

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment

of 30 January 2009 No. 1-II

in the case concerning the review of the constitutionality of Sections 2, 3 and 4, Article 13, and Subsection 2, Section 1¹, Article 14 of the Federal Law “On Agricultural Land Transactions” in connection with a complaint of L. G. Pogodina.

Saint Petersburg, 30 January 2009

The Constitutional Court of the Russian Federation composed of President V. D. Zorkin and Judges N. S. Bondar, G. A. Gadzhiev, Yu. M. Danilov, L. M. Zharkova, G. A. Zhilin, S. M. Kazantsev, M. I. Kleandrov, S. D. Knyazev, A. L. Kononov, L. O. Krasavchikova, S. P. Mavrin, N. V. Melnikov, Yu. D. Rudkin, N. V. Seleznev, A. Ya. Sliva, V. G. Strekozov, O. S. Khokhryakova, V. G. Yaroslavtsev,

in the attendance of Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation A. N. Kharitonov, Representative of the Council of the Federation Ye. V. Vinogradova, PhD in Law, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 3 and 4, Article 3, Section 1, Article 21, Articles 36, 74, 86, 96, 97, and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provisions of Sections 2, 3, and 4, Article 13, and Subsection 2, Section 1¹, Article 14 of the Federal Law “On Agricultural Land Transactions”.

The reason for the consideration of the case is a complaint of L. G. Pogodina. The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicant are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur G. A. Gadzhiev, statements by representatives of the State Duma, the Council of the Federation and the President of the Russian Federation, the expert opinion of G. A. Volkov, PhD in Law, D. V. Pyatkov, PhD in Law, and V. V. Ustyukova, PhD in Law, interventions by the invited representatives: T. A. Vasilyeva for the Prosecutor General of the Russian Federation, A. A. Kalyagina for the Ministry of

Agriculture of the Russian Federation, S. Yu. Shugaev for the Interregional Public Movement “Krestyansky Front” (Peasants’ Front); 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. Article 13 of Federal Law No. 101-Φ3, “On Agricultural Land Transactions”, of 24 July 2002 (as amended by Federal Law No. 87-Φ3 of 18 July 2005) provides for the right of a participant (participants) in shared property of agricultural lands to demand allotment of a land plot associated with the share in the right of shared property of agricultural lands (Section 1). Further, it stipulates that the location of the allotted land parcel shall be determined by the participant in the shared property regarding the decision of the general meeting of participants in the shared property and provided that the borders of the parcel of the shared land plot for priority allotment are set under Article 14 of the Law. Allotment of the share of the land plot associated with the participant’s right in the shared property shall be carried out on the basis of such decision (Section 2). If the general meeting of the participants in the shared property has not set such borders, the participant in the shared property is obliged to notify, in writing, other participants in the shared property of his intent to allot the part of the land plot associated with his right in the shared property or to publish this notification in the media determined by the subject of the Russian Federation. The notification shall contain an indication of the supposed location of the land parcel to be allotted (Subsection 1, Section 3). If within thirty days after the due notification no objections are submitted by participants in the shared property regarding the location of the land parcel to be allotted, the proposal for its location is regarded as approved. All disputes on the location of the land parcel to be allotted should be resolved by the participants in the shared property in conciliatory proceedings determined by the subject of the Russian Federation. If no conciliatory solution is found, the dispute should be decided by a court (Section 4).

Article 14 of the said Federal Law sets forth specific requirements for determining a procedure for disposal, possession and use of the land plot in shared property. In particular, the general meeting of participants in the shared property is authorized to make decisions when at least 20 per cent of all participants in the shared property or participants having an aggregate of at least 50 per cent of the shared property is present. The decision is regarded as adopted when the participants in the shared property having an aggregate of at least 50 per cent of shares owned by the participants attending the meeting vote for such decision (Subsection 2, Section 1¹).

1.1. On 15 September 2005, certain citizens including the applicant in the present proceedings, L. G. Pogodina, who are participants in shared property in agricultural lands located in the Ramenskoye District of the Moscow Region (cadastral number 50:23:00000000:0008), published a notification of the intent to allot a land parcel associated with their shares in the shared property in the *Yezhednevnye Novosti. Podmoskovie* newspaper. The area of the allotted land parcel was supposed to be 17.5 ha located near the village of Mikhailovskaya Sloboda, and a description of the borders of the land parcel was provided. Certain objections were received from other participants in the shared property, who asserted their intent to allot their parcels in the same location. By that moment no decision had been passed by the general meeting of the participants in the shared property determining the location of the land parcel for priority allotment from the shared property. On 21 November 2006, one of the participants seeking allotment of a land parcel within the contested borders announced a call in the newspaper for a general meeting of participants in the shared property on 25 December 2006. At the same time, another participant, PH Chulkovskoye CJSC, also notified of its intent to allot a land parcel in the same locations and also received respective objections.

The general meeting of the participants in the shared property took place on 25 December 2006, and the decision was adopted by a majority vote to allot the contested land parcel to PH Chulkovskoye CJSC. The individuals who were first to notify of their intent to allot the land parcel in the same location filed an action with the Ramenskoye Town Court of the Moscow Region seeking to invalidate the results of the general meeting. They asserted that objections to their intent to allot a land parcel within the borders as specified in the notification of 15 September 2005 should also be recognized invalid. The claimants alleged, *inter alia*, that the general meeting of the participants in the shared property of the land plot is entitled only to determine the location of the part of the land plot, while the owner determines the borders of the allotted land plot on his own. In case of any disputes between the participants the general meeting may not assume judicial functions and resolve the dispute by a majority vote.

The Ramenskoye Town Court of the Moscow Region rejected the lawsuit by its decision of 22 November 2007. The court reasoned that the general meeting of the participants in the shared property took place in full compliance with Articles 13 and 14 of the Federal Law “On Agricultural Land Transactions”. The court stated that the amount of shares owned by the respondent, PH Chulkovskoye CJSC, and certain other owners who voted for the decision (838 shares representing 62.09 percent of the overall area of the land plot in the shared property on the date of the general meeting), allowed them to adopt any decision regardless of the other participants’ opinion.

1.2. L. G. Pogodina requests to recognize Section 2, Article 13 of the Federal Law “On Agricultural Land Transactions”, as contradicting to Articles 17 (Section 3), 19 (Section 2), and 55 (Sections 2 and 3) of the Constitution of the Russian Federation. In the applicant’s opinion, the contested provision permits allotment of a particular land parcel to a participant in the shared property of agricultural lands by the vote of the participants attending the general meeting. The owners having a majority of the votes may use their superiority in the property status to exercise their rights to the detriment of the interests of those having a minority of the votes, in particular, in allotting a land parcel associated with the owned land shares regardless of the other participants’ intent to allot the land parcel in the same location. Further, due to its uncertainty this provision allows to set the borders of a part of the land plot in shared property for allotment of land parcels regardless of the number of owners having intent to allot and the number of land shares subject to allotment. In practice there is no possibility to satisfy the claims of all owners who intend to exercise their right to allotment, while the owners having a majority of the votes in the general meeting are allowed to decide at their discretion which shares are to be allotted and which shares are to remain in shared property, by using their voting superiority.

L. G. Pogodina also seeks to recognize Subsection 2, Section 1¹, Article 14 of the Federal Law “On Agricultural Land Transactions”, as contradicting Articles 19 (Section 2) and 55 (Section 3) of the Constitution of the Russian Federation, since she believes that this provision stipulating that the amount of votes given to a participant in shared property is determined by the amount of the owned land shares, and thus prescribes inequality of the owners depending on their proprietary status and limits the rights of those who have fewer land shares as compared to those having more land shares.

Thus, the applicant alleges violation of her constitutional rights by the procedure for allotment to the particular owners of land plots associated with their shares in the shared property of agricultural lands to the extent that this procedure implies convocation of a general meeting of the participants in the shared property and adoption of its decision by votes of participants having an aggregate of more than 50 per cent of the shares in shared property of the land plot calculated on the basis of the amount of shares owned by the participants attending the general meeting.

This procedure is prescribed by Sections 2–4, Article 13, taken together with Subsection 2, Section 1¹, Article 14 of the Federal Law “On Agricultural Land Transactions”, which, under Articles 74, 96, and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, are the subject matter for consideration in the present proceedings before the Constitutional Court of the Russian Federation.

2. Pursuant to Article 9 of the Constitution of the Russian Federation, land and other natural resources shall be used and protected as the foundation of life and activities of the peoples living in the respective territory (Section 1), and it may be in private, state, municipal and other forms of property (Section 2).

Providing for the right of private property and revealing its constitutional content in Article 35, which includes the rights to have, possess, use and dispose of property both personally and jointly with other people, the Constitution of the Russian Federation guarantees the right of individuals and their associations to have land in private property as a separate constitutional right (Section 1, Article 36). Substantiating in this regard the provisions of Article 17 (Section 3) the Constitution of the Russian Federation proclaims that possession, use and disposal of land shall be exercised by the owners freely if it is not detrimental to the environment and does not violate the rights and lawful interests of others (Section 2, Article 36).

It follows from the specified provisions of the Constitution of the Russian Federation that in order to provide legal protection of private property as required by Article 35 (Section 1) of the Constitution of the Russian Federation and assuming that land is the foundation of life and activities of the peoples living in the respective territory, the legislator regulating land relations, including those in the area of transactions with land plots and land shares in shared property of agricultural lands is obliged to maintain a balance of public and private interests involved in the exercise of the right of private property of land on the basis of the constitutional principle of proportionality (Section 3, Article 55).

3. Under Section 2, Article 1 of the Federal Law “On Agricultural Land Transactions”, legal regulation of relations in the area of transactions with land plots and land shares in shared property of agricultural lands shall be carried out pursuant to the Constitution of the Russian Federation, Land Code of the Russian Federation, Civil Code of the Russian Federation, other federal laws, and adopted on their basis regulations of the Russian Federation and statutes of subjects of the Russian Federation.

The Civil Code of the Russian Federation recognizes equality of participants in property and other relations regulated by it, inviolability of property, freedom of contract, impermissibility of anyone’s arbitrary interference in private affairs, necessity to exercise civil rights freely, guarantee of restoration of civil rights in case of their violation, and their protection in courts (Section 1, Article 1). Further, regarding the rights to property in shared property it provides that disposal of such property shall be effected under an agreement between all participants; a participant in shared property shall have the right, at his own will, to sell, give, leave under will, mortgage his share, or dispose of it in any other manner provided that the right of priority purchase under Article 250 of the Code is respected if the property is alienated under

payment (Article 246); property which is in shared ownership may be divided between its participants by an agreement between them; the participant in shared property shall have the right to claim severance of his share from the common property (Sections 1 and 2, Article 252).

Pursuant to the Land Code of the Russian Federation, property relations regarding the possession, use and disposal of land plots and transactions with them are subject to regulation by civil legislation unless otherwise provided by the land legislation and specific federal laws (Section 3, Article 3). Outlining the general provisions on private property of land, the Civil Code of the Russian Federation provides, in Section 2, Article 260, that agricultural lands or other lands with a specially designated purpose, the use of which for other purposes is restricted or prohibited, shall be determined by law and under the procedure established by it; land plots assigned to these lands may be used within the limits inherent to their designated purpose.

Preservation of the designated purpose of land plots is one of principles serving the basis for transactions with agricultural lands as provided by Subsection 1, Section 3, Article 1 of the Federal Law “On Agricultural Land Transactions”. Taking account of this principle stemming from Article 9 of the Constitution of the Russian Federation, and assuming that shared property of agricultural lands is a result of privatization of agricultural holdings previously owned by collective farms and granted as land shares to their participants (workers), the federal legislator determined, in Section 1, Article 12 of the mentioned Federal Law, that the provisions of the Civil Code of the Russian Federation with reservations provided in Articles 12–14 of the Federal Law are applicable to transactions with land shares in shared property of agricultural lands when there are more than five participants in it.

Pursuant to special norms of the mentioned Articles, decisions on the possession and use of a land plot in shared property shall be made not by consensual agreement of all participants in shared property of such land plot (as prescribed by Article 247 of the Civil Code of the Russian Federation), but rather by a majority of votes of the general meeting of the participants. The federal legislator introduced this rule in order to implement the constitutional principle of proportionality aimed at maintaining a balance of private and public interests and ensuring the exercise of the constitutional right to own land as private property, without interference in technological or production links of agriculture.

4. Relations in allotment of land parcels associated with shares in shared property of agricultural lands (under the procedure provided in Sections 2–4, Article 13, and Subsection 2, Section 1¹, Article 14 of the Federal Law “On Agricultural Land Transactions”) affect the rights and legal interests of all participants in shared property of that land plot, which as a rule is a considerable number of owners. Therefore, certain corporate features are inherent to such relations.

The existence of varying interests of different groups of shareholders is characteristic of corporate relations. As the Constitutional Court of the Russian Federation pointed out in its Judgment No. 3-II of 24 February 2004, this leads to increasing importance of legal proceedings in making economic decisions, and these procedures must be a guarantee of minority rights. For relations of shared property of agricultural lands, one such procedure is holding a general meeting of the participants in shared property of the land plot. Pursuant to Subsection 1, Section 1¹, Article 14 of the said Federal Law, an agricultural association which uses the respective land plot, a participant in shared property of the land plot, and a local self-government authority in the location of the land plot may call a general meeting of the participants.

4.1. The right of a participant in shared property of agricultural lands to allotment of a land parcel associated with his land share is not absolute, since the exercise of this right is conditioned by certain requirements determined by the legislator, e.g. preservation of the designated purpose of these land parcels and the existence of a common interest of the co-owners expressed by a majority vote.

To prevent irrational allotment of particular land parcels, from the standpoint of such majority, which may result in an unreasonable decrease of the value of the land plot remaining in shared property or in obstacles for further use of the land plot in line with its designated purpose, the federal legislator guaranteed the right of the general meeting of the participants to set borders (location) of the land parcel for priority allotment out of the shared property, while the co-owner of the shared property wishing to allot the land parcel is entitled to determine the location of the allotted parcel within these borders.

This statutory limitation of an individual's constitutional right of private property of land may not be regarded as disproportionate with respect to the aims listed in Article 55 (Section 3) of the Constitution of the Russian Federation, since such limitation is provided to protect the rights and interests of others. At the same time it implies that the general meeting of the participants in shared property may not set the borders of the land parcel for priority allotment in a manner which prevents satisfaction of the claims of all owners wishing to allot their parcels.

4.2. For cases where the general meeting of the participant in shared property has not set the location of the land parcel for priority allotment, the law aimed at protecting the private interests of the owners wishing to allot their parcel by providing him with the option to determine the location of the land parcel associated with his land share by publishing a notification in the media (containing a description of the land parcel location) and obliging other owners to lodge their objections in writing. Within the legal logic of implementing the constitutional principle of proportionality, this option is available in cases where the general meeting of the participants has never been held, provided, however, that the interested owner has

taken all necessary steps to call such a meeting and is able to prove it with reference to documents.

In these cases coordination of the private and public interests of the co-owners of shared property is possible by default. However, if there is a single objection regarding the location of the land parcel to be allotted, the dispute shall be resolved in conciliatory proceedings prescribed by subjects of the Russian Federation (in order to ensure, in the best possible way, respect for historical and local traditions, national and natural peculiarities existing in the federal state).

The federal legislator allows the participants in shared property of the land plot to use conciliatory proceedings to determine the location of land parcels to be allotted and at the same time stipulates that, when the acceptable solution is not found (and when the objecting owners avoid such conciliatory proceedings), the dispute shall be resolved in court. In prescribing this procedure the federal legislator considered the necessity to secure protection of the private interests of the owners and therefore legal protection of private property rights (Section 1, Article 35 of the Constitution of the Russian Federation), and the requirement of the Constitution of the Russian Federation for justice to be administered only by courts (Section 1, Article 118), and guaranties of judicial protection of rights and freedoms (Section 1, Article 46).

Under the basic principle that individuals and legal entities acquire and exercise their civil rights at their own will and in their own interests, as derived from Articles 8, 19, 34, and 35 of the Constitution of the Russian Federation, the participants in shared property of the land plot may hold a general meeting as a conciliatory procedure to determine the location of the land parcels to be allotted. In this case the decision on allotting, to a participant in shared property, of a particular land parcel associated with his share in the right to shared property (when it is made pursuant to Subsection 2, Section 1¹, Article 14 of the Federal Law “On Agricultural Land Transactions”) will be individualized, and the owners who disagree with that decision will be entitled to challenge it in court in the same manner as provided for cases where conciliatory proceedings does not lead to an acceptable solution.

Any other approach would result in serious distortion of the constitutional nature of shared property relations, which are based on a balance of individual and group interests, and disproportionate limitation of the subjective right to allotment of a land parcel associated with his share in shared property contrary to the aims of Article 55 (Section 3) of the Constitution of the Russian Federation. It would preclude access to court, which, as the Constitutional Court of the Russian Federation has stated on several occasions, is a general right and in itself a guarantee of all other constitutional rights and freedoms.

However, given the constitutional nature of relations between the participants in shared property under Article 55 (Section 3) of the Constitution of the Russian Federation and

Section 1, Article 1 of the Civil Code of the Russian Federation, which precludes any interference in private affairs, the limits of judicial control may not necessarily coincide for decisions of the general meeting of participants in shared property determining the location of the land parcel for priority allotment out of the shared property and the decisions of the general meeting of the participants in the shared property regarding approval of allotment of a particular land parcel to the owner.

4.3. Pursuant to the legal opinion of the Constitutional Court of the Russian Federation expressed in its Judgment No. 14-II of 22 July 2002 in relation to the voting procedure and decision-making at a creditors' meeting, the approval of a majority vote decision of creditors calculated considering the amount of each creditor's claim is a democratic procedure; such procedure may not be regarded as violation of the constitutional principles of equality and equality of rights (Sections 1 and 2, Article 19 of the Constitution of the Russian Federation). The mentioned principles are specified in the principle of equality of all participants of civil relations prescribed by Section 1, Article 1 of the Civil Code of the Russian Federation.

The mentioned legal opinion is applicable to the provision of Subsection 2, Section 1¹, Article 14 of the Federal Law "On Agricultural Land Transactions", which grants the general meeting of participants in shared property the right to adopt decisions by a majority vote calculated on the basis of land shares owned by each participant in the shared property attending the meeting, *inter alia* decisions on the location of the land parcel for allotment out of the shared property, or location of the land parcel allotted to a certain owner.

This decision-making procedure is adequate to the model chosen by the legislator for the exercise of the right to allotment of land parcels associated with land shares, since it takes into account the proprietary character of the shared property relations and, as a rule, a considerable number of participants in the shared property. This model is built upon the recognition of autonomy of the will of every owner, and respect of his right to independently dispose of his property. Consequently, it does not contradict the constitutional principle of fairness.

4.4. Accordingly, within the meaning of interrelated provisions of Sections 2–4, Article 13, and Subsection 2, Section 1¹, Article 14 of the Federal Law "On Agricultural Land Transactions", a failure to hold a general meeting of participants on the issue of determining the borders (location) of the part of land plot for priority allotment out of the shared property may not hinder the exercise of the right to allotment of land parcels by participants in the shared property through conciliatory proceedings, provided that the interested owner has taken all possible and necessary measures to hold a general meeting. However, a possibility to use a general meeting of participants in shared property of the land plot as a form of conciliatory proceedings is not precluded. The decision on the allotment of land parcels to certain owners shall be taken by a

majority vote calculated on the basis of the amount of land shares owned by the participants attending the general meeting, provided that this decision may be challenged by the discontent participants in court.

Concluding from the above and pursuant to Article 6, Sections 1 and 2, Article 71, Articles 72, 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 Sections 2, 3 and 4, Article 13, and Subsection 2, Section 1¹, Article 14 of the Federal Law “On Agricultural Land Transactions”, which prescribe a procedure for allotment to certain owners of land parcels associated with their shares in the shared property of agricultural lands, as conforming to the Constitution of the Russian Federation within their constitutional meaning established by the present Judgment.

The constitutional meaning of these statutory provisions shall be generally binding, and any other interpretation in the law-enforcement practice is precluded.

2. The lawsuit of L. G. Pogodina decided on the basis of the provisions of Sections 2, 3 and 4, Article 13, and Subsection 2, Section 1¹, Article 14 of the Federal Law “On Agricultural Land Transactions”, interpreted differently from the constitutional meaning established by the present Judgment, is to be reconsidered according to the established procedure provided that there are no other obstacles for that.

3. This Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable, and shall not require confirmation by other authorities and state officials.

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 and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

No. 1-II