



Science Arena Publications
Specialty Journal of Politics and Law

ISSN: 2520-3282

Available online at www.sciarena.com

2019, Vol, 4 (3): 63-69

The Role of Cadaster in Reducing Lawsuits against Real Estates

Siros Ghanbarpor*, Seyd Hasan MirHosini, Hamid Azizi Moradpoor

Faculty of Law and Human Sciences, Department of Law, The trend of registration of documents and real estate, South Tehran Branch, Islamic Azad University, Iran.

*Corresponding Author

Abstract: *One of the duties of Registry of Deeds and Landed Properties is a thorough mastery over legal aspects and the geometrical location of real estates. It is clear that for this aim, there shall be a system possessing comprehensive location information about the boundaries of real estate together with their legal conditions. Such a system can be accessed only via execution of a dynamic cadaster system. Whereas comprehensive land recording of real properties records a complete details of a property, the title deed, the particulars of owners and the transfer records thereof, a software program can automatically prevents issuance of a title deed for two owners respecting one property (controversy in property). State Registry of Deeds and Landed property in Iran is in charge of execution of such a national wide-range system that will play an important role in confirmation of the ownership of real persons and legal entities and accreditation of contracts and transactions as well as arrangement and organization of social and legal relationships. Comprehensive land recording of real properties, in particular, eliminates committing some registration crimes while reduces the lawsuits over real estates.*

Keywords: *Cadaster, Reducing lawsuits, Real estate, Registry of deeds & landed properties, Registration crimes.*

INTRODUCTION

The registration of deeds and real properties that are dealing with under registration act avails some purposes and targets similar to other laws. Therefore, it has been questioned that which targets and objectives the human society was looking for that led to the establishment of the registration of deeds and their deals; and the duties and the main mission of this body which are confirmation of ownership of owners and accreditation of transactions, had been in line to which objectives of this organization. For this, recording real estate has fundamental social consequences.

The registration of deeds and real estate that is implemented for confirmation of the ownership of people over their assets and legalizes the transactions, recovers some benefits for the people in a society, administration of the government and generality of a society and provides the land information system and its frequent benefits not only be an advantage for people but also for the third parties and finally to the whole society. Therefore, the most key consequences of real estate and transaction in a society, is the legal and economic consequences and whereas land grabbing and registration offences are more seen under traditional registration system so a complete system called Cadaster appeared to assist recording real estates.

Cadaster plays a crucial role in land management and optimized land uses and their private ownership as well as reducing conflicts over real estates. A parcel of land is the unit of data registration under cadaster system and this characteristic is common between any types of cadaster. In any developing country and even some developed countries, mobilization of a cadaster system together with its legal registration system is of paramount importance. " Cadaster" originates from past and has been used all over the world under different formats but its financial and proprietary aspects attracted more attention in history; also its basic contribution in all aspects of life, civil projects, targeted planning by various organizations such as Housing and Urban Development , Education, Environment , Economics and health cannot be neglected.

Thus the accurate execution of cadaster plan and surveying of public and private properties under this plan, not only reduces the number of lawsuits over the land and properties before legal courts and fraudulent and land grabbing before the penal court that comprises an important part of the files in the justice department, but also plays a crucial role in national economy by enhancing the safety and stability of the transactions.

Definition of Cadaster

The word "cadaster" is a Greek word means Notebook and its concept has changed in Latin gradually and ascribed mainly for taxations purposes in the different provinces. Today, "Cadaster", is a system aims to determine the defined boundaries and the legal data of the limits such as the "mete and bounds of the real estate ", " geographical boundaries", " natural boundaries" and so on. At the time of being in the European countries, this term is attributed to a system that is designed for registration of ownership including either the boundary and bounds and any varied information regarding the "land" and "property".

In article 1 of the by-law, the limits and arrangements for compilation of a real estate plan as a cadaster and its executive codes, subject matter of note 3 of article 156 of Deeds & Real Estate Registration act, the cadaster plan is defined as follows:

"the cadaster map/plan defines a set of technical, engineering, audit, registration and legal operation about some properties that their registration process is terminated , either registered in a real estate agency or not, and its implementation is for clarification of limits and location of real estate and their geographical connections for the purpose of confirmation of ownership, enhancing resolving the disputes over properties , registration of real estate and what has anything to do with property affairs."

Lawsuits against Property (Action for declaration of title to land)

According to the note 1 of article 29 of Civil Law, the owners seek to have any interest in the assets including the property itself or the benefit thereof. Based on this article, if the ownership relation, i.e., the relation between the person and property (such an asset may be the asset itself or benefit thereof) is the subject of a lawsuit, such a case can be defined as a Lawsuit against Property.

Under article 33 of Deeds & Real Estate Registration Act approved on 17 March 1932:" Registration of a property in no way violates the right of those who avail a well or aqueduct, either operating or arid, in this property". Henceforth, if anyone has a claim about easement rights, such a case will cover under lawsuits against property (Roudijani, 2013, pp22-23).

Types of lawsuits against property

Not all transaction goes through well and sometime, some problems arise and/or one of the parties' breaches in meeting his obligations so the issues cannot be settled by the parties easily and the matter can be heard via the judicial investigation. In this case, the claim is an action for declaration of title to land (lawsuits against property) that has various categories and some subjects such as necessity of drawing title deed, binding to meet obligations, binding to acquire certificate of completion of construction and etc., as well as penal claims such as stelionate, fraudulent, forgery and so on.

The lawsuits against property divides into" legal claims against property, registration claims and penal claims as are defined based on governing law as follows:

1- Legal claims against property

the legal claims against property is related to some claims such as binding to make notarial deed, binding to do redemption, binding to issue certificate of completion of construction, binding to issue partition certificate, revocation of the contract, cancellation of the contract, all the claims regarding the public and private endowments, collect unpaid rental, collection of compensation, adjustment of rental, collection of key money and business fee, evacuation of trade and residential assets subject to law passed in 1997, evacuation of residential properties subject to law passed in 1983, transferring the benefits, collection based on right of preemption, collection of consideration, and binding to hand over the purchased property .

2- Registration claims

The registration claims are in fact a part of legal claims but due to their importance under law, they are discussed independently. The registration claims comprise revocation of notarial deed, revocation of registration writ, cancellation of registration operation of registration commission, nullification of judgment by registration board of dispute settlement, partition of an estate, revocation of a disputed title deed, nullification of a disputed transaction, enforcement of registration, confinement of judicial process and cancellation of registration operation and so on.

3- Penal claims on real estate

The penal claim on real estate discusses occurrence of any offense regarding the real estate. According to the law, the most important penal claims that re introduced under real estate headline includes fraudulent in transaction of properties, forgery of title deeds, using forged deed, fraudulent conversion, stellionate, transferring of benefits of third party's property, collusion in state-run transactions, enter into disputed transaction, changing the application of farming lands, subdividing the lands and unauthorized entry into a third party's property

The role of registration consequences of cadaster in reducing disputes and lawsuits

The day-increasing growth of population resulted in irregular consumption of natural resources as well as impolitic development of cities and urbanism in such a way that the environment and natural resource are endangered and poverty and slumming become prevalent in social aspect. The cadaster plan is the smart and optimized management of such resources and makes it to be formed as an accurate and controlled planning under the title of land rights and modern registration rights.

The role of judicial consequences of cadaster in reducing lawsuits

Besides legal and judicial functions, the multipurpose and numerical cadaster plan may also bring forth some judicial consequences. The judicial aspects of cadaster are tangible and objection part of legal actions and in other way, it comprises the "Claim" and claim management section. Therefore, the judicial aspects of cadaster are either direct or indirect. The direct consequences of cadaster are relinquishing some substantial and procedural affairs during legal proceedings. But the indirect judicial consequences respectively include elimination and/or ceasing application of traditional archive, make arrangements for establishment of e-judiciary, reducing the disputes over real estate, reducing prolongation of the proceedings and so on.

With respect to the effect of conducting cadaster plans to prevent land grabbing , it can be said that those countries which utilize cadaster plan lack the judicial files about breaking into adjacent lands because the cadaster surveyor engineers will promptly specify the location. Article 156 of registration law specifies that: in order to specify the boundary and location of real estate inside the boundaries of cities and suburbs, the map of real estate will conduct as a cadaster. Besides its current duties, the General Registry of Deeds and Landed Properties is also responsible for provision of cadaster map for the real estate and such a plan will have different application as a result. It should be noted that regarding the lawsuits on partition of real estate, under this article, and limitation of adjacent properties as well as the complaints that are lodged before judicial authorities, settling limitation pursuant to cadaster plan would serve as a criteria and today, many cities are mobilized with cadaster plan. Due to high price of lands and real estate and the ancient texture of cities in Iran, conducting a cadaster plan is very hard and needs a very delicate accuracy for example 1/500 accuracy maps. It shall be noted that cadaster plans will not be used only for legal application but the

industrial countries, among others, will deploy such plans for handling any civil, political, and economic issues (Moghimi and Bayari, 2010, p 108).

The effects of cadaster in reducing various types of lawsuits

The cadaster is founded based on the engineering and geographical principles and its combination with registration laws. Its main and basic purpose is determination of boundaries of properties and specifying the owners and their rights in such a way that the mistake rate will decrease remarkably. Based on the application of recent instruments and technologies in cadaster and evolutions of data transfer and restoration systems, it can be said that Cadaster deserves to be named a Modern Registry. For execution of cadaster, the government is borne huge costs therefore the government shall make sure that execution of cadaster will yield more profit. An overview will show that execution of cadaster can directly or indirectly, reduce the burden of some cost on the part of government. One of the domains that show the role of cadaster is its contribution in reducing judicial lawsuits. In the field of real estate, when the limits and ownership is marked with high safety rate, the people are demotivated to lodge ambiguous lawsuits. Also, upon increasing the probability of discovering the offenses about real estate, the people found committing offence more costly than its profit so they will abandon committing such an offence.

1- The role of execution of cadaster plan in reducing the claims on offence about obligation or illegal transaction

article 4 of comprehensive cadaster law says as follows : " The organization is entitled to implement and enforce the comprehensive system, during the time interval made in article 3, in such a way that besides the information in the maps and title deeds, it also comprises the information about the plate and registration data of the property, its post address, exclusive identification code , complete specification of the owner (s), their national code and exact post address of their domicile as well as personal details of transferors and transferees, their obstacles and prohibitions ". In article 5, the lawmaker also states that" the organization shall be bound to instant registration of all registration and legal actions that are done about the real estate under this law including any change, transfer, obligations, any transaction such as final, conditional, partition, separation, modification, integration and else that are done officially and after utilization of the comprehensive system, reply all registration enquires electronically. "Based on these two articles and its adjustment with forgoing registration offense, it can be culminated that by making such an instant and comprehensive system, it is impossible to enter into two disputed transactions regarding immovable assets if two transactions are going to be done based on title deed (under 1st clause). According to article 7 of Comprehensive cadaster law, the same result can be attained regarding the movable assets under 1st clause (if both of them have title deed).

2- The role of execution of comprehensive cadaster law in reducing lawsuits against the offenses about transaction of a property with disputed title deed

Comparing this offence with comprehensive cadaster law, it can be found that execution of this law basically prevents the issuance of disputed title deed. So, after execution of this plan, no disputed deed will be issued so no one will commit an offence by relying on it.

3- The role of execution of comprehensive cadaster law in reducing the lawsuit on forgery of deeds

By comparing the offense of forgery of deeds and its clauses and comprehensive cadaster law and whereas the registry, under article 5 of comprehensive cadaster law, entitles to establish a general registration system and its instant record system as well as pursuant to article 7 and its 1st and 2nd clauses, the organization entitles shall connect the notary public office to this system and handle its instant registration and remove the hand-made registration books therefore based on the cadastral title deed and a cadastral databank , the possibility of committing registration offenses, subject matter of article 100 of Deeds & Real estate registration law passed in 1931, will decrease to zero and such a preventive measure will be a non-penal preventive measure (Astineh, 2015, pp 85-86)

4- The role of execution of comprehensive cadastral law in reducing the lawsuits on collusion of the owner or representative of endowment department with the applicants of registration of endowed property, detained property and one-third of an estate

While comparing the elements of this offense with Comprehensive Cadaster Law, it seems that theoretically, this law plays no role in prevention of this crime and in practice; it may reduce the mental inclination for committing such an offense.

5- The role of execution of Comprehensive Cadaster Plan in reducing the lawsuits on registration of a third-party estate and introducing one as a false owner

Based on the clauses made under this offense and adjusting its element with Comprehensive Cadaster Law, it can be said that based on such a system and its instant registration category and the enquiries, committing the below offenses can be prevented:

1- Issuance of a title deed for an applicant who transferred the property to a third party after registration of his application, by the way, he applied for issuance of the title deed;

2- Issuance of a title deed for an applicant who, for any reason, is expropriated after registration of his application, by the way, he applied for issuance of the title deed;

3- Issuance of a title deed for an heir who is expropriated after his request is registered; by the way, he applied for issuance of the title deed;

6- The role of execution of Comprehensive Cadaster Plan in reducing the lawsuit on registration of a third-party's property as personal property in spite of the existing trust

Upon execution of article 5 of Comprehensive Cadaster Law saying: "the organization shall be bound to instant registration of all registration and legal actions that are done about the real estate under this law including any change, transfer, obligations, any transaction such as final, conditional, partition, separation, modification, integration and else that are done officially and after utilization of the comprehensive system, reply all registration enquires electronically", it can be concluded that execution of this law will exactly define the rights of people over the properties, the owner and trustee of the property so occurrence of such an offence will be prevented ; and such a result will be definitely attained after thorough execution of cadastral plan and its implementation for all national estates. Such prevention is of non-penal preventive type.

7- The role of execution of Comprehensive Cadaster Plan in reducing lawsuit on perfidy or collusion of trustee to a property with a third party and registration of the same property in favor of another party

Regarding this offense , it shall be stated that by execution of article 5 of comprehensive cadaster law saying : " " the organization shall be bound to instant registration of all registration and legal actions that are done about the real estate under this law including any change, transfer, obligations, any transaction such as final, conditional, partition, separation, modification, integration and else that are done officially and after utilization of the comprehensive system, reply all the registration enquires electronically", it can be concluded that execution of this law will exactly define the rights of people over the properties, the owner , the trustee and a third party to the property so occurrence of such an offence will be prevented ; and such a result will definitely attain after thorough execution of cadastral plan and its implementation for all national estates. Such prevention is of non-penal preventive type.

8- The role of execution of comprehensive cadaster plan in reducing the lawsuits on introducing self as the (false) owner of a third-party's property and apply for registration of the property

The role of cadaster about this offense is that after execution of article 5 of comprehensive cadaster law, it can be concluded that all the rights of people toward the estate will be specified so occurrence of such an offence will be prevented; and such a result will be definitely attained after thorough execution of cadastral plan, because in fact, this offence may be committed at the initial stages of registration of property. This is a non-penal preventive measure.

The effect of indirect functions of cadaster on reducing and preventing offences

By functions of cadaster under the headline of prevention of offences, it means the management of strategies for prevention of contingent offenses; in other words, the accurate management in legal, economic and political aspects as well as management of offense prevention. Such functions will not affect these functions directly but based on some ideal conditions and making an accurate and ideal discipline, it reduces the dissatisfaction among people so there will remain a weak intention for committing offense or lodging legal claims.

Conclusion

The basis for the consolidation of land ownership and buildings is the same traditional old-fashioned drawings, based on which the title deed is issued and handed over. Now, if we want to put into practice the process of issuance in the country and on the basis of the law of the "single-letter" cadaster document, we must consider the reality. That is, the use of cadastral maps conforming to the current situation. The lack of adaptation of the traditional map with the map prepared by the current status of the cadaster prevents the issuance of a single-letter title deed, which has huge legal problems in all the registry units of the entire country. However, execution of cadaster will solve the issues on interference and overlapping of property plates. In some areas, the implementation of cadaster creates very complex legal issues, as is evidenced by the huge number of files litigated before legal courts. That is, the implementation of cadaster in some areas not only does not result in a reduction in claims, it also increases the number of legal claims that can be solved by the general effort and needs the involvement of various bodies such as natural resources, road and urban development authorities, municipalities, supervisory bodies and the judiciary. considering the necessity to single out the title deed that under cadaster law the registry of deeds is entitled to change all title deed to single-letter deed within 5 years, it can be seen that it is now passing two years from ratification of this law but no effective action is took place. The co-operation of various bodies in the preparation and provision of UTM maps, including the Natural Resources department, the Department of Roads and Urban development, and municipalities, are essential to help the executive body in this critical case, and to permanently eliminate the interference and conflict of the plates and also bring growth and prosperity to Iran. Therefore, the weakness and functional deviation of State Registry of Deeds & Landed properties in gaining credits and exact implementation of cadaster operation as well as weak cooperation of this organization with State Surveying organization and other organizations and bodies in charge of issuing map and lack of necessary legal instructions in enhancing intra-organizational communications resulted in failure of legal expectations in issuing cadaster maps.

Hence, the adoption of the comprehensive cadaster Law (Cadaster) is an important step towards the management of land and the passage from traditional to modern technology, which if fully implemented, can yield many effects and achievements for the country. Therefore, enforcing law of cadaster is the best way to reduce violations and attacks on state lands and natural resources, and this plan seeks to ensure the consolidation of property rights by means of precise methods. Also, by implementing this law, it is possible to comprehensively recover all state land from uncertainty so the ownership status of any real person or legal entity will be determined and this matter will result in reduction in number of trial cases before the judiciary, reduces fraudulent and land grabbing cases.

Suggestions

- Considering that one of the ways to reduce civil disputes and land degradation is to implement a comprehensive cadastral plan in the country, therefore, provision of required accreditation for prompt

and complete execution of the plan will bring about numerous positive effects on reducing the litigations and it will enhance the economic and legal order in the society.;

- Undoubtedly, the use of modern technologies in providing services will play an important role in clarifying and speeding up performance, improving administrative health, reducing applicants' referrals and reducing costs, therefore, providing adequate funds to mechanize the process of registration of documents and real estate, as well as registration of companies and industrial property, and also the networking of all registry units and marriage and divorce registries, archiving the files and the creation of a comprehensive database are among the basic necessities that may change and modify State Registry of Deeds and Landed Properties.

References

1. Astineh, Maryam, 2015, "Role of Cadastre in the Prevention of Registration Offenses", Master's Degree in Law, majored in Penalty and Criminology, Islamic Azad University, Qom, Qom.
2. Moghimi, Mohammadreza, bayari, Abdolreza, 2010, The grounds for land grabbing and its preventive methods, Karagah publication, Volume 11, 2nd and 3rd round, Tehran.
3. Roudijani, Mohammadmojtaba, 2013, "Possessory Action in Iranian Law (Deforce & Prevention of Rights and Harassment), Ava book publication, Third edition, Tehran
4. <http://www.hemayatonline.ir/TextVersionDetail/7859>.