The Legal Status of Real Estates in The Land Registry in Case of Unfinished Documents of the General Cadastre

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Abstract. The real estate advertising rights are closely linked to the record of the Land Fund. The introduction of law acts and facts concerning the real estates from the same commune in land registry is the object of the real estate advertising. The real estate advertising business goal is to ensure free access, with ease and in a timely manner, of all those interested in information on the legal position of the buildings and the creation of an effective safeguards system in the protection of broadcasting rights.

Keywords: real estate advertising; general land registration; the land registry book.

INTRODUCTION

Since 1996, on the whole territory of Romania was laid the foundations for a new system for real estate advertising, unique and unitary. It is a real advertising system, based on land registry and cadastral measurements books. Real estate advertising, after the entry into force of the Law on cadastre and real estate advertising no. 7/1996 is based on the records system of the general cadastre. By doing this, it pursues the general cadastre of the country, still unclaimed, meaning a system of general registering of the whole land fund of the country, regardless of the destination of land or related constructions, or the quality of owners.

MATERIALS AND METHODS

The legislation that regulates this area of great importance is made up of the main legislation Law 7/1996 which was republished under art. II of the Title XII of the Law no 247/2005 on the reform in the fields of Justice and property, as well as other supplementary measures, giving it a new numbering format, and from the secondary legislation composed of Decisions of the Government, Orders of the Minister of Administration and Interior, Orders of the Director of ANCPI, etc. The method of research consisted of bibliographic study of both normative acts and jurisprudence, especially.

RESULTS AND DISCUSSION

The Article 58 of the Law 7/1996 reissued regulates the procedure of carrying out entries in old records. Thus, in the case of regions of the land register, subject to the legal provisions of the Decree-Law no. 115/1938, or, where appropriate, of Law no. 242/1947, entries relating to buildings for which are already open land books - advertising land registers -will continue to be carried out in these books, but with respect for and the provisions of this law, so in accordance with the Law no. 7/1996.
If such a property is disposed of, it has to be open a new land register under the Law no. 7/1996. Also, a new land register will be open assuming there are operations to change the land body, for the new separated building and for the inclusion of buildings acquired under the laws of the land.

Although the law, by the provisions of art. 58, expressly provides that the new registrations will be made in accordance with the Law no. 7/1996, the Supreme Court, in the resolution of an appeal procedure in the interest of the law, decided that the actions of the land register-in tabulated performance and in correcting tabulated - aimed at the inclusion in the land register of rights in rem in immovable property provided for in legal acts validly entered into before the entry into force of the Law no. 7/1996 are governed by the provisions of that Decree-Law no. 115/1938 (I.C.C.J., United Sections, decision no. 21 of December 25, 2005, published in M. Of. no. 225 of 13 March 2006).

In regions where it could be applied the transcriptions and inscriptions system, if there were not yet opened land registers, the law allows carrying out further in the old records of real estate advertising of inclusion, but only in cases specifically and express provided for by the provisions of art. 58, paragraph (2), in consideration of the special importance required by their record.

Concerning the registration of the real estate in case of the unfinished documents of the general cadastre, prior to the adoption of the Law no. 247/2005 and republishing of the Law no. 7/1996, by the provisions of the former art. 61 there were regulated the entry of the registrations with not definitive and definitive character. This classification must not be confused with the division of final and provisional registrations. The classification of registrations with not definitive character and definitive character, respectively, result from the provisions of the former art. 61 of the law, which were designed because, in Romania, the general land register is still not complete, representing a matter of the future.

According to this article, legal acts and facts relating to a building situated in an administrative territory for which no general land register documents were definitive, were recorded, with not definitive character, in a land register, the definitive record remaining to be made when general cadastre will be effective on the above mentioned territory.

Currently, the Law no. 247/2005 abandoned the classification of the recordings in recordings with not definitive character, and definitive character, respectively, just as strictly terminological aspect, of the name of these categories of entries. In this regard, we note that the current rule states, essentially the same two categories of recordings, which are made in the land register, differentiated according to the same criterion: completion of the cadastre general documents on the administrative territory.

Thus, if there is no land register documents are completed in the territory of an administrative - territorial unit, the recordings in the land register will be carried out according to article no. 59 of the law. Conversely, if these documents of the cadastre general are completed, it will become applicable the provisions of the art. 11 paragraph (7) and art. 66 of the law, doing the carrying out of the records in the land register.

Giving up the conceptual distinction between these two categories of recordings is warranted, perhaps by the desire to avoid the possible lack of public confidence in conducting records in land registers, declared by law as being with not definitive character. In order to achieve this aim, we consider the stipulations of the art. 2 paragraph (1) point b) of the law,
which expressly stated that legal contents of the general cadastre, carrying out the
identification and registration of all owners and other legal owners of buildings, in view of
recording in the land register with definitive character.

Assuming that an administrative territory has not completed the cadastral documents,
buildings will register in the land register under art. 59. Thus, the opening book of land will be
made at the request of the person concerned, under the act or law act, including the title of
ownership issued pursuant to the laws of the land, the building located in a territory for which
no administrative are completed general cadastre documents. At the request of registration
will be required to attach documentation of land register drawn up by the natural or legal
person authorized by the national agency.

From governing laws results that the main features of the procedure for inclusion of
buildings situated on such administrative territory are as follows:

- These entries are mandatory, territorial offices being obliged to open up the
  land registry books for any act or fact legal on the performance of the
  operations of real estate advertising;
- Opening of the land registry books is made at the request of the person
  concerned and not on its own initiative;
- To open the land register the property has to be individualized and identified
  by the cadastral number. To this end, the law foresees the necessity of the
  attachment of a cadastral documentation;

In this respect, foresees of art. 62 of the Regulation provide that for buildings which
are not recorded in the land register - the first record- there will be opened land records based
on the following entries:

- the cadastral documentation received, through which the cadastral number will be
  assigned.

Reference to the "received cadastral documentation” shall be interpreted in correlation
with other normative provisions. Thus, the manner in which the receipt number is included in
art. 10 by Order no. 643/2006 and consists in: (a) verification of the contents of the
documentation); b) verification of the existence in the ANCPI database of the person
authorized that has prepared documentation and the validity of the authorization; c) verifi-
cation of the concordance between authorized person who made out the documentation,
the requesting receipt and the one mentioned in the declaration made out on his own
responsibility in accordance with the annex. 5; d) location of the site in the database with
graphics, verify the accuracy of its classification limits; e) verification of the method for
calculating areas; f) correspondence between descriptive attributes and graphics; g) cadastral
number allocation in the cadastral index, if the documentation is correct. Where deemed
appropriate, OCPI/ANCPI may conduct checks on the ground, as to whether the preparation
of documentation by the authorized person. After cadastral number allocation, stand reception
cadastral documentation will consist of the OCPI stamp, according to the annex 6 of this
regulation.

- Supporting the entry of a legal act or fact of acquisition or formation of right in
  rem;
- Tax Certificate or the certificate issued by the city in the district which is situated;
- In order to be admissible an application for entry, it is also necessary to be
  cumulative conditions laid down in art. 48 of the law and that there is no other
  obstacle to making entry:
- Concurrently with the opening of land shall be card checks and will mention in the
  books of transcriptions and inscriptions, in the right position, right where it was
transcribed to be tabulated in the land register, the number of the book land and the town where it is open.

In the new open land register on the administrative territory in accordance with the law, the building cadastral number will be recorded, attributed after receiving the cadastral documentation by the territorial office. At the same time, under the heading remarks in part A of the land register, it may also be mentioned the topographical number from which the real estate derives, if any.

REFERENCES