable possession (as applicable in the City of Moscow) shall be provided to the citizen under a lease agreement. This provision puts citizens who possess larger land plots in disadvantage by limiting the full use of the lease term and imposing on them an obligation to bear costs in the form of lease payments. Thus, the law of the subject of the Russian Federation introduces limitations not only of the right to use and possess property (e.g. a land plot), but also of the constitutional freedom of contract. This contradicts Article 55 (Sections 2 and 3) of the Constitution of the Russian Federation.

5. The requirements of certainty, clarity and lucidity of the legal regulation follow from the constitutional principles of equality and fairness, since any other approach may not ensure uniform enforcement, does not preclude unlimited discretion in the law-enforcement practice and, consequently, inevitably leads to arbitrariness. This legal opinion expressed in several judgments of the Constitutional Court of the Russian Federation, *inter alia* the Judgment of 25 April 1995 in the case concerning the review of the constitutionality of Sections 1 and 2, Article 54 of the Housing Code of RSFSR and of 5 July 2001 in the case concerning the review of the constitutionality of Decision of the State Duma “On Introduction of Amendments to the Decision of the State Duma of the Federal Assembly of the Russian Federation ‘On the Announcement of an Amnesty in Connection with the 55th Anniversary of Victory in the Great Patriotic War of 1941–1945’”.

Section 2, Article 16 of the Law of Moscow “On the Basics of Paid Use of Land in the City of Moscow” does not comply with the constitutional requirement of certainty of legal provisions imposed on the legislator, since it enables extension of the notion “granting of the land plot” to both cases of initial granting of land and cases of re-registration of the existing right of use and possession of land plots by citizens living in houses which are their property and which are located on such land plots. The absence of distinction between the institutes of granting land plots and changing the title to land plots for the owners leads in practice to arbitrariness in resolving issues relating to the limits of the possessed land plots.

The uncertainty of the norm allows executive authorities to qualify the re-registration of rights to the land plot as initial granting and, accordingly, to determine at their own discretion the marginal limits for granting the land plot under life inheritable possession (in the applicant’s case this resulted in substantial decrease of the area of the land plot). This creates an opportunity for abuse, inconsistent law-enforcement practice, and does not conform to the principle of equality before the law and the court (Sections 1 and 2, Article 19 of the Constitution of the Russian Federation).

6. Since on the date of adoption of the Law of Moscow “On the Basics of Paid Use of Land in the City of Moscow” there existed federal legislation regulating relations of permanent

(without term) use or the right of life inheritable possession of land plots and their re-registration, the regional legislator was precluded from introducing its own regulation contradicting the federal one. This prohibition follows from Articles 15 (Section 2) and 76 (Sections 1, 2, and 5) of the Constitution of the Russian Federation. Acts of subjects of the Russian Federation adopted in disregard of this prohibition, i.e. *ultra vires*, shall not be applicable, and the rights of citizens limited by such acts in any case may and must be restored in the course of enforcement on the basis of direct effect of the Constitution of the Russian Federation and superiority of federal law.

This, however, does not eliminate the necessity for the Constitutional Court of the Russian Federation to review the constitutionality of *ultra vires* acts adopted in the subjects of the Russian Federation should the lawful reasons and grounds be in place. Even more so when the rights of citizen violated by the statute of the law of the Russian Federation were not protected by law-enforcement decisions.

This legal opinion is expressed in the Judgments of the Constitutional Court of the Russian Federation of 16 June 1998 in the case concerning the interpretation of certain provisions of Articles 125, 126 and 127 of the Constitution of the Russian Federation and of 11 April 2000 in the case concerning the review of the constitutionality of certain provisions of Articles 1, 21 and 22 of the Federal Law “On the Prosecutor’s Office in the Russian Federation”. It is predetermined by the legal nature of judgments of the Constitutional Court of the Russian Federation, which are the only judicial acts able to deprive legal provisions contradicting the Constitution of the Russian Federation of the legal force, and hence secure uniform enforcement of constitutional provisions as specified by the legislative branch.

Relying on the direct effect of the rights and freedoms, the Constitutional Court of the Russian Federation provides their legal protection on the basis of the Constitution of the Russian Federation itself, and not by just being guided by the federal legislation having priority over inferior acts. Accordingly, the Constitutional Court of the Russian Federation is not in a position to refuse review of the constitutionality of a law of the subject of the Russian Federation upon a citizen’s constitutional complaint where the citizen’s constitutional rights were not restored by other courts on the basis of the applicable federal law, as it was in the case of the applicant.

Concluding from the above and pursuant to Sections 1 and 2, Article 71, 72, Articles 74, 75, 79, and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the provisions of Section 2, Article 16 of the Law of Moscow “On the Basics of Paid Use of Land in the City of Moscow” as non-conforming to the Constitution of the Russian Federation and its Articles 19 (Sections 1 and 2), 35 (Sections 2 and 3), and 55 (Sections 1, 2, and 3).

2. Pursuant to Section 2, Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the lawsuit of T. V. Blizinskaya shall be reconsidered according to the established procedure.

3. This Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, and shall be directly applicable.

4. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be published in the Collection of Laws of the Russian Federation, *Rossiyskaya Gazeta* and in the official media of the City of Moscow. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

No. 16-II