

The role of the state in regulating the purifying works through the rural and urban surveys.

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Received: 01/2024

Published: 06/2024

Abstract:

The operations that had previously ended, titled as The Agricultural Revolution in a municipal territory, are considered as starting point for composition of real estate card set, and this is stipulated in Article 24 of the Agricultural Revolution Law.

Therefore, these cards constitute the beginning of preparing the general survey and establishing the real land register. Therefore, the preparatory work for land surveying is based on all previous documents, records and engineering plans that is mainly related to the real estate law that was in effect during the colonial period. We note that the Order 75/74 establishing the land survey came as a complement to the Agricultural Revolution Law, and it started from where it ended, and that is why we find that rural surveying has witnessed more success, unlike urban surveying. In light of these data, the following problem was raised: To what extent can the state organize purifying works through rural and urban surveying? To answer this problem, we decided to divide our research into two axes. The first axis dealt with the preparatory work for the survey process, and the second axis dealt with the survey division of municipalities

Keywords: Land Survey Rural Survey, Land Law, Agricultural Revolution .

Introduction:

The process of real estate documentation, in the urban or rural environment in Algeria, in both, its physical and legal aspects, is related to the mechanisms and the procedures organized by the Algerian legislator based on a set of law provisions. The survey process is the real and effective tool for determining the real estate ownership. However, this must be related to the field through the appropriate mechanisms decided by the state to follow it up, by legal mechanisms and surveying equipment that undertake this task at the national level and which have the powers that enable them to take the necessary measures and even the most appropriate measures for preparing the public land survey. It is represented by public institutions of an administrative nature that collect various information obtained and record it in accurate and clear documents. The surveying and purifying works undertaken by the state must be achieved through a series of actions. Some of them are preparatory, which began with the beginning of the agricultural revolution at the level of the relevant agencies, and some of them are field-related, related to the cadastral division system for municipalities. Basing on this, this research paper was divided into two axes. The first axis is the state's preparatory work for the land survey process. The second axis: the survey division system for municipalities. Accordingly, what are the state's preparatory works for the land surveying process, and what are the components of the municipal cadastral division system?

Section I: The state's preparatory works for the land survey process:

The agricultural revolution is considered the first sign of the configuration of a group of the real estate cards in Algeria and this is what was stipulated in Article 24 of the Agricultural Revolution Law. Accordingly, these cards constitute the beginning of preparing the general survey and establishing the real estate registry.¹

The Algerian legislator sought to establish the National Land Survey Agency in order to establish the legal mechanism for the survey process, which is essentially responsible of preparing a general land survey and distributing it throughout the

¹ Article 1 of Order No. 74/75 of November 12, 1975 relating to the general land survey and establishing the cadastre.

national territory and desiring to purify the real estate problems inherited from the colonial period and this is one of the stages of implementing the public real estate documentation project. The survey process was usual for the Department of State Property Affairs and Real Estate Affairs, for quite some time.²

Accordingly, the preparatory works for land surveying are based on all previous documents, records and engineering plans which are mainly related to the real estate law which was applied during the colonial period, especially since Order 74/75 establishing the land survey came as a complement to the Agricultural Revolution Law, and it started where it ended. This is why we find that the rural surveying has witnessed more success, unlike the urban surveying.

A) The beginning and opening of land surveying works:

Due to the importance of land surveying in the process of clearing property and building a successful real estate policy, the start of the works takes an official form and is carried out according to a decision issued by the regionally competent governor and comes with a proposal from the Sub-Director of Land Survey, specifying the date of opening the survey in the territory of the concerned municipality as well as the type of survey, whether rural or urban. The decision must be communicated through all applicable publicity methods to ensure it reaches the public and to prepare for the process.

As soon as the state decision is issued regarding the opening of public land surveying operations in the territory of a municipality, the surveying process takes on a legal character and becomes mandatory and official and has full authority to carry out the works, because it is binding on the state and no party or person can obstruct its launch process. Otherwise, it will be subject to the penalties stipulated in Article 417 of the Penal Code. This article is referred to by Article 25 in the French language text of Decree 62/76 of 1976. It is noted that the same text in Arabic was incorrectly referred

² The surveying process was ceded to the National Land Survey Agency pursuant to Executive Decree 89/234 of 12/19/1989, which included the establishment of the National Land Survey Agency.

to Article 147 of the Penal Code, which speaks about the crime of insulting a public employee. Accordingly, the status of undeclared properties that are arrived at late is not legally protected and remains suspended and exposed to instability. This is what made some legal specialists see the necessity of maintaining the statute of limitations in some exceptional cases because there is no conflict between the principles of the Algerian real estate registry and the civil law. So there is no objection to its rules still being applied in cases where there is no conflict ³. One of the consequences of the decision to open the survey is that all real estate disputes in the area covered by the decision are frozen and referred to the judge who heads the survey committee, who cannot decide on them except by mutual consent or refer them to the judiciary. The legislative will did well to refer disputes during the survey to the committee judge, because it does not decide on the dispute whose owners did not reach a mutual consent, but rather refers it to the judiciary, which causes disruption of the survey works. The survey decision also gives the state property interests, as a party concerned with national property, to intervene strongly and express reservations about some of the results within the framework of the tasks entrusted to it to protect and monitor its property by representing it in the survey committee and in the field survey teams when conducting real estate investigations. It can be concluded ,that the statute of limitations for gains is possible in light of the concrete record with regard

B) Preparing, exploiting and collecting survey documents

Referring to the colonial period, we find that this period left behind many problems associated with the process of rural surveying, including the problem of lands called AL-ARCHE, which are lands left over from colonialism, despite the fact that the real estate policy followed in that period was in the service of European settlement projects. Despite its negative repercussions on real estate conditions, it left behind important and useful documents in any process of purifying real estate ownership,

³ Mohammadi Farida, the statute of limitations on gains and the real estate registry system, published article, Jurisprudence of the Real Estate Chamber of the Supreme Court, Part One, Publications: Supreme Court, Documents Department, 2004, p. 117.

and it cannot be dispensed with, because these real estate documents, regardless of what they were, reflect the reality of the real estate situation that existed. Therefore, the survey process must be based on relevant old information and documents and take them as a reference in preparing new survey documents. An example of this, as we mentioned previously, is the problem of the lands called the AL-ARCHE , which are lands left over from colonialism who confiscated them from the tribe that owned them and annexed them to the state property, and they still raise a lot of controversy as they are the state property because they are registered in the public registry. But the last amendment to the National Property Law in 2008 confirmed that it remains the property of the state. Referring to Instruction No. 16 referred to above, we find that it specified the survey documents that were completed during the colonial period, which can be referred to and used before the start of the public survey works, because they are not devoid of information related to public real estate and agricultural surroundings 4. Note that the same instruction also indicated the places where these documents were supposed to be located, because they relate to the national archives, which should not be destroyed.

Regarding the practical procedures for collecting documents, the survey director first searches for all available plans related to the municipality that is the subject of the survey, by reviewing the real estate status card and which is a map related to the municipality that is prepared by the National Institute of Maps, and collects all the necessary plans and designs, such as plans with a scale of 00 or 1/5 for rural areas, plans with a scale of 1/25000 or 1/2500 for urban areas 5. As well as the plans that were prepared pursuant to a law under the Agricultural Revolution Law and the plans for lands that were specific to the self-management system. After completing the collection of old plans and cards, the survey director resorts in a second stage to

4Zarbani Muhammad Mustafa, Protecting National Property in Light of Economic and Social Challenges, Journal of Legal and Political Studies, No. 04, 2016, p. 95

5 L'instruction n°16 du 24/05/1998 relative à la conduite des opérations cadastrale et d'immatriculation foncières .la direction du domaine nationale .op.cit. P5 .

collecting plans related to the forests located on the territory of the municipality to be surveyed, plans for those lands that constitute agricultural investments, which is distinguished by the fact that it is scanned because it was drawn up according to administrative contracts registered in the real estate governorate used during the implementation of the agricultural revolution, documents using enlarged aerial photographs with a 500/1 ladder relating to the expropriation operations for public benefit that took place on the territory of that municipality, documents of endowment properties and roads, and those kept by the offices of promotion and real estate management. And the bodies managing national properties, then the real estate documents for the properties subject to allocation.

The interests in which old documents can be found are primarily the interests of state property, taxes, old real estate governorates, and judicial courts, because these bodies existed during the French occupation period.

C) collect the procedure for aerial photography to identify the areas:

The aerial surveying is useful for surveying activities when difficulties arise in some areas, or if necessity requires resorting to this type of surveying. It is a binding procedure in some cases that may prevent the progress of survey works. Accordingly, the Land Survey Department may resort to aerial surveying during the preparatory phase of the survey work, with the aim of providing real estate data and information using aerial photography methods by aircraft. There is a new experiment announced by the Ministry of Finance that uses satellite surveying with the aim of accelerating the process and completing it within the deadlines. Referring to Instruction No. 16/1998, we find that it defined aerial photographs as a document on a scale, which has the same metric features as a plan and represents the shape of an aerial photograph.

Section II: Survey division of municipalities

The measures taken within the framework of the land survey preparation process aimed at clarifying the physical structure of the real estate registry through the topographical location of the real estate property, which must go through complex administrative and technical procedures, because it requires expertise and qualification specializations in the technical work of the survey. Therefore, the first procedures for directing survey work require that the agents have an accurate and comprehensive knowledge of the municipal boundaries, and they must have the necessary information about the municipality, its neighborhoods, and its total population. They must also be familiar with legal information.

A) Techniques for confronting the difficulties of identifying real estate units::

The process of setting the territorial boundaries of the municipality requires following three basic technical stages:

1- Carrying out reconnaissance work: which is carried out by the technical team for land surveying with the aim of identifying the place to be surveyed, diagnosing it and discovering its difficulties.

2- Preparing the statement plan and issuing the minutes of demarcating the boundaries:

Which aims to limit the section concerned with the survey to a specific spatial and cadastral space and extract its total area on the ground to facilitate identification of the group of real estate units and the number of lands that make up the cadastral section.

3- The report of the demarcation of boundaries:

which is prepared by the technical assistant in charge of the survey and it should be in the presence of the mayor of the concerned municipality and the heads of neighboring municipalities. It mentions all protests or disputes related to the boundaries, which are usually due to the designation of pastoral areas or AL-ARCHE lands. It is signed by those present in the demarcation process and then sent to The concerned governor for approval.

If the municipality's borders are adjacent to another state or a foreign country, the report is approved by the Minister of the Interior. We point out that in the event of a dispute over borders, despite referring to the documents and plans prepared within the framework of the country's regional organization for the year 1984, the problem is presented directly to the Minister of the Interior and Local Communities, who decides on it administratively and finally 6.

B) Adjusting the engineering survey plan for municipal properties:

The land survey plan for each municipality represents a graph of the municipality's territory, i.e. its total area. The plan shows the number of survey sections in the municipality, and each section includes several places and neighborhoods approved in the survey. These places consist of a group of real estate units, and each real estate unit may be divided into Land plots represented in the plan by letters or numbers. To know the location of the real estate unit within the survey department and how to identify it, we will look at the following clarifications:

1) Surveying Department:

It is part of the municipal territory, defined in a technical manner according to a form that will not allow it to be transferred on the paper of the section survey plan in each municipality according to increasing numbers, the department is located in a place that has a special designation that is known among the population

2) Property group or real estate unit:

It consists of all the adjacent land plots that are subject to the same rights and burdens and it is owned by one person or in common, and has a defined spatial area. It constitutes a real estate unit distinct from the rest of the other properties, meaning that its physical and legal components must be homogeneous and identical.

⁶ Zarbani Muhammad Mustafa, previous reference, p. 195.

What is notable about this concept of the real estate unit is that it did not take the rules of strata ownership into consideration if the building apartments were fixed separately from the land, and it is taken from Egyptian legislation, which was criticized, but Algerian law corrected the situation and allocated special cases to joint ownership. The survey is important in numbering the real estate unit within the section to which it belongs, because the section number and the real estate unit number are what express the identity of the surveyed property and are a reference in the transactions that take place around the property. Accordingly, the ownership group or real estate unit includes information about the legal nature, origin of its ownership, and the full identity of the apparent owner, in addition to the rights and burdens that burden the real estate unit.

In the case of Ownership over communism, the list of partners must be included. In the event that the property contributes to an economic activity, information on the nature of the land must be added to it if it is agricultural, and the things on it must be designated by specialty, such as wells and irrigation systems.

C) Classification and identification of state property:

The process of establishing and identifying national properties differs from other properties

The process of establishing and determining national property differs from other ownership, especially individual property, because the individual property system is subject to private law, while national property is determined according to a procedure that is largely subject to public law and the issuance of administrative decisions it imposes. Establishing annexes to state property during land survey work must be in the presence of representatives of the technical departments managing these annexes or in accordance with the data and plans sent by these departments to the Land Survey Directorate. In the absence of accurate information, the one who fixes the boundaries resorts to specifying in accordance with the limits of the use of the adjacent properties, with the exception of the seashore, national and state roads, and

permanent water courses, as this requires the intervention of their interests. The decree preparing the land survey confirmed that the state, local groups, institutions and administrative bodies must provide all clarifications about the boundaries of their ownership when undertaking land survey operations and accordingly, this determination of public property, which follows the survey, is carried out in an official report according to the procedure stipulated in the National Property Law and subsequent texts. As for the National Property Law, we find that it takes into account the private property rights of others during the process of establishing public property, or allows interlocutors, whether public or private, to register their observations and rights during the inspection period due to the danger resulting from this process, because after completing the study of the objections, the regionally competent governor takes a decision to control the borders, and after the procedure, the authority becomes absolute for the state over the individuals who did not declare their appeals during the process.

Conclusion:

The State intervention in organizing clearing works through rural and urban surveying is achieved through a number of works, some of which are preparatory at the level of the relevant bodies and agencies, and some of which are field related to the material and technical works of the purifying works process, and some of which are related to the land survey plan for each municipality. The graph represents the municipality's territory, i.e. its total area, and the plan shows the number of survey departments in the municipality. The agricultural revolution is considered the first sign of state intervention in purifying works and the formation of a set of real estate cards and the process of establishing and determining national property differs from other property, especially individual property, because the individual property system is subject to private law, while national property is determined according to a procedure that is largely subject to public law and the administrative decisions it imposes.

1- Bibliography:

Footnotes:

- 1- Article 1 of Order No. 74/75 of November 12, 1975 relating to the general land survey and establishing the cadastre.
- 2- The surveying process was ceded to the National Land Survey Agency pursuant to Executive Decree 89/234 of 12/19/1989, which included the establishment of the National Land Survey Agency.
- 3- Muhammad Farida, the statute of limitations on gains and the real estate registry system, an article published in the Jurisprudence of the Real Estate Chamber of the Supreme Court, Part One, Publications: Supreme Court, Documents Department, 2004, p. 117.
- 4- Zarbani Muhammad Mustafa, Protecting National Property in Light of Economic and Social Challenges, Journal of Legal and Political Studies, No. 04, 2016, p. 95.
- 5- L'instruction n°16 du 24/05/1998 relative à la conduite des opérations cadastrale et d'immatriculation foncières .la direction du domaine nationale .op.cit. P5.
- 6- Zarbani Muhammad Mustafa, previous reference, p. 195.

References

- 1- Order No.: 74/75 of November 12, 1975 relating to the general land survey and establishing the cadastral registry, C.R., No. 92, issued on November 18, 1975 -

- 2- Executive Decree 89/234 of 12/19/1989 establishing the National Land Survey Agency, C.R., No. 54 -
- 3- Muhammad Farida, the statute of limitations on gains and the real estate registry system, an article published in the Jurisprudence of the Real Estate Chamber of the Supreme Court, Part One, Publications: Supreme Court, Documents Department, 2004.
- 4- Zarbani Muhammad Mustafa, Protecting National Property in Light of Economic and Social Challenges, Journal of Legal and Political Studies, No. 04, 2016.
- 5- L'instruction n°16 du 24/05/1998 relative à la conduite des opérations cadastrale et d'immatriculation foncières .la direction du domaine nationale .op.cit. P5.