



LAND OWNERSHIP ACT AS A BASIS FOR LEGAL STATUS REGULATION OF REAL ESTATE LOCATED IN RURAL AREAS

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Abstract

The concept of real estate legal status has not been explicitly defined by the legislator. Despite this, the literature took the view that this is generally the rights and restrictions assigned to the property. To determine legal status one should determine first the entities which has rights to the property. For the purpose of determining the legal status of real estate, mortgage registers are established in Poland. Unfortunately, at this moment, a large part of the properties, particularly in rural locations do not have established mortgage registers. In the absence of mortgage registers other documents showing ownership of the property may be land ownership acts. For agricultural properties, they are sometimes the only documents on the basis of which one can specify the entities to which it has rights in rem to real estate, they are also the basis for founding the mortgage register.

In recent years the number of new mortgage registers increased significantly in real estate of rural areas. The basis for establishing the mortgage register in addition to the documents confirming the acquisition of rights is also data shown in the Land and Property Register, which are the basis for determination of the property. Due to the fact that the legal status of the property disclosed in the Land and Property Register report do not always reflect the legal situation, the necessity of regulation of the state is increasing for the purpose of founding the mortgage register. This need led the authors to a thorough analysis of the characteristics of the land ownership acts as a document confirming the legal status of real estate with a focus on surveying procedures performed during op-

erations aimed at demonstrating the correct legal status of the property at the Land and Property Register report. This analysis allowed the authors to identify gaps in the law, which main aim is to regulate legal title.

Keywords: land ownership, land register, regulation of legal status

INTRODUCTION

In the applicable legal regulations, the concept of „legal status” used in relation to real estate is not explicitly defined by the legislator. Literature has come to the view that it is all rights and restrictions assigned to real estate. To determine the legal status of real estate, it is necessary to state all entities that are entitled to aforementioned real estate in the first place. According to paragraph 1 pt. 1 of The Act on Land and Mortgage Registers and on Mortgage (The Act 1982) for the purposes of determining the legal status of real estate the land and mortgage register are created. Up to the present moment a large part of real estates in Poland located in rural areas does not have a perpetual land and mortgage register. In cases where a real estate does not have a assigned land and mortgage register, other documents can be used as a confirmation of legal status, such as: collections of documents, notarial deeds, final judicial decisions, court settlements and final administrative decisions (§ 4 of the Real Estate Demarcation Regulation, 1999). Specific examples of administrative decisions that establish the acquisition of real estate by virtue of law are Land Ownership Acts issued under the currently non-binding law on the Act of 26 October 1917: On the regulation of farm ownership (The Act 1971). For properties located in rural areas, the Land Ownership Acts are sometimes the only documents on the basis of which property owners are entitled to property rights. They are also the basis for the establishment of a land and mortgage register (Bieda *et al.* 2010).

In recent years, due to system transformation, as well as significant reduction of fees for land and mortgage registers, the number of land and mortgage registers established by owners of real estate located in agricultural areas has increased. The basis for the establishment of the land and mortgage register, in addition to the documents confirming the acquisition of rights, is the data recorded in the Land and Property Register that form the basis for the designation of the property. The legal status of real estate disclosed in land and mortgage registers should be consistent with the actual legal status; but due to historical conditions concerning establishment of the Land and Property Register, this compliance may not occur (Kwartnik *et al.* 2012).

Due to the fact that the legal status disclosed in the Land and Property Register does not always reflect the legal status resulting from the documents, it is necessary to regulate this state for the purpose of establishing the land and

mortgage register. This need has prompted the authors to undertake a thorough analysis of the Land Ownership Act as a document stating the legal status of the property with particular emphasis on geodetic procedures undertaken during the activities which purpose is to demonstrate properly the legal status of the property in the Land and Property Register.

The subject of the study was 10 geodetic surveys focused on the assortment of works map for legal purposes made for communities: Stąporków and Końskie, located in the Końskie county of Świętokrzyskie Voivodeship. The analysed area is the area of the former Russian Partition, where the cadastre did not exist (Noga *et al.* 2003), and Land and Property Registers were established in the 1960s and 1970s, based on photogrammetric studies, which were made more legible by direct field measurements. In the 1990s, on the analysed area, another surveys of legal status were conducted, which aim was to actualize Land and Property Register.

LEGAL BASIS OF LAND OWNERSHIP ACTS ISSUANCE

The legal basis for the issuance of the Land Ownership Acts was the Act of 26 October 1971: On the regulation of farm ownership (The Act 1971), aimed at regulating the legal status of real estate located in agricultural areas. According to the Act, autonomous owners of farms became lawful owners of real property on November 4, 1971, which were autonomous in their possession, if they had acquired it on informal agreements (Kwartnik 2002). Autonomous owners may also acquire property if they have been in possession of it for at least 5 years in good faith or 10 years in bad faith until the date of entry into force of the Act. Landlords could also purchase the property if owners for at least 5 years did not manage their property on account of employment in a profession other than work on the farm.

The acquisition of property through administrative decision was pronounced by the competent authority for agricultural affairs. Appeals through this authority could be submitted to the Voivodeship Arbitration Commission. The Land Ownership Act, which was not revoked became final and could be the basis for the establishment of the land and mortgage register. Land Ownership Acts in administrative proceedings were issued only until April 6, 1982, until the date of entry into force of the Act amending the Civil Code and repealing the Act of 26 October 1971: On the regulation of farm ownership (The Act, 1982). Since April 6, 1982, the acquisition of property is only possible in non-litigious court proceedings.

Currently, the final administrative decisions of the Land Ownership Acts are not subjects to the Code of Administrative Procedure (The Act. 1960) regulations concerning the resumption of proceedings, annulment, repeal or final

decision. At present, there is no legal possibility to undermine Land Ownership Acts even if they are affected by qualified legal defects (Supreme Administrative Court ruling of 22.03.2016, code number II OSK 1756/14). In the case of submitting a request for cancellation of the Land Ownership Act, the competent local authority should by decision refuse to initiate administrative proceedings (Judgment of the Voivodeship Administrative Court in Cracow of 11.05.2009, Ref. II SA / Kr 242/09).

LAND OWNERSHIP ACTS CORRECTION

At present, there is no legal possibility of undermine the final administrative decision such as the Land Ownership Act. It is possible only to rectify the errors in writing, accounting and other obvious mistakes in the Land Ownership Act (NSA's verdict II SA 432/95, Judgment of the WSA in Cracow, II / Kr 2623/03, judgment of the WSA in Cracow, no. II SA / Kr 1279/09). According to paragraph 113 § 1 and 3 of the Code of Administrative Procedure (The Act 1960) at the request of an authorized party or of its own motion, rectification of obvious errors in the Land Ownership Acts may be done. The authority authorized to adjudicate such cases will be locally competent authority of the municipality (judgment of the WSA in Warsaw dated 29 March 2006, ref. IV SA / Wa 2403/05). Correction of the Land Ownership Act is made by way of a resolution, which can be complained about by entitle party.

The concept of „obvious mistake” has not been clarified by the legislator. According to the Supreme Administrative Court's verdict, a misprint is a misuse of a word, a misleading spelling, and an unintended departure of the word. An obvious mistake according to the Court, is when *the decision expresses something that is apparently incompatible with the thought unambiguously expressed by the authority, and was spoken over by mistake, wrong choice of words* (Judgment of the NSA of 21 September 2012, code number II OSK 940/11). It is important that rectifying the error cannot lead to a change in the substance of the judgment (Supreme Administrative Court ruling of 10 February

1994, SAC / DK 723/93). It is not possible to rectify the error if it leads to a different resolution from the original of the case (Judgment of the Voivodeship Administrative Court in Kraków of 4 December 2013, Ref. III SA / Kr 354/13).

According to the Voivodeship Administrative Court in Cracow, an example of a typographical error that can be corrected administratively is the incorrect entry in the Land Ownership Act of the name of the entity acquiring the property by virtue of law. The Voivodsehip Administrative Court stated that in addition to the name of the subject, another personal data, such as the date of birth or the name of the parent, also allows for unambiguous identification of the subject (judgment of the VAC in Kraków dated 10 September 2015, signature II SA /

Kr 766/15), therefore the error in the name of the subject does not lead to the disclosure of the wrong person in the decision.

However, in the Land Ownership Act, the fractional parts attributed to a particular entity may not be altered in the administrative proceeding. This also applies to the existence of conditions under which it is possible to presume that the facts disclosed in the decision are incorrect. Such change results in the need to conduct an investigation, which may lead to a different settlement of the case (Judgment of the VAC in Kraków dated 4 December 2013, Ref. III SA / Kr 354/13). It is not possible, in the administrative procedure, to „add” an entity to the Land Ownership Act even if there is a presumption that the entity should be listed in the final administrative decision, as such an amendment also introduces the need for an investigation (Judgment of the VAC in Kielce, 04.06.2014r., Signature II SA / Ke 266/14).

In the Land Ownership Act, apart from showing the persons acquiring the property by law, the aggregate areas of the land parcels acquired by the entity were also disclosed. According to the Voivodeship Administrative Court in Warsaw, the faulty surface area revealed in the decision does not constitute a basis for correcting the obvious mistake in the Land Ownership Act because it leads to a change in the substance of the case (the Warsaw Administrative Court’s ruling in Warsaw of 29 March 2006, Ref. IV SA / Wa 2403/05). Another view is presented by the Voivodeship Administrative Court in Kielce, which states that each case should be considered individually, since not in any case a change of area disclosed in the Land Ownership Act may lead to a change of administrative decision (Judgment of the PAC in Kielce of 26 April 2016, Signature II SA / Ke 66/16).

The very large number of Land Ownership Acts that were issued caused them to be not free of errors (Kwartnik 2003). A land surveyor, when making a regulation of legal state of a property in accordance with the Land Ownership Act, should remember that if he finds obvious errors in the decision, the means by which it can be eliminated from the content of the Land Ownership Act is to rectify errors in the administrative proceedings. On the basis of the analysis of different cases, it is unfortunately possible to state that the sole fault of the entity that is agreed to be rectified by the courts in the Land Ownership Act is the correction of the name or other personal data identifying the entity acquiring the property by virtue of law. From the contractor’s point of view, it is important that, according to the judgment of the Voivodeship Administrative Court in Kielce, an attempt may be made to request administrative change in the area indicated in the decision, since the incorrectly stated area affects the extent of the landowner’s right to land stated by the land surveyor, while undertaking actions to regulate the legal status of real estate in accordance with the Land Ownership Act.

THE LAND AND BUILDING REGISTER REPORT AS A LAND OWNERSHIP ACTS DISCLOSED REAL ESTATE MARK BASIS

Before commencement of activities connected with Land Ownership Acts issuance in Końskie and Stąporków municipalities, geodetic surveys were conducted in 1960s, which aim was to establish the Land and Building Register. These activities were carried out in accordance with the Land and Building Register Decree (Decree 1955) and executive instructions (Noga 2006). The survey involved the state of actual possession that existed on the ground during the measurement. Establishment of land possession state for Land and Building Register purposes was based on documents held by the relevant authorities or submitted by the parties, and in the absence of them, on the basis of statements by the parties confirmed by the representatives of the village. Establishing of land possession state in rural areas took place on the ground in the presence of a surveyor, interested parties and village representatives, confirmed by signatures to the land possession state protocol (Łuczyński 2009). The state of expropriated farmer's possessions and the areas of real estate shown in Land Ownership Act were determined according to the data contained in the Land and Building Register, however, taking changes that occurred prior to the date of entry into force of the Act of 26 October 1971 On the regulation of farm ownership (The Act, 1971) into account.

Entities acquiring real estate were listed in the Land Ownership Act as well as the numbers of individual land parcels owned by these entities and their aggregate surface area. Land plot boundaries and their surfaces have been shown in Land and Building Register that are still kept in the National Geodetic and Cartographic Resource. When adjusting the legal state in accordance with the Land Ownership Act, the entire Land and Building Register report should be analysed, and above all, the parcel boundaries on old survey maps should be checked, surveying outlines and their areas should be analysed, because, on the basis of the Land Ownership Act, the land surveyor can determine only the subject entitled to the ownership title of a given property, while the course of borders can only be determined on the basis of data from the resource.

LAND OWNERSHIP ACT AS A BASIS FOR ESTABLISHING LAND AND MORTGAGE REGISTER

At the moment of establishing the Land and Mortgage Register, the party is obliged to submit to the court an application as well as the documents stating the ownership title of the property and the basis for their identification. The basis for the designation of immovable property in the Land and Mortgage Register is

data from the cadastre (Article 26 pt. 1 of the Act on Land and Mortgage Registers and on Mortgage): an excerpt from the register of Land and Building Register and an outline from the cadastral map. Documents which are basis for ownership right entry are, inter alia: Land Ownership Acts, custody orders, abolition of co-ownership, declaring inheritance, acts of attestation of inheritance. After submitting the application for a Land and Mortgage Register, the court examines the content and form of the application and other attached documents (Article 626⁸ §2 of the Code of Civil Procedure, 1964). If, after analysis has taken place and the court has concluded that there are no grounds or there are obstacles to make entry, the application is dismissed. An example of such an obstacle may be the inconsistency of the disclosed state in the Land and Buildings Register report with the status shown in the Land Ownership Act.

On the studied part of Końskie County, the issue of Land Ownership Acts was preceded by geodetic surveys, which aim was to measure the state of land-ownership in the 1960s, and consequently the creation of relevant land registration data such as the area or numbers of parcels disclosed in the Land and Building Register report. These data were the basis for the properties marking shown in the Land Ownership Act. Over time, land development has changed and there is a need to update the data recorded in the Land and Building Register, therefore in the 1990s, a re-measurement of the state of land ownership was made. These works were carried out on the basis of the Decree on Land Register (Decree 1969), according to which boundaries of plots were determined according to the actual state of land possession state established on the ground. The establishment was based on documents submitted by the parties or held by the competent authorities or on the basis of statements by the parties. As a result, the land possession state protocols were written down. By analysing the documentation, it can be stated that in many cases, when updating the land registry, surveyors did not investigate whether the state existing on the ground during the measurement corresponded to that shown in the documents defining the legal status of the property. As a result, there have been occasions when the surveyor was able to unconsciously legalize land under informal land conversion by measuring the current status of the landowner. That could be in cases where the parties, due to their narrow plots, in exchange with their neighbours, exchanged areas for use in order to obtain their favourable shape for more efficient management. As a result, during the land survey, the surveyor included a non-compliant state with the Land Ownership Acts, which was subsequently disclosed in the Land and Building Register. This condition usually persists in the records until the party makes the application for the outline map needed for the establishment of the Land and Mortgage Register. The employee of the competent authority (authority that creates and maintains Land and Building Register) analyses the materials and draws out an outline map showing that the state of the record after

the update of the survey does not coincide with the legal status of the Land Ownership Act (Figure 1).

Due to the fact that in recent years the number of the Land and Mortgage Register has been increasing, and whereas the computerization of Land and Building Register makes it possible to detect such errors, the number of geodetic surveys is increasing in order to regulate the legal status of the real estate in the records with the state resulting from the Land Ownership Acts. The Land and Buildings Register records the objective and subjective status of the relevant documents, and does not create legal status in such a situation or it cannot settle possession right and therefore it is appropriate in such a situation to carry out activities in order to regulate the status shown in the records with the legal status of the relevant documents. These activities may be performed by a surveyor after appropriate procedures.

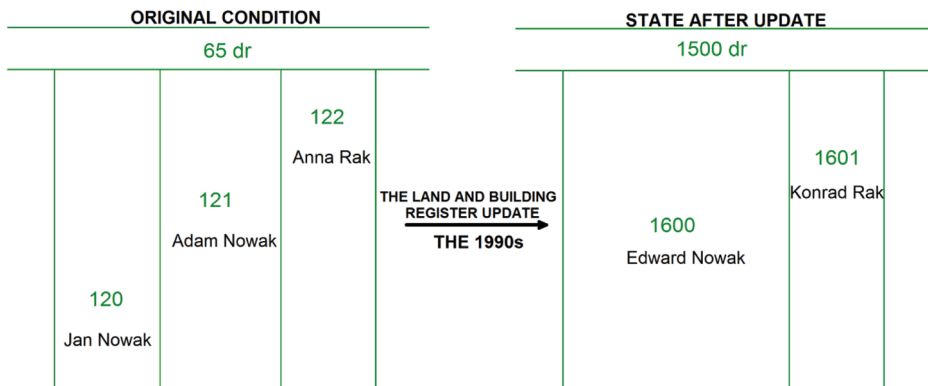


Figure 1. An example of a misrepresented state of ownership in the land and buildings register

GEODESIC ACTION IN REGULATION OF LEGAL STATUS OF REAL ESTATE

Regulating the legal status of real estate is complex activity, which is the compilation of several geodetic surveys (Hanus 2007). By making legal adjustments in accordance with the Land Ownership Act, the authorized surveyor performs geodetic activities to reconstruct the course of the boundaries according to the state disclosed in the Land and Building Register report as of November 4, 1971, while identifying the entities who will now have property rights in the property. The problem in this case may be that the National Geodetic and Cartographic Resource does not always have materials on the basis of which this

state can be reproduced. In the areas of the former Russian Partition, in addition to the maps made prior to the updating of the land register, documents which also described the course of the borders were the measurement outlines created in the 1960s. However, these materials cannot always be used because they may be unreadable due to the passage of time. Other sources that can be used to determine the state of possessions are the so-called. „obliczeniówki”, which are documents in which the area of each parcel of land was calculated. From these materials one can read ex. widths of plots, which are usually measured directly in the field. While analysing the documents, one should support oneself with the Land and Building Register map, but the accuracy of defining the boundaries on the basis of the map is small (Bieda *et al.* 2011). When reconstructing the course of the boundaries, it is also necessary to examine the condition disclosed in the land register, because these documents can be analysed not only as a source of information on the area of individual plots, but also on the rights assigned to individual entities.

After correctly determining the course of the boundaries of the land parcels, the final effect of the analysed surveys included the division of plots revealed in the register prior to the update (Figure 2). Due to the fact that in the PZGiK (the National Geodetic and Cartographic Resource) it is not always possible to find documents determining the course of plot boundaries before the updating of the land and buildings register of the 1990s, there were cases where the surveys consisted only of separating the corresponding areas shown in the old land registers in an appropriate shape of parcel.

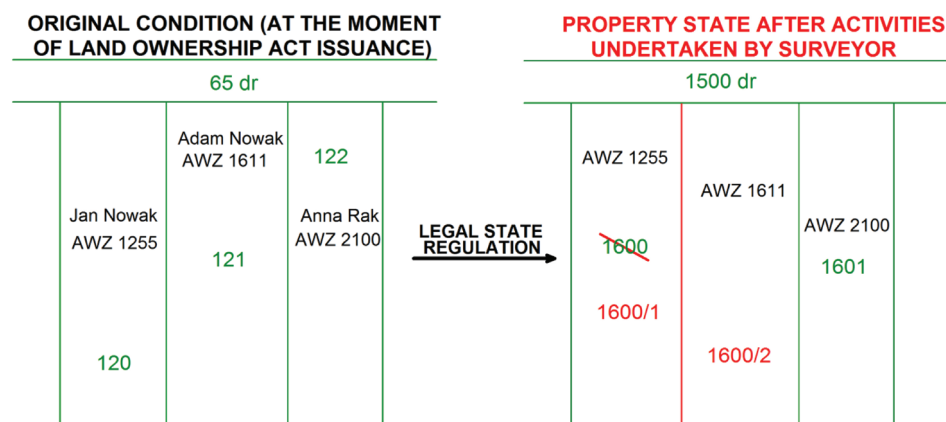


Figure 2. State disclosed in the land register after the completion of geodetic survey

Lack of clear legal regulations on the issue makes surveyors encounter many problems during the operation. One of them may be the border protocol. There are no specific guidelines in the legislation that defines which boundary protocol should be prepared by a land surveyor and what elements it should contain, so when analysing the technical documentation, some freedom can be observed in this regard. In 8 out of 10 analysed cases, surveyors made a protocol, which is applied during a property division. In the other 2 cases used protocols suitable for setting border points. The application of the Adoption of Borders protocol for parcels from which separation activities are made seems reasonable, but the application of the same protocol for newly established borders may raise doubts.

A problem may be determining which parties will now have ownership right of the properties shown in the Land Ownership Act. Due to the fact that since the decision-making period has already passed a long time and rarely the subjects directly disclosed in the decision still live, it would be correct to demonstrate in the border protocols and on the resulting map their successors. Analysing the documentation, it can be seen that in 30% of cases the legal successors cannot be identified because there is no established land and mortgage registers, and inheritance proceedings are not always completed. So there are no documents on the basis of which it would be possible to establish an entity entitled to ownership of a plot of land.

The final result of the work is the creation of a map, on the basis of which changes in the land and buildings register will be introduced, involving the disclosure of newly allocated land parcels. From these activities land surveyors draw a map for the legal purpose, which exact content was determined in the Regulation on technical standards (Regulation 2011). In addition to the elements listed in the regulation, the surveyors make a list of changes in the registration data, which together with the map is the basis for changes in the Land and Building Register made by competent authority. Once the changes have been made, the status shown in the land register corresponds to the demonstrated status in the documents stating the legal status of the property, and thanks to that the party may conclude for the establishment of the land and mortgage register.

It should be noted that errors in land and buildings register may result in disclosure of the wrong legal status in the land and mortgage register. This is the case if the error discussed above is not noticed by the employee making the outline map and an excerpt, and as a result the wrong data becomes the basis for the establishment of the land and mortgage register. Once the land and mortgage register has been established, even if the discrepancy is noticed, there is no longer any way to rectify the error in administrative proceedings.

CONCLUSIONS

The data disclosed in the land and buildings register shows the subjective and objective status, which is a result of the relevant documents, but this data cannot create legal status and settle the right of possession range. That is why the legal status shown in the land and buildings register should be in line with the property rights documents.

There are no specific legal regulations governing the procedure, when regulating the legal status of a property in accordance with the Land Ownership Act takes place, whereby land surveyors carrying out such works encounter numerous technical and legal problems. Unclear legal regulations on many issues raise doubts and even result in the inconsistency of technical documentation with applicable laws.

The lack of specific technical guidelines defining the border protocol to be drawn from the activities carried out on the ground results in full freedom of form and content of protocols used by contractors. Analysing the technical services performed by the surveyors, it was noted that in 80 % of cases used protocol for the border clearance procedure prepared during the division of real estate. Correct application of the protocol of acceptance of borders for parcels currently disclosed in the records seems to be the right solution. However, it is only possible to raise justified doubts by the mere taking of the boundaries of new land plots.

In 30 % of cases inheritance proceedings was not finished. The problem is to identify the legal title to the registered land parcels, and consequently those who need to be notified about the activities on the ground and which should be shown in the border protocol. It would therefore be useful to issue laws that would clarify the procedure to be followed in such a case.

Based on the analysis, it has been unequivocally stated that the issuance of technical guidelines defining the procedure for regulating the legal status of immovable property, in line with the Land Ownership Act, as well as the form and content of the border protocol would facilitate work, clarify a number of unclear issues, and clarify ambiguous provisions.

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