

06_The Fate of Buildings in Public Auctions of Land_MR[english]

On 18 May 2017, the General Assembly of the Civil Law College of the Supreme Court of Cassation (SCC) issued an interpretative decision in Interpretative Case No 5 of 2015, giving answers to some questions concerning the ownership right to buildings and structures in the event of a public auction of the land.

The Supreme Court of Cassation upheld that the ownership rights to a building erected on a parcel of land would not be acquired where the enforcement proceedings involved only the land. There is an exception to this rule for accessory structures.

The general rule that the landowner is also owner of the buildings and structures and the vegetation planted on the land, unless provided for otherwise does not apply to principal properties. They are valid subjects to independent disposal of the ownership rights thereon and therefore enforcement proceedings may involve them on their own. Nevertheless, where the property was not subject to the public auction, the ownership of the buildings and structures is not acquired together with the land by appurtenance. If the facility was not included in the enforcement act of the judicial officer, then there is no conveyance of the ownership of this property to the buyer of the parcel of land.

Similarly to sale arrangements, the assignee of a property in a public auction is transferred all the rights of the debtor to that property. However, public auctions have a complicated factual composition. The objective of the enforcement proceedings is to cash in the debtor's property in accordance with the provisions of the Code of Civil Procedure concerning real estate enforcement. When the enforcement is focused on the property, the latter has to be precisely described, distrained, evaluated, declared and assigned in the way provided for in the law. The SCC invokes these provisions in its reasoning that where the enforcement proceedings involve only the land, it could not be assumed that the ownership of the buildings or structures thereon would be acquired by appurtenance. This conclusion is in line with Article 63 of the Ownership Act, which reads that it is possible for the building or structure to be owned by a person different from the landowner of the parcel.

The fate of accessory structures is different in case they do not meet the statutory requirements for a principal building which is an independent facility subject to ownership

rights. Such structures are outdoor kitchens, sheds, barns and other household structures. Where it is not an independent facility, the structure generally follows the ownership of the land or the building, as the case may be, to which it is attached. When land is assigned in a public auction, it is acquired together with the accessory structures even when they are not included in the description, distraint and assignment act. The applicable law in this case is Article 92 of the Ownership Act in accordance with which the assignee of the land acquires also the ownership of the structures by appurtenance.