

## **HUNGARIAN LAND AUCTIONS IN THE MIRROR OF NEW REGULATIONS**

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### INTRODUCTION

The topic is current nowadays because regulations of land auctions has been changed basically by the Act CXXII of 2013 on Transactions in Agricultural and Forestry Land (hereinafter referred to as Act CXXII of 2013). According to the Act CXXII of 2013 in the case of acquisition of ownership of land through auction or tendering as part of an enforcement or liquidation procedure, or local government debt consolidation procedure (hereinafter referred to as “auction”), the agricultural administration body shall carry out the auction as provided for in the decree adopted for the implementation of the Act, at the request of the bailiff, liquidator or fiduciary. In this way in connection with the land auctions the auction of immovable property rules of Act LIII of 1994 on Judicial Enforcement (hereinafter referred to as Judicial Enforcement Act) cannot be applied.

According to the definitions of the Act CXXII of 2013 the ‘agricultural, forestry land’ shall mean any parcel of land, irrespective of where it is located (within or outside the limits of a settlement), registered in the real estate register as cropland, vineyard, orchard, garden, meadow, permanent pasture (grassland), reed bank or forest or woodland, including any parcel of land shown in the real estate register as non-agricultural land noted under the legal concept of land registered in the Országos Erdőállomány Adattár (*National Register of Forests*) as forest.

Unless otherwise provided for by the Act, the provisions on lands shall also apply to farmsteads (Section 5 point 25). This is an important regulation because this is the reason that the auction of lands came out the jurisdiction of bailiffs.

In this paper I would like to introduce the regulations of selling agricultural forestry land by auction (hereinafter referred to as land auction) in detail. The paper focuses primarily on land auctions occurring in judicial enforcement proceedings.

### 1. AUCTION OF AGRICULTURAL, FORESTRY LAND IN THE MIRROR OF ACT OF CXXII 2013

As we can see in the introduction the Act of CXXII 2013 has changed the rules of land auctions fundamentally. These regulations are introduced in this chapter.

As it was mentioned earlier according to the Section 35 of Act of CXXII 2013 not the bailiff carries out the 'forcibly selling' but it is performed by agricultural administration body at the request of the bailiff, liquidator or fiduciary. It can be mentioned as a significant changing of the Act of CXXII of 2013 that in land auctions the rules of electronic auction which is included in Judicial Enforcement Act. Moreover, there is another relevant change in rules of land auctions which is different from the Judicial Enforcement Act: there is no possibility to sell the land without auction.

Thus regarding to the above mentioned participants of the auction are required to verify their eligibility for acquiring the ownership of land by producing the relevant documents at the place where and at the time when the auction is held, and, in the cases provided for in Sections 13-15, they shall provide statements in compliance with the requirements specified therein relating to formalities. Of course pre-emption rights also can be exercised in case of lands. Holders of pre-emption rights shall be able to exercise such right at the auction, with the provision that the documents evidencing their right of pre-emption shall also be presented in person at the place where and at the time when the auction is held.

According to the regulations of Act CXXII of 2013 the agricultural administration body which carries out the auction shall consider the eligibility of the auction buyer and the right of pre-emption of the person bidding as the holder of pre-emption right, and as to whether the auction sale is predisposed to breach or circumvent restrictions on land acquisitions. It can be happened that there are more than one holder of pre-emption right of the same ranking participating as auction buyers. In this case the one designated by the agricultural administration body shall acquire ownership of the land which – this paper does not deal with this question – can suggest constitutional problems.

If the agricultural administration body approves the acquisition, it shall at the same time endorse the auction report as provided for in its regulations and shall send it to the bailiff or the liquidator, as appropriate. After that the agricultural administration body shall transfer the purchase price shown in the auction report in full to the bailiff or the liquidator.

If the agricultural administration body refuses to approve the acquisition of title by the auction buyer, or if the auction fails, the land in question shall be transferred under State ownership and shall be assigned to the National Land Fund. The agricultural administration body shall communicate its decision on the refusal of approval, and the report on the failure of the auction to the land fund management body as well. The land fund management body shall transfer payment of the appraised value to the bailiff or the liquidator, as appropriate within thirty days following the date of delivery of the final decision or the report on the failure of the auction.

## 2. REGULATIONS OF THE JUDICIAL ENFORCEMENT ACT CONCERNING LAND AUCTIONS

Despite of that the Act CXXII of 2013 and its implementing decree include several detailed regulations concerning land auctions we can also find rules in connection with the land auctions in the Judicial Enforcement Act which can have significance from point of view of the new owner who got the land which was under judicial enforcement proceeding.

However firstly the acquisition of immovable property by auction as a form of acquisition of property created pursuant to administrative decision is introduced. The 'primary' nature of acquisition of lands by auction cannot be considered clear-cut according to the effective legal regulation. However most of the authors in Hungarian legal literature and legal practice of the Supreme Court endorse the 'primary' nature of acquisition by auction but according to the view of Gergely Légrádi [1] the acquisition of immovable property by auction cannot be considered clearly 'primary' acquisition because the 'primary' and 'derivative' elements are mixed in this form thus – I can agree with this point of view – he considers it as a 'quasy primary form of acquisition of property'. [2] According to the section 5:41 of Hungarian Civil Code (Act V of 2013) – which shall be emphasized because the earlier Civil Code (Act IV of 1959) did not mentioned here the acquisition of immovable property by auction - any person who has acquired a thing in good faith by means of official resolution or official auction shall gain ownership irrespective of who the previous owner was. Upon the acquisition of ownership of the thing by means of official resolution or official auction, the rights of the third party on the thing shall cease, except when the party acquiring ownership by means of official resolution or official auction did not act in good faith in respect of those rights.

According to section 137 of the Judicial Enforcement Act the ownership right of the new owner acquiring a seized immovable property shall only have the following encumbrances: easement, right of use for public purposes, beneficial ownership recorded in the real estate register, beneficial ownership by virtue of law even if it is not recorded in the real estate register.

As an exception in the subsection (2) appears that the rights of the new owner of an immovable property shall not be limited by any right of beneficial use, whether or not recorded in the real estate register, if the holder of such usufruct is liable to satisfy the claim of the judgment creditor, or if it was established by contract after the mortgage has been attached.

The subsection (3) establishes – which is the most 'important' in connection our topic - that if a third party (hereinafter referred to as 'land user') holds any right fixed in a contract for the use of landed areas used for agricultural and forestry purposes as defined in the Act on Transactions in Agricultural and Forestry Land (Act CXXII of 2013), which are seized for the purpose of enforcement, the ownership right of the new owner acquiring the seized land shall be restricted, apart from the rights referred to in Subsection (1), by such land use rights as provided for in Section 137/A.

Section 137/A regulates that how land use rights can limit the ownership right of auction buyer because if there is land use right based on contract on the agricultural,

forestry land under judicial enforcement procedure in that case land use right will charge his/her ownership right. [3]

The section 137/A establishes that subject to the exceptions provided for the above mentioned subsection (2), land use rights shall be terminated on the last day of the sixth month following the date of registration of the new owner's right of ownership in the real estate register.

There are two groups of exceptions under this regulation: Land use rights shall not terminate on the deadline prescribed in subsection (1), if: the new owner makes a written statement to the land user for the retention of the land use right before the deadline prescribed in subsection (1), or the land user received any land-based agricultural and rural development support funded from European Union or national resources, subject to the obligation of land use as prescribed by law for a specific period as a precondition for the support. In these cases - provided for in the above mentioned exceptions - the land use right shall terminate in accordance with, and at the time provided for in, the legislation governing the termination of the contract for such right.

The provisions of subsection (1) shall also apply to land use rights acquired following the seizure of the land in question that is land use rights shall be terminated on the last day of the sixth month following the date of registration of the new owner's right of ownership in the real estate register.

### 3. LAND AUCTION RULES IN THE IMPLEMENTING DECREE OF ACT CXXII OF 2013

In the above chapter the paper included examination of the 'act level' regulation, in this chapter discusses the procedural rules (briefly) which are contained in the implementing decree of Act CXXII of 2013 (191/2014. (VII.31.) governmental regulation, hereinafter referred as to Regulation) which came into force on 1<sup>st</sup> of August 2014.

#### *3.1. Rules of the request for the auction*

If it is necessary to order land auction (of agricultural, forestry land) in enforcement or liquidation procedure, or local government debt consolidation procedure the applicant sends a request to the agricultural administration body – which has jurisdiction on the basis of the location of the land – in 30 days from the occurrence of conditions of sale in the cause of publication of auction or sale notice and the auction.

In this case the bailiff practically sends a request to the agricultural administration body instead of publication of auction notice.

The contents of request are established in the Regulation. The content elements of the request have similarities with the immovable property auction notice included in Judicial Enforcement Act. The request must include: the name of the applicant, the address of its office, its phone number, its invoice number, moreover the name and

address of the judgement debtor and the judgment creditor in judicial enforcement procedure, the amount of lowest bid, and information about pre-auction rights (for a real-estate) of the local government or the other owners of the land. Furthermore, it has to include the name and the number of its company register (or court register), its residence in liquidation procedure; the name and the residence of the debtor in local government debt consolidation. In connection with the land it must include its real estate registration data, the name of the owner, the above mentioned rights: easement, right of use for public purposes, beneficial ownership recorded in the real estate register, beneficial ownership by virtue of law even if it is not recorded in the real estate register, lien, land use right recorded in leasehold registry and register of foresters and its term, moreover the building registered with the land and its main function, the appraised value of land. Furthermore, in connection with liquidation procedure the minimum price according to the regulations recorded in 237/2009. (X.20.) governmental regulation. The deadline for the real property sales contract in liquidation procedure and local government debt consolidation procedure which is also a necessary element of the request. Last but not least the possibility and conditions for auction buyers to watch the building registered with the land.

### *3.2. The auction notice*

After that the agricultural administration body got the request it schedules the auction by means of auction notice within 15 days (from the delivery of the request). That is the reason why request and auction notice are very similar regarding to their content elements. The necessary data are the following: the agricultural administration body's name, address of its office, its phone number, its invoice number, the place, time and identifier number of the auction, the names of the judgement debtor and judgement creditor, and the legal title and amount of principle claims in judicial enforcement procedure. Furthermore, it has to include the name of debtor and the number of its company register (or court register), its residence in liquidation procedure; the name and the residence of the debtor in local government debt consolidation. In connection with the land it must include the real estate registration and leasehold data especially: name of the settlement, the placement of the land, topographical lot number, the growth of the territory, gold crown value, the name of the owner, the above mentioned rights: easement, right of use for public purposes, beneficial ownership recorded in the real estate register, beneficial ownership by virtue of law even if it is not recorded in the real estate register, lien, land use right recorded in leasehold registry and register of foresters and its term, the relevant specialities of the land, the building registered with the land and its main function, appraised value of land. Furthermore, it must contain the amount of auction deposit (hereinafter referred as to deposit) and bid, moreover the minimum purchase price to be offered, and the bidding threshold. In addition, it must have include calling attention according to the Act XLIX of 1991 in liquidation procedure; notification for who have pre-auction rights about that the condition to exercise their rights is to take part at the auction; notification about the possibility of taking image and voice records. Last but not least it is necessary to include the deadline for the real property sales contract in liquidation procedure and

local government debt consolidation procedure; the possibility and conditions for auction buyers to watch the building registered with the land and other information which concern the auction buyers.

The Regulation establishes the place and the date of the auction: it can be placed at the location office (according to the location of the land). The date of the auction shall be established in that way that it cannot be earlier than the 60<sup>th</sup> day from the scheduling of the auction but it cannot be later than the 90<sup>th</sup> day from the scheduling of the auction. The scheduling day does not include into the counting of these deadlines.

After that the auction notice is finished it has to be delivered within 8 days to that people who are nominated in the Regulation. In the judicial enforcement procedure the auction notice has to be delivered to judgement creditor, judgement debtor moreover those who have rights in connection with the land in the real estate registration, the other owner(s) if the land is in co-ownership, and last but not least notaries of villages, towns, Budapest district governments – competent for the location of the land - to placarding the auction notice. Moreover, it has to be delivered to the real estate supervisory authority (also competent for the location of the land) to record the fact of scheduling the auction into the real estate registration, and of course it has also to be sent to the applicant that is the bailiff.

It has to be ensured that the completed auction notice is placarded. The finished auction notice has to be placarded on the bulletin board of the agricultural administration body, bulletin board of settlement mayor's office competent for the location of the land, and in the case of the joint mayor's office it shall be placarded on the bulletin board of the joint mayor's office and the mayor's office belonging to the joint mayor's office. Last but not least it has to be placarded on the bulletin board of real estate supervisory authority and the court responsible for enforcement. Furthermore, it has to be published on the website of government office. It is important in both cases (on bulletin boards and websites) auction notices shall be left posted for no less than thirty days before the auction, until the fifth day preceding the auction. Upon the request of either party (judgement creditor or judgement debtor), the agricultural administration body shall arrange for publicizing the auction in other appropriate ways as well.

In legal practice the next problem has been raised: Are there any remedies which are available against the auction notice? And if there are which remedies are those?

The auction notice – in my opinion – cannot be attacked by demurrer because that is not during the bailiff's procedure but it was prepared during the agricultural administration body's measures. The request of bailiff could be attacked by demurrer but it does not have to be sent to the parties, it has to be delivered to the agricultural administration body. Administration bodies – usually – do not ensure jurisdiction of remedy against the auction notice which raises constitutional questions (in connection with the jurisdiction of remedy). According to my opinion if neither the Regulation nor the Act CXXII of 2013 do not ensure special remedy against the auction notice in that case the rules of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services – as the background of the

administrative proceedings, the code of the administration (according to the ministerial explanation)– shall be predominated and in consequence of this the appeal according to the Act CXL of 2004 shall be applied against the auction notice. Unless otherwise prescribed by an act or government decree, an appeal shall be lodged within fifteen days – it shall be submitted to the authority that adopted the decision contested – following the date of delivery of the decision. In the appeal no new evidence may be introduced, of which the client was aware before the decision was adopted. The appeal shall be reasoned (see Section 98-107 for the details)

### *3.3 The process of the auction*

One of the most important elements of the auction is that who has the possibility to be an auction buyer. It is necessary to be an auction buyer firstly to deposit the 10% of the appraised value of the land as the advance money at least before the beginning of auction at the agricultural administration body, secondly to pay the bid furthermore according to the rules of Act CXXII of 2013 (section 35) to produce the relevant documents which verify their eligibility for acquiring the ownership of land. Deposit the advance money and paying bid could happen by transfer.

The Regulation also establishes those who cannot be bidder and auction buyer. These are for example according to the Judicial Enforcement Act: neither in person nor through an authorized representative or proxy, may not represent bidders, and may not acquire the asset directly or indirectly by way of auction bailiffs, substitute bailiffs, bailiff assistants, other employees of bailiffs, bailiffs' offices, members or employees of bailiffs' offices; any legal person or business association in which either of the persons or organizations have majority control; the close relatives and domestic partners of acting bailiffs, substitute bailiffs, members of bailiffs' offices and employees of bailiffs and bailiffs' offices; staff members of the court responsible for enforcement; and the judgment debtor. The act of Judicial Enforcement establishes that the persons or organizations referred to in the above mentioned shall not be excluded from the auction if their entitlement to acquire the asset in question derives from their judgment creditor or co-owner status, or if they have the right of pre-emption afforded under specific other legislation for the asset. Bidders may not withdraw their bids.

Act CXXII of 2013 also has regulations in connection with it. Ownership of land may not be acquired by: third-country natural persons; foreign states, including their provinces, local authorities, and the bodies thereof; legal persons, except as provided for in this Act.

Last but not least Act XLIX of 1991 also has regulations in this field but this paper does not intend to examine them.

The process of auction is the following: Bidders may bid in person, or through an authorized representative or proxy. The agricultural administration body, the applicant, the parties who was took part in the request procedure and the bidders can take part at the auction.

The auction shall begin by the agricultural administration body announcing to the bidders the appraised value (reserve price) then the conditions of the auction are set out and calling upon the bidders to quote their bids. The reserve price of the land is the amount of the appraised value. The main rule is that the highest price offered has to be at least the 50% of the reserve price in auctions which are in connection with judicial enforcement procedure or local government debt consolidation procedure. One of the exceptions from this rule is the farmstead in respect of that, bids are accepted if made in an amount covering at least 70 % of the reserve price if it is the only residential property of the judgment debtor, it is his residence and it has been for six months prior to commencement of the enforcement procedure.

The auction has to be continue until valid bids came from bidders. If there is no more bids the auctioneer tells three times the highest price offered and then calls upon the ones who have pre-auction rights (and take place at the auction) to exercise them.

The auction buyer is that who offers the highest price.

The auction can be unsuccessful in this case the auction has to be repeated (there shall apply the rules of the first auction but with some exceptions). If the repeated auction is also unsuccessful the auction is failed. if the auction fails, the land in question shall be transferred under State ownership and shall be assigned to the National Land Fund (as I mentioned above).

At the auction the agricultural administration body makes an official report of auction. It can be attacked by remedy. It has to be delivered those people who are recorded in the Regulation.

If the auction was successful, the auction buyer has 60 days to send the price to the deposit account of agricultural administration body. If the auction buyer fails to send the money within 60 days he/she will lose the advance money.

## CONCLUSIONS

In my paper I tried to introduce briefly the auction of land in the mirror of the new regulations. As we can see in the above the regulation changed basically the rules of the auction of the land. This paper does not contain all detailed rules but I tried to emphasize the most important changes.

The new rules have similarities with the original immovable property auction rules but the most important difference is that rules of electronic auction cannot be applied. Basically in my opinion it can cause in some cases corruption because it is not as 'safe' as the electronic auction.

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