

## **Compulsory land acquisitions for public investments in Russia: legislative update and landmark examples.**

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“No person shall be deprived of his property, without due process of law. Compulsory acquisitions of property for public interests can be done only with preliminary and just compensation”

(Article 35, Constitution of Russian Federation).

“Countries retain powers of compulsory acquisition in order to enable governments to acquire land for specific purposes. The nature of these powers and the ways in which they are used are invariably sensitive and have wide implications, including from the perspective of international agreements on human rights and their national expressions. Compulsory acquisition is disruptive for those who are affected and whose land is taken and, if done poorly, will have serious negative impacts on people and their livelihoods”.

(Food and Agriculture Organization).

In the recent years various aspects related to compulsory acquisitions of land for the government and municipal needs have become a subject to debate in research and thesis of scholars let alone everyday practice of land administration. Such attention to the mentioned topic is due to a several reasons, including:

1. Accumulation of considerable amount of monetary and financial reserves on the side of the government. In particular, having USD 500 bln on its balance sheet allowed government investment in the Russian transport infrastructure which strongly demanded modernization. The bottom of the infrastructural iceberg is demand for land to complete new public developments.

2. Regardless of the fact that only 7% of land were privatized over the past 20 years in context of the territory of Russia these figures appear considerable. In addition to the total territorial size it is worth saying that the majority of the land parcels were located within population centers or in close proximity. In conjunction with land market administration policies the mentioned fact unveiled a new set of questions in the area of town planning and complex territorial development.

3. A parallel process to new policies, land legislation and town planning regulations is a huge chunk of unresolved land rights disputes with property owners who are effectively using their property since the Soviet times. Regardless of the fact of actual usage of land, the legal status of many property owners remains unclear.

4. A new wave of interest to compulsory land acquisition measures is related to winning the right to hold Winter Olympic Games 2014 in Sochi. A special procedure reflected in a separate law describes the particular case of compulsory land acquisitions in Sochi. However, the law is a subject to amendments with almost every new property acquisition performed by the government in Sochi.

Of course the named issues related to compulsory land acquisition measures are just a few of many. All of them are similar in the nature and obstacles that are faced by the government when implementing land acquisitions. One of the important things to consider is that problems faced in the area of building an adequate procedure of cooperation between private property owners and the government are mostly caused by small understanding of how to meet the goal of effective communication working under the rules of market economy. The other problem is immature market itself that currently has not evolved enough to provide cultural and behavioral basis for non-enforced policies.

Another set of limiting factors in setting a single policy for land acquisitions is related to regional differences in land relations that are impossible to eliminate in such a huge country like Russia. However this factor was disregarded in the new history of the country. Starting 2000 the general regional policy was set towards building of so called "vertical of power" that aimed at concentrating the majority of functions in the federal center. The drawback of this decision has found its way through bureaucracy both on federal and regional levels.

Unlike that, back in the Soviet there was a different view on how regional aspect of land acquisition policy should be developed. In the Soviet period the right of the government to withdraw land resources from land users was backed up by the state ownership of land. The actual withdrawal/acquisition powers however were yield to the local authorities who obviously were more aware of the regional specifics. This way, problems with land distribution were never a cause a slowdown or even stoppage of industrial or social development.

Thus, using a land acquisition instrument for public needs is not new for Russia. In the tsarist Russia as well as in the Soviet Russia there were policies that regulated withdrawal of land from land owners. In the contemporary history of the country we face the task of finding the right mechanism to work in the market economy. Moreover, problems faced in the area of building an adequate procedure of cooperation between private property owners and the government are mostly caused by small understanding of how to meet the goal of effective communications working under the rules of market economy.

The majority of population in Russia sees the government as a bureaucratic machine in the first place. Most of the attempts to interfere in private life (especially private property) are regarded as a threat to yield personal interests to prosperity of corrupted officials, not society as a whole. For this reason people strive to protect even illegal status of their property. At the same time, current legislation protects the constitutional right of private ownership. This is reflected in the land acquisition procedure that puts compensation first and only after that allows withdrawing land for the public needs. Still business practice is not always like that and along with psychological and cultural barriers this leads to massive property disputes.

One of the recent examples of the mentioned fact is a long-lasting scandal with one of the many residential communities in Moscow ("Rechnik" case). Disputable legal

status of the project has reached its peak in 2010 resulting in forced demolishing of several buildings without consent of their owners. No compensations were provided. Easement in legislation that allows legalizing residential developments was not applicable due to the fact that "Rechnik" was an attractive target for the government. The case proved that enforcement is still an option when it comes to motivation to quickly resolve a problem. The disappointing social cost of the dispute in that owners of residential properties in "Rechnik" accused Moscow government of manipulating land legislation for its own benefits.

With that there are other examples that illustrate a good scenario of land acquisition in Russia. For instance, legislation amendments were to be made in order to increase efficiency of compulsory land acquisitions in Sochi. These measures were targeting specification of measures and procedures. Approximately 5000 people were to be resettled; 3000 ha of land had to be withdrawn from their users; 250 units of property were found illegal and are target for demolishing without compensation. In this case special factors that determine status of Sochi as international resort and Olympic city put limits on ability on the government to use enforcement instruments. Of course this case is still far from perfect example, as official legislative measures are not necessarily efficient, even with special regional law. But the benefit for the public is the power of precedent: many of local residents who are subjects to resettlement currently try to protect their interests in court.

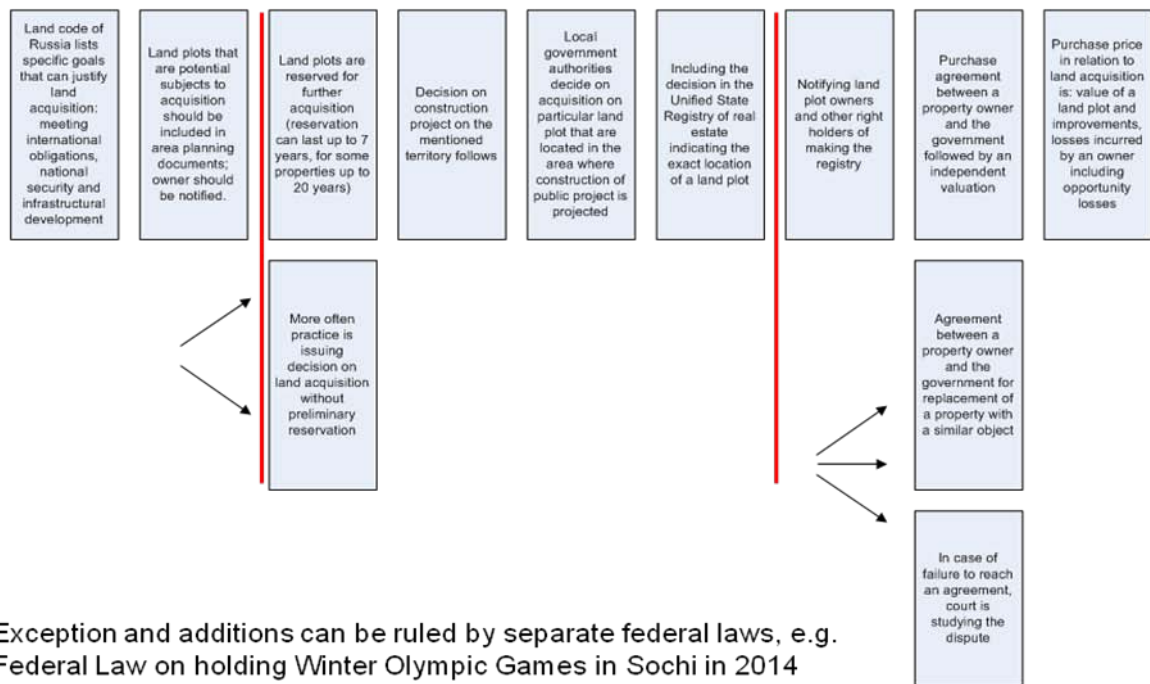
When one starts analyzing the legislation infrastructure it is evident that regional differences in land relations are impossible to eliminate in such a huge country like Russia. This factor was disregarded in the new history of the country. Starting 2000 the general regional policy was set towards building of so called "vertical of power" that aimed at concentrating the majority of functions in the federal center. The drawback of this decision has found its way through bureaucracy both on federal and regional levels.

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The most important legislation that regulates land acquisitions in Russia is: Constitution of Russia, Civil Code, Town Planning Code and Land Code. The most main articles of these laws reflect the some of the core principals of land acquisition:

- Authorities are obliged to justify land acquisitions;
- The most important requirement to the government in order to perform land acquisition is to guarantee preliminary and equal compensation;
- Compensation is based on agreement with land owner and if failed is ruled by the court;
- Market value of properties planned for acquisition is determined by independent appraisers (subjects to valuation activity in Russia).

Under the current legislation compulsory acquisition of land is a process that goes through the several stages:



With that, some important additions to the regular procedure were introduced in Sochi. The most meaningful legislative novelties are:

- Land acquisition process is financed through a special purpose vehicle, so called “State corporation Olymptstroy” set up by the government;
- Land acquisition powers were granted on the regional level to Krasnodar region, where Sochi is located. At the same time duration and limits of powers are set by the law;
- Land acquisitions with properties that were not properly registered in the State Land Registry are allowed.

Unfortunately, not all the measures introduced by the government take into account interests of property owners. In particular:

- Cut in the period of allowed negotiations on compensation from 1 year to 3 month;
- Denial of the right of a court case to consider the need for acquisition of particular land plot;
- Specifications on the list of appraisers allowed to estimate a property value.

In order to illustrate some of the differences that were introduced with abovementioned procedure, below is the comparison of acquisition of land under a regular and “Olympic” scenario:

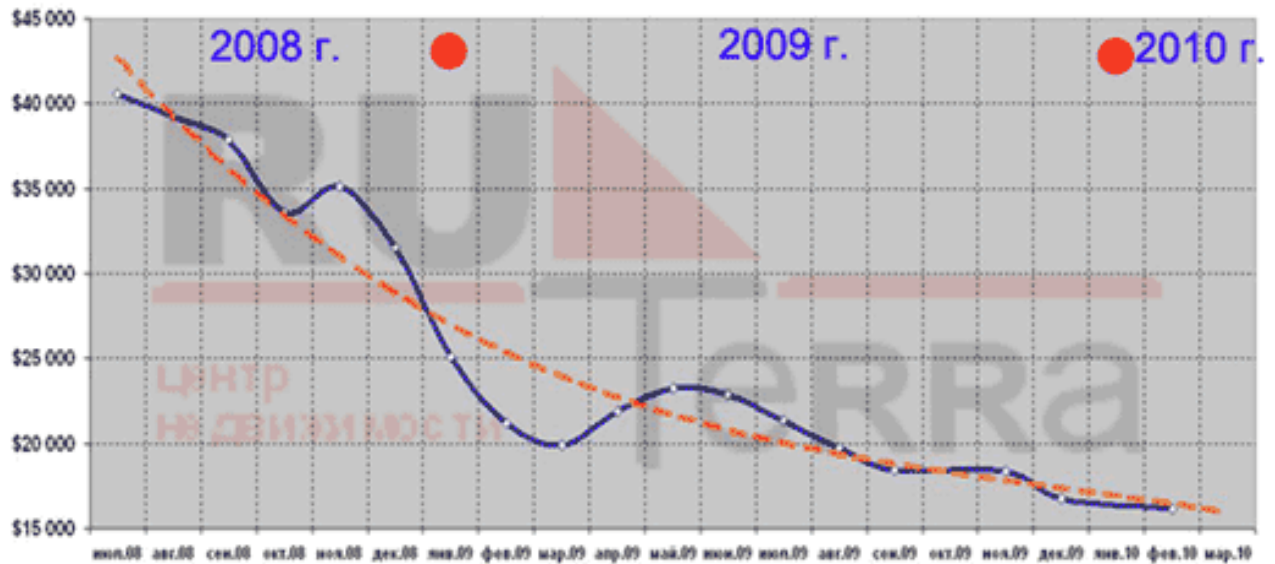
	<b>Regular acquisition process</b>	<b>Acquisition process for the Winter Olympics (special law)</b>
Who is making decision on acquisition?	Government authorities at all levels	Government authorities at a local level, Krasnodar region
Who is paying compensation?	State budget	State corporation OlympStroy
Ability to apply to court in order to put in issue acquisition of a particular land plot	Yes	No
Is it required to have registered rights to make acquisition?	Yes, decision on acquisition should be registered in the State Registry of Rights	No, disputes on property rights is not an obstacle for acquisition; decision on acquisition doesn't have to be registered in the State Registry of Rights
How is land owner notified?	Written notification of registered decision on acquisition with required registration in Russian Registry of Rights	Before making a decision on acquisition – notification through mass media. After the decision is made - written notification of registered decision on acquisition with required registration in Russian Registry of Rights.
Minimum time frame at which land owner should be notified?	Not regulated by law	7 days after decision on acquisition was made
Who is determining a purchase price?	Independent appraiser, compensation should be according to valuation report, inspection of valuation report by SRO	Independent appraiser accredited by OlympStroy, valuation is done no longer than 30 days, valuation date is within 30 days from decision on acquisition, compensation is within the limits of valuation report
Minimum time frame for voluntary agreement with land owner (before applying to court for compulsory acquisition)	1 year starting notification of planned acquisition, up to 3 years (2 years for housing)	1 month after land owner is presented a valuation report (works in theory after 2 month after decision of acquisition)
Can put in issue court decisions on compulsory valuations?	Yes	Immediate implementation of court decision

A special emphasis should be made on valuation process as a part of compulsory land acquisition. In particular, drawing a valuation statement is linked with two very critical issues:

1. Differences in valuation of similar properties which often appears excessive. In particular, if adjacent land plots with similar characteristics are valued differently this becomes a reason for market distortions and social unease.
2. Compensation size strongly deviates from the market value. Generally the compensation received by land owners was driven by three subjective factors: price fluctuations on the property market, lack of information of actual transaction volumes and regulations related to minimum size of housing per person. All three

are forcing the government to pay a compensation that exceeded the market value of properties subject to acquisition.

To illustrate the last statement it is worth saying that for the period preceding announcement on winning the right to host Olympic Games 2014 land prices in Sochi were starting to look speculative. This trend was followed by a skyrocketing growth in the 1st half of 2007-2008 with a 60% drop from historical maximum between 2008 and 2010.



### Concluding remarks

The mentioned problems are only a part of considerable gap in economic and legal mechanisms of land transactions in Russia. Currently we can conclude that there is no single look at the problem shared by the different branches of the state, but it is obvious that the question will become one of the most important issues for the next president elections.

### References

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