



Vlasic, 26th and 27th May 2005

Treatment of Construction Land in Bankruptcy Procedure

History of City Construction Land (CCL)

- City construction land (CCL) was mentioned for the first time in the Law on Nationalization of Rent Buildings and Construction Land from 1958 (Official Gazette of FNRJ 52/58), by which nationalization was performed of the entire city construction land in urban areas and town settlements throughout FNRJ.
- This CCL was transferred into state ownership ex-lege, i.e. by the force of the law itself (article 1 of the Law)
- State ownership over nationalized CCL was recorded in the Land Registry (LR) on the basis of decision of municipal body (art. 58 of the Law), which was made collectively for the entire land in that municipality (in practice mostly executed in the LR), but that registration did not have constitutive significance for occurrence of the right

Registration of Nationalized CCL in the LR

- If the nationalized land was underneath a building, then the A section was divided into land registry body I (the land), II, III (building) and other. After such division, state ownership over the land was registered ex officio (article 11 of the Instruction on Land-Registry Entries of Nationalized Rent Buildings and Construction Land – Off. Gazette of FNRJ 49/59).
- Only the land, without buildings, was registered in state ownership on the basis of municipal body's decision on nationalization of construction land.
- On official duty, the court registered the right of temporary use of the previous owner (art. 14 of the Instruction) – in practice, very rarely.
- When the land is taken into planned use, the municipality had to submit the decision to the court, which ex officio registered cease of the temporary right of use (art. 14 of the Instruction) – in practice very rarely.
- Right of use for construction, as well as earlier rights of owner were entered into land registries, in encumbrance sheet (art. 24, par. 2 of the Instruction) – in practice very rarely

Law on Construction Land from 1986 (Off. Gazette SRBIH 34/86)

- Article 16, par. 1 of the law prescribed that by entry into effect of the decision determining CCL, ownership right and other property rights ceased to exist.
- The implication is that regardless of the LR status, if there was a decision pronouncing CCL, ownership right over that land ceased to exist.
- By paragraph 3, it was prescribed that registration of state ownership was performed ex officio, and the right of previous owner over that land.
- According to art. 13 of this law, CCL could only be determined by the municipality

Right of Use for Construction Purposes According to the Law from 1986

- Right of use for construction purpose had to be recorded in the LR (art. 52 and 54), and it had constitutive momentum according to the general rules of the ZOSPO.
- In its nature, the right of use for construction purposes is a property right, and it was acquired by registration in the LR, and not by decision itself.
- Right of use for construction purposes was lost if the construction was not completed within three years after the construction permit was obtained (art. 53), and that was determined by a municipal body in its decision, based on which the registration of that right was deleted in the LR (the moment of deletion from the LR is constitutive).

Law on Construction Land from the Year 2003

- CCL can be in private and state ownership (art. 4)
- CCL in private ownership is only the land underneath and around a building, which serves for its regular use (art. 4)
- Municipality manages and disposes of the CCL in state ownership in accordance with the law (art. 6)
- CCL in private ownership is traded and it is disposed of by its owners (art. 7), with limitations prescribed by the law
- Any legal transactions on disposition of CCL contrary to the law are void (art. 9)

Proclamation of City Construction Land

- CCL is proclaimed by the municipal council (art. 12)
- Decision on proclamation of CCL does not have constitutive character, but it has to be run through the LR (art. 15)
- Decision on proclamation of CCL is submitted to court ex officio for registration in the LR (art. 14), making the new Law on Land Registry and this law in agreement with regard to constitutionality of the registration in the LR
- Municipality can expropriate CCL in private ownership, and the old owner has the priority right of construction according to regulative plan (art. 16)

Acquiring Private Ownership Over CCL (Art. 39)

- Owner of a building also acquires ownership right over the land underneath and around the building, which is required for regular use of that building (art. 39)
- By this, prior permanent right of use (built-up construction land) is turned into ownership right in favor of the **owner** of the building
- Only the part that serves for regular use of the building is turned into ownership
- Ownership right over built-up CCL is acquired by the force of the law, and registration in the LR only has declarative significance
- Question: If the right of disposition is entered in the LR, can ownership right be acquired by art. 39 (in FB/H yes, but not in RS as well?)

Registration of CCL in Private Ownership in the LR

- Registration of ownership over built-up construction land in the LR is done upon request, and the LR permanent right of use on the same lot is registered as ownership of the building owner.
- If a building is not registered in the LR, for the registration it is necessary to have the decision on assignment of the land for construction and use permit for the building
- If there is no urban plan or allotment plan, i.e. if it is unclear what is essential for use of the building, there has to be a special procedure before administrative body (Municipality), where the ownership is not determined, but only the size of the lot (art. 39, par. 2)

Transfer of CCL

- Legal entity can transfer non built-up CCL only to municipality with no consideration, or with compensation for infrastructure (art. 18) – to bring it to permanent purpose
- Possession right over CCL is limited, and it can be transferred only along with the building located on it (art. 41)
- Legal entities have the priority construction right on the land they use, in accordance with urbanism regulations (art. 42 and 43)
- Unfinished building, according to this law, is the one where the first floor is closed (54), and transfer is limited (transfer between relatives, or, with approval of municipality, to third person)
- By the force of the law, state ownership ceases to exist over non built-up CCL which had been proclaimed by the municipal assembly (article 96), where it is actually returned to the prior owner (actual denationalization)

Question

- If a decision on proclamation of CCL from the prewar period has not been executed in the LR, can land without buildings in a city be sold as debtor's bankruptcy estate, since the debtor had been registered (after the war) in the LR as owner?
- Is there room here for retroactive application of principles from article 5, par. 1 of the Law on Land Registry, according to which only registration in the LR has constitutive significance for rights over real property?
- Is third person as buyer of property a conscientious person, and as such can it be protected by the principle of credibility in the LR from art. 9 of the Law on Land Registry, in case of litigation due to invalidity of the legal transaction by which CCL was transferred?

Conclusions for CCL

- Non built-up CCL cannot be sold as bankruptcy estate, since it is CCL in state ownership
- Unfinished building on CCL can only be sold to relatives, or to third persons as well with approval of municipality
- CCL can only be transferred with buildings
- Legal transactions of disposition contrary to these rules are void (article 9)