THE IN KIND RESTORATION OF PROPERTY FOR THE SHAREHOLDERS IN STATE'S AGRICULTURAL COMPANIES

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Abstract

The regulation[2] and, generally speaking, the entire institution of the property restoration for agricultural lands which have passed into the state's authority as the effect of special laws, other than those concerning expropriation, and still administered by the state's agricultural companies, went through a series of intricate juridical changes, but eventually came up the idea to restore in kind the value of those lands appropriated to the owners. Initially, the keepers of those lands had been given the opportunity to apply for shareholding in the agricultural companies, settled by way of Act no. 15/1990, that are bestowed these lands on administration in exchange for a number of shares proportional to the equivalent surface of agricultural tracts passed to the state's patrimony. As it may be easily noticed, we testimony a sort of restoration, not merely by natural recovery, provisioned by an actual right (the title to the proper land) as ensued from the semantics of "restoration" phrase, but in a share-holding form (a claim right). Ten years after, under the provisions of Act no. 1/2000, cast by the late and famous rule of restitutio in integrum, the rule turned into a writ that makes provisions expressis verbis for the in kind restitution of property, on the account of the rights encompassing these lands. The breach of this act has a bearing upon those keepers who acquired – due to granted or onerous titles – the shares issued by the state agricultural companies. The problem is highly controversial as much as the laws which regulate the propriety restoration are framed by peremptory rules, functioning as principles and adjudging the right to restitution only to the ex-owners of agricultural tracts or to their heirs, that is to say those which were robbed from their owner title by the state. A strict enforcement of these principles, without taking into consideration the sheer consequences that the debentures effected in the civil circuit would defraud the present share keepers (that have neither the quality of ex-owners' or ex-owner' heirs) for the benefits of Act 1/2000.

Keywords:

the propriety restoration; the in kind restoration of property, shareholders to the agricultural state companies; transfer of state company shares, agricultural cooperative of production, agricultural state companies

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[1] Article 37 from Act no. 18/1991 (the ex-paragraph 36 in the late regulation of the modification in 1997) is the enactment that settels the agricultural tracts, other than those expropriated, which stay within the authority of state's agricultural companies.

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A. A few preliminary standpoints on restitution of private property right on agricultural tracts held in state propriety

Restitution, within the provisions of Act no.18/1991 (further alterations and completions comprised), aligns with the re-titling of ownership for certain categories of people whose lands went to the agricultural cooperatives of production (C.A.P.-s), irrespectively of the title, by co-operativization or other methods (L. Pop, (2001), : 59). It must be hereby stated that neither the "re-titling of ownership" does not perfectly overlap with the land fund laws because when the "re-titling" is brought about to discussion it is meant a restoration of the previous situation when these antinational measures were put into force (cooperativization, nationalization, expropriation, etc), that is to say a genuine *restitutio in integrum*.

The law of the land fund is far from achieving these challenges, chiefly when one pays attention to the proper juridical text that provides not the full retrocession of the late land estates, but the rendering of only lesser than 50 ha (I. Adam, (2005), : 170). The alterations operated to the article 23, paragraph 1^2 of Act no. 1/2000 by Act no. 247/2005 scarcely qualify some defrauded owners – e.g. the cult establishments – to claim the ownership title for the entire surface held before year 1945.

As to the object of restitution, on the other hand, although title IV from Act no. 247/2005 that writes out the provisions of Act no. 18/1991 seemed to choose other categories of lands for the retrocession of ex-estates, it did not bring brand new articles in fact. And that happens because all the previous regulations stated that the restitution points at the any land forcibly taken, namely the reference being hinted upon the abuse character of transfer; it also alludes to those situations when though the keepers did not subscribe to the associative forms, their lands were taken without any title1.

Henceforth, only those landowners and their heirs who got in, by any means, with their estates in the cooperative could claim the restitution, other cooperators who did not have proprieties being excluded from the effects of the law. The essence of this institution establishes that the right to restoration goes exclusively to those who apply for it, and consequently according to the readiness of those who are entitled to benefit by the outgrowth of this specific

[1] In this category there are lands such as: agricultural tracts (within and without the incorporated areas), the lands brought within the cooperatives by the members (art. 8, paragraph 2 from Act no. 18/1991); the agricultural tracts (within and without the incorporated areas), transferred without an ownership title or by any other method, either from cooperators, or from various other persons who did not have the quality of cooperators (art. 15, art. 16, art.18 & art. 33 from Act no. 18/1991); the agricultural tracts taken by the C.A.P-s under the provisions of special laws; the agricultural tracts owned by the state that while the enforcement of the law are in cooperatives use (art. 18 & art. 31 from Act no. 18/1991); the premises of the agricultural and sylvan tracts (art. 1, paragraph 1 from Act no. 1/2000, altered by Act no. 247/2005)

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institution1. It goes without saying that once the right not borne in the due date provisioned by the law2, the claimant is deprived of his/her right, losing, on the top of it, not only the subjective right to claim restitution, but also the factual right to claim restoration.

A particular situation – exemplified by the case law brought to analysis below – is represented by the agricultural traits that had gone to the state's propriety by the effect of special laws (others than those delivered or taken over, by any means, to the communist cooperatives) and are still within the administration of state's agricultural companies.

According to the article 37 from Act no. 18/1991 (the late art. 36), the land owners that had been undertaken by the state by the effect of special laws and that are still within the administration of state's agricultural companies were presented with the opportunity to become, on request, shareholders of the agricultural companies settled by Act no. 15/1990. The amount of shares was allocated proportionally to the surface of agricultural tracts that passed into state's propriety. As it may be easily noticed we testimony a sort of restoration, not merely by natural recovery but by shares.

The in kind restoration of the ownership right onto this category of lands had been expressly sanctioned ten years after when the law on the restitution of propriety appeared, and then by the Act 1/2000. In article 8 of the mentioned act it is provided that all the private persons to whom had been assigned the shareholder quality in state's agricultural or fishing companies, on grounds of article 36 (the present article 37) from the land fund law, are restituted agricultural and fishing surfaces of the same character, on the merit of previous writs attesting the incontrovertible ownership right to the detriment of state's companies.

[1] There is a trend, ill founded otherwise, to rule that the right to propriety can be granted to that heir who, before the passing of Act no. 18/1991, accepted the legacy without any other application requested by the legal conditions of Act no. 18/1991, on the appraisal that, even though it makes a mention of the other heirs, the claim of one them brings benefits inclusively for the not applicants.

[2] The last amending to the land fund law (by the title VI of Act no. 247/2005, art. 33) hands down a ruling to the private persons and legal entities that applied for the restitution within the provisions of Act no. 169/1997, Act no. 1/2000 who may present such an application within a 60 day term from the enforcement of the preset act.

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B. Some aspects of case law regarding the rightfulness sub-purchasers in the state's agricultural companies to be granted the in kind restoration for the lands located within the perimeter of these companies

I. The circumstances of this specific case

The settling and the grounds of judgment

By the civil verdict no. 10955, found by the Court of Iasi in October 5th 2007, the court of first instance dismissed the claim brought by the claimant U.R. by the provisions of Act no. 18/1991 versus the settlement of county commission no. 6794 from June 26th 2007 thereof solicits its overrule and the compel of the county commission to adopt a new settlement holding the cancellation of the claimant from the Supplement 19 and registration in Supplement 27 with a 9.5 ha surface of land ranged within the administrative area of the Municipality of Iasi.

The judge of the first instance grounds that, essentially, the administrative and juridical deeds issued in favor of the claimant – that is Order no. 4684/March the 6th 1995 and the Shareholding Resolution no. 7476/March the 14th 1995 – are illegal and cannot bestow on him the quality of owner and, consequently, the claimant cannot ask for the livery with the executed surface and cannot claim to be registered in the Supplement 27 and to be granted with the ownership title.

The court of first instance takes into account that, one the one hand, the transfer writ converting the 9.5 ha surface into shares cannot be legally effective (as, although a conveyance debenture with a granted title, the authentic form must be fulfilled) and, on the other, that Act 31/1990 that regulates the transfer of the ownership right to the state shares neither has been observed thorough the registration of the shareholding declaration in the shareholders' registrar, or tries that on the title issue there is a sheer mention about transfer.

Carrying into further review the legality and the grounding of the appellate civil verdict in terms of the pleaded reasons for appealing and of the legal provisions enforceable, and by the grounds of the provisions of article 304¹, paragraph C., civil suit, the Court of Iasi finds, by the civil resolution no. 727/April the 4th 2008, that the appeal made by the claimant is in all reason. In the foregrounding, the appellate court takes into account that, after the demise of the owner, her heirs pass on the claimant U.R. the shares to the S.A.Z.P.I.C. Miroslava, representing a 9.5 surface, and that those who had a shareholder quality are restored in kind, by request, with agricultural tracts ranged within the perimeter of the state's agricultural companies, thereof registered in Supplement 27, after the execution of the County Committee, at the proposal of the Local Committee. It is shown that the decisions issued by the County Committee in

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1995 by which the restoration of recursive claimant's ownership right (for the share equivalent of a 9.5 ha surface) has been ruled, were not cancelled by means of legal traits thereby they yield their legal effects, whereas the ownership right must be acknowledged the way the recursive claimant rightfully asserts. The fact that the Iasi County Commission charged with the examination of land fund issues, assessed, as a respondent, that the initial ratification had been made by breaking the provisions of Act no. 18/1991 and that, subsequently will refer to the Prefect of Iasi to further the finding procedure for the absolute nullification of Order no. 4684/1995, does not indicate as not sustainable the dismissal of complaint. Therefore, the Court granted a new trial, amended the verdict of the court of first instance and, by canceling the order of the Land Fund County Commission, disposed the cancellation of the claimant from the Supplement 19 and his/her registration with a 9.5 ha surface in Supplement 27 to SAZPIC Miroslava.

The facts:

M. R., ex-owner defrauded by the communist authorities, owned a 15 ha surface located on the Galata Hill, a land undertaken by the state and I.A.S. administered – the late S.C. S.A.Z.P.I.C. S.A. Miroslava. As when the Land Fund Law came up the original owner had demised, her daughter, G.C.M., applied for the restoration of her ownership right and got, by the GO/1991, the equivalent in shares of a 9.5 ha surface and 0.5 ha from the initial lot, accordingly to the provisions of Act no.18/ 1991. Further on it has been ordered a shareholding title for the demised owner (leveling with a 9.5 surface) and that document was issued on January 1992 for 5,000 sq. meters.

The entitled owner demised, in her turn, in June 1992, and her heirs, on grounds of their legacy certificates, transferred to the claimant, U.R. both the shares (by a conveyance deed) and the lot (by authenticated grant of property).

As the 5.000 sq. meter surface executed as material restoration located within the initial lot of the other landowner (who recovered, in his turn, the entitled ownership right), the granted claimant appraised the County Committee that a breach of law has been made.

In order to settle this atypical juridical situation, the County Committee decided to undertake the quality of owner for a 0.5 ha agricultural tract, and the Prefect issued an order thereof acknowledging the shareholding right (for a equivalent 9.5 ha surface) for the recursive claimant, soliciting at the same time the restitution of all authentic acts (order, ownership title, shareholding decision issued in favor of the restitution claimant from 1991, that is G. C. M.). Later on, after the issuing of the new ownership title for the restituted lot, the claimant sells it as a consequence of its getting in the civil circuit. But the claimant keeps his quality of shareholder in SAZPIC Miroslava.

After the enactment of Act no. 169/ 1997, the legal frame required the material restitution of lands restored otherwise with shares. It has been made a livery and it has even been laid out a preview for the title issuing for the initial

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place of the land, but an ownership title did not come up as this lot already gathered a number of 50 titles designedly issued for some agriculture experts (the matter was also called the experts' bargain).

Subsequently the claimant U.R. handed in countless petitions for the material restitution of that property, including the Office of the Prefect from Iasi, an institution which intimates the Local Committee from Iasi (considering for the rightful livery and title issuing) to draw out and forward to the County Committee a brief „in view for the cancellation from Supplement 19 and provisioning the material propriety" (Address no. 5062 from November 14th 2006). During the session from January the 17th 2007, held for the enactment of Act no. 18/ 1991 (republished), the County Committee from Iasi decides to forward the proposal of cancellation from Supplement no. 19 and the registration of U.R. in Supplement no. 30 with a 9.5 ha surface of agricultural tract.

Thwarting its own guidelines for the Local Committee and the very regulations regarding the restitution of property, the County Committee from Iasi gives the Order from June 26th according to the provisions of Act no. 18/1991, and „dismisses U.R.'s petition"; the claimant commits his petition to a competent court.

II. The commentary of the law case
The juridical features of the rights acquired by the claimant.

The plaintiff did not claim his quality of legatee or devisee, but he is the heirs' successor, therefore he benefits from the restoration of propriety, on the grounds of two particular deeds signed with him. Henceforth, an authentic grant of property was signed and another one by which the shares acquired on the strength of Act no. 18 / 1991 pass to the claimant (a conveyance deed).

1.1. Whilst the grant of property is a lawful act there are not problems of interpretation. Thus, the heirs were granted with an ownership title for a 0.5 ha surface. Thorough authentic deed they conveyed this estate to the claimant. Willing to take into possession the acquired estate, the claimant discovered that for the vary same lot there had been a double issuing of title (favoring also the ex-owner), and the resolution of this problem came into the authority of County Committee which had to repeal the title for the wrong lot and to reissue a new ownership title for the initial tract located in the IAS perimeter.

That way, the Committee faced an unprecedented law problem. Certainly, the estate got into the civil circuit, as the grant of property removed it from the property of the initial titular and came within the property of the purchaser. Those who initially acquired an ownership title could not get a second one because, on the one hand, they had disposed of it and, on the other, by the issuing of a new title for the same heirs, they would have been stroke

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rich. The settlement of the County Committee – the issuing of a new ownership title on the donor's account – observed the law case met in the grant of property, without alterations of the nominal properties.

1.2. In accordance with article 36 from Act no. 18/1991 (its initial form) „the persons whose agricultural tracts passed into state's property become, at request, the shareholders of companies settled by the provisions of Act no. 15/1990, and the amount of shares will be proportional with the formerly taken lot surface". In the concerns of the entitled person's endowed right, we relate to the juridical tenure of shares in commercial law. Thereof, the regulation waiver allows that not the state company issues the titles, but the County Committee, by grounds of article 93, paragraphs 3 and 4 from Act nr. 18/1991 (the initial form); the decision is intimated both to the titular and the state's companies. So, there is not a nominal suit for a material form, as requested by the Companies Law, but with a specific decision of the County Committee.

Moreover, the registration of the transfer deed in the shareholder's registrar must be operated by the company proper. In this specific case, the transfer declaration reports that the deed was signed in the company office, before its commodity representative, respectively the company solicitor (who wrote down on the deed „delivered and signed before us, today, may 15th 1993).

2. A few standpoints regarding the legality of the transfer manner for the shares in state's agricultural companies

2.1 In order to be valid, the transfer act need not have the authentic form.

As mentioned before, Act no. 18/1991 – regarding the juridical tenure of shares – acquires a special character by compliance with the general regulation from the Companies Law no. 31/1990. Lacking, in Act no. 18/1991, a straight regulation on the manner in which these shares may be disposed of, this precise juridical operation observes the general rules.

Namely, article 64 (enforced in 1993), and respectively article 89 (in the present form) from the Companies Law provides that the ownership title on nominative shares may be transferred by a registered declaration in the shareholders' registrar and also by title writ mention.

In comparison with the particular juridical configuration granted on the manner of nominative shares, this precise legal provision is derogatory to the Civil Law, according to which the grant of property (in order to be valid) must have an authentic form.

2.2. The special provision on the nominative shares disposal does not make the difference between the disposal of onerous title and the disposal of granted title.

The shares will be transferred by declaration. As a consequence, the transfer act, signed both by the assignee and the assigner observes the

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provisions of the law and must bring forth effects even though it does not have an authentic form.

In particular, I could not prove (and could not have done it under any circumstance) that the transfer declaration had been written in the shareholders' registrar and that a written mention had also been made on the title proper. The proof that the transfer deed was registered at the state's company is represented by both the subsequent deeds issued by S.A.Z.P.I.C Miroslava where the company avows U.R.'s shareholder quality and, respectively, locator, and the deeds that prove that he received dividends. The obligation of registering came within the responsibility of the company and not of the shareholder. Taking into consideration all these deeds and facts and the provisions of Act 18/1991 that regulates the undertaking of legal actions, the requirements of article 64 (the present article 98) on the transfer of ownership into shares from the Companies Law no. 31/1990 were fulfilled. The transfer deeds providing the equation of ownership title with nominal shares are within the legal frame both from the perspective of restoration regulations and the provisions of commercial law.

3. The inequity of the court's settlement related to the deducted object of suit

3.1. The court's arguments

From the presented grounds of judgment appears that the judge of the first instance took into consideration the fact that the "claimant is not a person rightfully entitled to the constitution or restoration of property", by pointing out that the effectiveness of these deeds (the order and the decision issued for the claimant) might be analyzed in absence of an instance's judgment on the nullity of the presented writs, due to the conditions given for the close related legality or illegality of the writ contested in the present complaint..."

By this „incidental remedy", the judge of the first instance „analyzes" and finds that:

- "the quality of owner is not granted by the referred writs but for the issuing within the procedure provisioned by article 32 from the Regulation adopted by G.O. no. 131/1991 and article 29 from the Regulation adopted by G. O. no.1172/2001" as the claimant does not prove that he is the person from whom the lot had been taken or that he is the legal/testamentary heir of the ex-owner.

Nowadays, after a plentiful practice of that act enforcement, the illegality of writs on favor of the claimant might look natural. Yet, these were adopted in 1995, that is before the passing of Act no. 169/1997 when – out of the regulations intended for the provisory settlements solving the cases of shares disposal – the County Committee respected the will to grant and to acquire, and also the legal provisions treated in the case law by issuing a new set of writs in

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U.R.'s name. Whose right has been strained and who has been the injured party after this misty affair?

- The Decision and the Order do not comprise „the mention that the referred decision would make for an ownership title for the claimant, and this is also lacking from the Order no. 4584 from March, the 6th 1995".

This judgment grounding has not any legal support.

On the one hand, the law manes the writs necessary for the initiation of restoration: orders, certificate of livery, provisory ownership certificate, ownership title. Each of these writs has a distinct configuration and ensued different legal effects. Sure enough that in the application for the provisory ownership certificates it is mentioned that these make for a title until the proper issuing, but this practice cannot be extrapolated to all needed writs, without any legal basis.

On the other hand, the law does not stipulate anywhere that the writ of property settlement (the order) or the shareholding right (settlement) will be done under the token that they simply stand for an ownership title – as, at the end of the legal procedure – they will be replaced by a real ownership title.

3.2. The County Committee and then the Court of the First Instance settle something else than the claim they were called for

3.2.1. The Land Fund County Committee – a law and administrative authority

According to reissued Act no. 18/1991 (article 8, paragraph 1), the settlement of the ownership right on the agricultural tracts is made by the constitution or restoration of this right. Likewise, article 51 of the same act defines the competence of the County Committee that validates or invalidates the proposals forwarded by the Local Committees. For the application of this procedural provision, all the regulations (drawn up, from 1991 till the present moment, in view of the enactment of restoration) expressly stipulate that, one the one hand, one of the local committees responsibilities is to file the proposals at the County Committee (after the evaluation of each specific situation is being made) all along with all the necessary documents, and, on the other hand, the County Committee has as a main responsibility the validation or the invalidation of Local Committees.

The County Committee (provided for its administrative and juridical responsibilities) is not, in any case, a civil court that might sustain or dismiss a suit; the County Committee is an authority, created by a special law, which validates or invalidates the Local Committees' proposals.

3.2.2. The Character of the right claimed by the plaintiff

By the Order of The County Committee from 1995, the claimer's private person previously acquired the right to bring legal suits, whereas according to imperative regulation of article 48, paragraph 1 from the Regulation (G. O. no. 890/2005) – "in Supplement 27 are registered the private persons to whom had been settled a shareholder quality to state's agricultural or fishing companies, on

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grounds of article 36 from Act no. 18/1991 (unaltered), and to whom is been restored in kind agricultural tracts ranged in the perimeter of the specified companies, by proof of documents acknowledging the ex-ownership". It goes without saying that the claimant asserted this specific right.

Though, in order to settle his claim of livery the County Committee had to run thorough an examination his shareholder quality and the fact that the initial lot was within the range of S.C. S.A.Z.P.I.C. Miroslava perimeter.

Sufficiently absurd and non legal, the assertion that there had been a livery requirement goes against the entire estate economy, after the suit brought out the fact that the claim referred to the writing of a right already avowed in another supplement.

3.2.3. The illegality of court analysis on documents issued previously the administrative procedure began

The County Committee has been vested with the responsibility of a strictly technical operation, required by the text of the law, lacking the competence to censure the legality of the settlement by which the right to suit has been provisioned.

From the Order of County Committee that disputed by means of sue complaint appears that the mentioned law was not abode by and that the County Committee examined a case that was not within its competence because the questioned right had been previously recovered, respectively the right to restoration.

By means of suit complaint, the claimant delegates the court to censure the order of the County Committee, and afterwards to find the illegality of displayed grounds of judgment, in view of the plaintiff's registration in Supplement 27. The Court had not been vested so as to bring verdict to the legality of the 1995 order.

The examination and inquires in the presented documents that also grounded the 1995 order, the court rendered a judgment to a cause that had not been brought up, in this respect its settling being void.

The shares transfer to the claimant was established by 1995 Order that restores the in kind right for the claimant's person. This order – which brings effects inclusively nowadays – provides the claimant with a positive and legitimate hope to acquire a chattel as provisioned by article1 from the First Protocol of Practice Convention C.E.D.O. (Barsan, C, (2005), : 979-989). Moreover, according to article II, paragraph 1 from G.O. 1832/2005 „the proposals filed by the communal, town or municipal committees referring to the settlement of ownership on lands, validated by the orders of County Committees or Bucharest Municipality and adopted before the enactment of the present order, are and keep on being valid save for the case they have been attacked in the legal term" (author's emphasis).

All these provisions, as much as the obligation to settle nothing else than the suited matter draw to the conclusion that the judge of the first instance

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could not analyze „by incidental remedy" the legality of Order no. 4684 from March 1995 and of the shareholding Decision no. 7476 from March 1995 .

The reasons of the settlement give on the one hand an erroneous interpretation to the proofs administered to the brief, as well as for the legal provisions suited for this specific case, and, on the other, bring an unqualified finding regarding the legality of the claimant's issued documents.

Conclusions

Facing the foggy meaning of the law on the juridical character of purchased shares on grounds of article 37 from Act no. 18/1991 (reissued), the judge needs to make an appeal to the analogical interpretation. Else, the most akin juridical institution to this specific case seems the one regulates the disposal of a disputable right. Thereby, the law regulates the disposal of a disputable right, a situation that the lawsuit relation is counted at first between the parties of the material litigation. If, during the legal procedure, one of the parties sells its disputable right – then the assignee takes the place of the assigner in the lawsuit. Equally, if during the restoration procedure the shares titular disposes of them, the purchaser subrogates to the seller, undertaking the rights and obligations concerning that property. In case of subsequent laws setting out upon the shares debt claim for an actual right, than the latter will be allowed to the purchaser's person, this one being the most entitled to be granted an in kind restoration.

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