

Role of Cadastre in Prevention from Land Grabbing in the Domain of National Lands

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Abstract--- *The purpose of this study is to investigate the role of cadastre in the prevention of land grabbing in the field of national lands. Cadastre system, a system that includes comprehensive geometric data from all real estate in the country, including property characteristics, owner or owners and related rights, and provides dynamic management of the mentioned data set to the relevant authorities in the Registry of Deeds and Real Estate and Notaries can do their job with quality and speed. The method of this research is descriptive content analysis of qualitative type. In other words, the research method of this project is descriptive and non-experimental and is of correlation and consistency type. In this study, while examining the impact of cadastre on litigation and prevention of crimes in the field of land, the role of cadastral registration effects in reducing land litigation and new registration strategies in notaries and its impact on land grabbing were examined. In the property owner cadastre, the method and means of transfer of ownership of the property, geographical location and the boundaries of the four properties are determined based on the main and sub-registration numbers and the quantity and size of the property. As these cases are identified and recorded in single-page cadastral documents, as well as registered in the instant registration system, the grounds for committing registered crimes, especially land grabbing crimes, are limited, and as a result, criminal cases are reduced. Therefore, it is possible to prevent many crimes related to land grabbing by resorting to the digital cadastre plan as well as the specialized judges in the field of cadastre.*

Keywords--- *Cadastre, Land Grabbing, Notaries.*

I. INTRODUCTION

Perhaps one can trace the root of Cadastre back to such words as Code Dister and Code Dastoor, but the Academy of Persian Language was more interested in choosing the term “Melk Amar” instead of “Cadastre” and Iranian legislator has used the term “Hadnegari – Limitography” (Purkamal, 1998: 153). The technical concept of Cadastre map refers to the transmission of the geological and geographical information by Cadastre map. Upon this approach, the Cadastre map consists of the geometrical and descriptive information of the property including the geographical situation of the property (GPS), four directions, and its geometrical directions in greater scale of the map including the digital and hand-drawn maps (Henssen, 1986). Cadastre, from a legal perspective, consists of a system of technical and legal information of immovable properties. This type of system is the touchstone of the practice of all judicial and notarial institutions and organizations insofar as the content of the articles 17, 19 and 21 of the instruction of the note 3 of the article 156 of the law of notation insist on this (Molaughlin, 1983).

By means of the plan of Cadastre and based on the satellite functions which are received from the real estates the exact coordinates of the properties are identified and in fact inscribe the plates on the maps. The speed and easiness of access to

the information of the property, legal and exact documentation in courts, increase of the legal security of the owners and facilitation of the land transactions are among the advantages of this plan in regard to the citizens. Eradication of the conditions of the usurpation of the governmental and national lands is also one of the key advantages of this plan in relation to the government. Therefore, the numeral Cadastre plan which has caught the attention of Iranian legislator plays an efficient role in the field of the land management due to two major reasons: firstly, digital method by the use of the dimension of time and height is applied in topography of the land and every type of the reception and storing or providing the access to the information is also done through the developed tools like internet. Then, in this state, the possibility of the technical and engineering error is lesser and for this reason, it is reliable and acceptable. Secondly, from the point of view of content, it contains information that have two key features. Its first feature is the collection of the geographical information of land and its descriptive information. The other feature is updating of the information concerning the property, owner, type of application, date and mode of transfer and so on and so forth.

Some studies have been conducted in this regard. Mojahed (2016) in a study has shown that the decrease of the complaints and legal health in Cadastre, decrease of property files, increase of the security and speed in transfer, creation of balanced market in the field of properties and lands, prevention from land grabbing and etc., are among the advantages of the legal Cadastre. Ensafi (2016) in a study expresses that given the acquired information from the legal Cadastre, one can conclude that how much of the national lands and properties is under the private ownership and how much of the lands is under the governmental ownership and how much is considered to be part of the national natural resources or how much is endowed lands.

Given the ever-increasing importance of the general and regional planning for the development of the national goals and also given the complication and volume of the necessary information for planning, the need for the use of information systems is vital for the support of the necessary decisions and policy making and in this line and given the extensive dimensions, the comprehensive Cadastre system in the best planning tool in different levels and global experiences show that many governments in the developed countries have taken good advantage of this system. Moreover, the existing gap in the research field with a comprehensive approach to this category and the legal and criminal effect of the application of the Cadastre plan in the field of reduction of the crimes in the criminal legal system of Iran doubles the necessity of the exact study in this regard.

II. METHODOLOGY:

The method used in this study is descriptive content analysis of qualitative type. In other words, the method of this project is descriptive and nonempirical. It is of correlation type. In other words, it describes whatever exists including the collection, registration, analysis and interpretation of the existing conditions. The data have been gathered through the library method including the books, essays, dissertations as well as the electronic resources. The computer softwares have also been used plus the online sources.

Theoretical Foundations of Research:

The objective of the Cadastre as a national project is the integrative management of the properties registration. Eradication of the conditions of the grabbing of governmental and national lands is one of the most vital advantages of this project in relation to the government. By the implementation of the Cadastre project, every traded property is registered based on the adopted laws and the most important positive point of it is prevention from land grabbing.

Security of Ownership Rights:

The establishment and preservation of security require the government to take effective steps towards the stabilization of the rights of individuals by creation of “appropriate legal facilities”. One of the facilities that governments can create for the establishment of security in the society particularly legal, economic, financial and social security is the “system of the registration of properties”. The system of the registration of properties in addition to the guaranteeing the ownerships of individuals, is considered to be a key element within the framework of the systematic and comprehensive growth. It is also necessary for protection of the right of ownership of the weak owners against the stronger ones. If this fundamental role of registration is not taken into account in the creation and modernization of the registry systems, the registration of the properties cannot provide the sufficient support and guarantee for the owners and the aforementioned ownerships are deviated from the “economic order” of the society (Jorge, 2006).

The British law of land registration 2002 by electronicalization of property trades and transparency of information related to the properties struggles to increase the importance of the property market in order to pave the ground for private and company investments. Land registration has regulated almost two thousand billion dollars of properties. It has also allowed the land market to be able to estimate the value of investments (Tim Murphy, op. cit., p. 240).

Validation of the transaction documents related to the registered properties and the necessity of their registration have brought stability to the capital market. This in turn has led to the activation of different economic sectors and reduction of the risk of investment. The security and confidence that are acquired through the registration of properties eradicates the doubts of the future interests of the long term investment in land.

In fact, property registration system provides the legal security of the ownership and causes the rights of the owners to be protected and as a result, the necessary persuasion for the long term investment of the owners including the betterment and reform of the houses, preservation of soil, planting trees and construction of buildings that lead to the stable economic development to be provided (J. David Stanfield, 2003).

Prevention from Land Grabbing in Plans of National Organization of Registration of Documents and Properties

Issuance of Single Page Ownership Document:

The National Organization of Registration of Documents and Properties by the collaboration of the professors, notarial and computer experts have provided the MEISAM Software (Integrated Property Registration Management) in order to prevent from the crimes of forgery, fraud, and reduce the number of files in the courts. To prevent from the occurrence of mistake in preparation of the ownership document, after the completion of the whole information icons, the draft of the document is prepared and later by getting the warrant of archive, the office of issuance of the ownership document registers the payment of the costs to the organization and issues the relevant document in the name of the new buyer. The single page ownership documents are issued in a systematic way and include different parts including the identity of the property, owner, considerations, directions, attachments, shared rights of the property and restrictions of the transfer.

Cadastre System:

The land management will provide an appropriate atmosphere for planning and determination of the construction, political and legal policies (Simpson, 1967). For example, by knowing the geometrical dimensions of the lands in different regions, we can take advantage of it in the programs of desert, industrial and natural tourism. Moreover, we can use the bank of land data as a fundamental source for implementation of the construction projects.

Today, pioneering law is the law that in addition to the regulation of the process of the market of land and house, designs and plans the respective economic and contractual behaviors based on the examination of needs and future planning. Among the foundations of the developed law one can refer to the preventive approach in the domain of legislation (Habibi, 2009). Therefore, one of the preventive functions in the domain of legislation regarding the land (land law) is the discussion of the numeral Cadastre.

The program of numeral Cadastre which has been taken into account by Iranian legislator plays an effective role in the management of land due to two major reasons: first, it takes advantage of the digital method by the application of the dimension of time and height in mapping the land and all types of the reception and storing of or providing access to the information take place through the developed tools like internet. Then, in this state the possibility of the technical and engineering error is low and for this reason it has the property of reliability and acceptability. Secondly, from the point of view of content it includes information that have two features. The first feature is the collection of geometrical information of land and descriptive information of it while the other feature is the updating of the information regarding the property, owner, type of application, date and mode of transfer.

Paying attention to the critiques resulted from the traditional registration and the disputes of the land, its rights, application, mistakes and divisions of the registration show the importance of the new registration (Cadastre). New registration whether in the category of work (time) measurement that renders prorogation impossible or in the field of the precision and quality of information enjoys distinguished features as compared to the traditional registration method (Doebele, 1985). The factors of speed and precision in the registration of land and relevant rights are considered to be among the necessary tools for reaching the legal development.

Influence of Cadastre on De-adjudication and Prevention from Land Crimes:

The general sense of de-adjudication in addition to inclusion of its special sense refers to the people's participation in dispute resolution, decentralization in judgement, privatization in judicial procedure, establishment of professional institutions for conflict resolution, establishment of alternative systems of dispute resolution, is making efficient the judicial system and prevention from radical adjudication (Habibi, 2011: 318).

In the analysis of the cause of the problem, one encounters the lack of professionalism in the courts, administrative courts, efficient laws that become further manifested in relation to the files of properties and documents. Therefore, one can reach a type of de-adjudication function in performance of Cadastre project by resorting to the Cadastre plan and dissolve many disputes and registration claims.

Among the effects of the comprehensive multipurpose numeral Cadastre plan, one can refer to the decrease of property and land claims, betterment of property incomes, increase of economic efficiency, management and supervision of the land market and transfer, design, urban planning and management, military and defense planning, crisis management improvement of the service providing by organizations, capability of use of topology and project estimation, identification of the owners, type of use of properties, betterment of the addressing system, optimized management of agriculture and natural resources, job creation, spatial planning, protection of environment, creation of substructures of spatial and legal information.

Role of Registration Effects of Cadastre in Reduction of Land Claims:

The growing increase of the population led to the radical use of the natural resources and also the unprecedented development of urbanization and urban life insofar as the environment and natural resources have faced danger and from the social perspective, the poverty and slum. The Cadastre plan represents the intelligent and optimized management of

these resources and paves the ground for the precise and controlled planning in the form of land law and new registration law. Thus, some effects are associated with the new registration which are studied.

A) Creation of Land Data Bank:

Among the most important registration effects in the new registration, one can refer to the registration and land data bank which has been considered by the Iranian legislator. The article 3 of the executive instruction of the article 156 of the law of registration of documents and properties refers to the constitution of the bank of land data. In the paragraph "M" of the article 211 of the law of fifth program of development has referred to the obligation of the National Organization of Registration of Documents and Properties in creation of the National Center of Registration of Data and online registration of land. SDI has provided the ground for the national and structural management. This structure has ensured saving time, cost and human force in the course of data collection, addition of data, preservation and combination of them with other data (Homilton, op. cit.: 54).

B) Documentation of Land Information:

Among the other registration advantages of the Cadastre plan, one can refer to the documentation of the geometrical and descriptive information of the immovable properties. Precise and immediate documentation is considered to be among the effects of the numeral Cadastre. Documentation of the owner, type of property (public, private or governmental), type of application in the time of register and in the time of later changes including the natural and legal changes, give a dynamic and progressive quality to the registering system and make the new registration system more efficient (Stubjaer, 1981).

C) Guaranty of Land Security Coefficient:

Cadastre project in addition to the stabilization of ownership that takes place through documentation of the immovable properties (Simpson, 1967; Larsson, 1977), in next stage, provide the ground for "guaranty of security" of these properties. Security of land violation simultaneously refers to the "land itself" and the "document" of land and all immovable properties. On the other hand, the guaranty of security of immovable properties is at stake both in the stage of "creation" and in the stage of "implementation". In new registration, all changes within a short period of time are registered in an electronic form and in this way the occurrence of administrative corruption and forgery is prevented in the domain of documents, properties and lands.

Role of Judicial Effects of Cadastre in Decrease of Files:

The multipurpose and numeral Cadastre project in addition to its legal and judicial functions can have certain judicial effects too. By judicial effects, we intend the concentration on the direct formal and essential effects.

A) Formal Judicial Effects:

Among the formal judicial effects one can refer to the creation of the common judicial literature and preparation of the efficient legal services.

Creation of Common Judicial Literature:

Lately one of the functions of Cadastre was said to be the "elimination of parallel work" of governmental institutions. Among these institutions, one can refer to the judiciary, office of registration of documents, properties and municipality – in property and land affairs. Then, one can claim that among the judicial effects lies the elimination of parallel work of the

relevant governmental institutions through implementation of the numeral Cadastre project. For the information of the numeral Cadastre includes all aspects and technical, legal and judicial literature and in this way, unique meanings are derived from the terms used in the relevant offices. Therefore, property conflicts and also other claims of the land rights and given the geometrical and descriptive information in national Cadastre, we can put an end to all disputes and reach an intelligible divergence through legal interpretations and judicial procedure.

Realisation of Efficient Legal Services:

In numeral Cadastre project, all immovable properties are registered and have a reliable documentality. Therefore, private and unofficial oral or written agreements will be invalid. Therefore, it is the right of the government and other third parties to be informed of the land and property transfer in normal fashion. The files like inconsistent transactions (article 117 of registration law), registration of property of others (article 105 ff. of registration law), forgery of property document (article 523 ff. of Islamic Penal Code), Deforce, dispute of the ownership and many other claims, limits or rights related to the land have their origin in the lack of precise and accessible information.

B) Essential Judicial Effects:

Cadastre project by presentation of documented information provides a trustable basis in the files related to the land rights. Cadastre by providing complete and precise information allows the realization of the “true opinion” and prevents from the prolongation of legal procedure and formality of the opinions. On the other hand, the other essential effect of the Cadastre project is raising Ex ante Evidence according to which a prediction has taken place before the occurrence of the event. For example, if someone claims to be insolvent and does not have the capability to pay his debts or governmental costs, one can register an inquiry to the National Register Organization in order to test the veracity of his claims. In doing so, there remains no room for suspension of the judicial system.

New Registration Strategies in Notaries and Its Impact on Land Grabbing:

1- Reception of Inquiries of Notaries in a Systematic Form:

Given the fact that in the traditional system, the answer of the inquiries of registration offices was delivered in physical form, there were some challenges in the process of the inquiry register by the notary and the delivery of the answer by the registration unit. These challenges were overcome by the new registration system and many paths that lead to the challenges and abuse were closed. Here we discuss them in details.

A) Prevention from Forgery:

Now the answer of inquiries is delivered through the electronic system. In the notaries after the presentation of the relevant documents by the owner who wants to sell his property the inquiry is registered by notaries on the website and the answer is given in due time by the registration organization through specific portal based on the comprehensive data bank. By elimination of the manual procedure, many possible challenges including the forgery of the answer of inquiry and many other possible abuses that would result in judicial procedure is eliminated. This can be considered to be an extension of the de-adjudication of the new registration system.

B) Prevention from Bribery:

Since the representative of the notaries as the permanent person was in charge of the relevant affairs as the link between the notaries and the registration offices, he could have developed some particular close relations and in some

cases friendship with the staff of the registration office and in this way the scene was set for possible financial relations and bribery in order to accelerate the delivery of the answer. This gave rise to administrative corruption and there would be bribery files that should have been considered by the judicial courts. By establishment of the electronic answering system of inquiries, there is no occasion for physical delivery of answer to the notaries. Then, there is no room for bribery and we will be witness to the healthy administrative relations. Many possible judicial files of bribery are prevented.

C) Prevention from Files and Complaints against Registration Organization and Notaries:

By operationalization of the electronic answering system of inquiries, the answer of inquiry of notary is delivered to the notary in less than 24 hours. In practice, this will lead to the increase of the satisfaction of the customers and elimination of the source of possible judicial procedure.

2- Registration of Transactions Sketch in Electronic Form:

Given the fact that in traditional system, the notary was required to send the transaction sketch to the registration office within five days after the preparation of the document for registration in the properties office, and on the other hand, the registration office was required to record the transaction sketch within 24 hours, some challenges and damages were seen that could result in the judicial claims.

According to the instruction of the immediate registration of the transactions as prepared and notified by the registration organization in collaboration with the association of notaries, as soon as the document is prepared and the transaction takes place the head of the notary registers the sketch in an online form on the comprehensive data bank of registration organization. This registration is done based on the unique identity code as registered in the system and the announced code by the system for later tracking will prevent from the possible forgery and further judicial involvement. On the other hand, operationalization of the system of registry of the sketch of transactions improved the procedure and accelerated the judicial prosecution of the files of property claims by the court and authorized officials.

Sometimes there were some cases in which the notary in the time of registration made mistake which emerged in two forms. First the mistake of the notary as to the type of document and second, the mistake of notary as regards the content and information of the document or the sent sketch of the transaction was correctly delivered to the registration office but in the time of registration in the properties office due to the mistake of the one in charge registered it on a wrong page. On the other hand, if the document was registered in the properties office and this registration was associated with the triple mistakes, for the sake of possible correction and revision of the document by the notary in the absence of the parties to the transaction, first this issue should be notified to the provincial supervisory board and after the announcement of this board's decision the revision is done (article 25 of registration law). The supervisory board with its high judicial official is considered to be a semi-judicial institution and the referred files to this board are too many for the aforementioned reasons. In practice, due to the operationalization of the immediate registration system, the possibility of the emergence of the mistake and error due to the elimination of the physical registration of the documents has been reduced. One can state that in the process of the decrease of the registration files, de-adjudication has become realized.

New Registration Strategies in Registry Offices and Their Impact on Land Grabbing:

According to the article 21 of the aforementioned instruction¹, the accomplishment of the Cadastre operation² in every registration region in all property claims and registration affairs, the Cadastre maps and information are replaced with the traditional method.

1- Prevention from Issuance of Disputed Ownership Documents:

As previously explained, if two ownership documents are issued for the same property, there will be dispute over the ownership document. Thus, the last issued document will be the disputed and invalid one. After the preliminary investigations of the supervisory board³ that is a semi-judicial institution the file will be sent to the court for recognition of the valid document and falsification of the disputed document. The judicial authorities after necessary investigations will authorize the document whose content is according to the registration regulations and laws and cancel the invalid document. One can state that now after the relocation of the registered plate of the property on the Cadastre system with determinate coordinates, there remains no room for forgery and dispute. Thus, there will be no further judicial dispute and this can be another positive effect of the new registration system towards the de-adjudication.

2- Possibility of Precise Determination of Place:

Given the fact that in line with the issuance of documents for the properties which the subject of the law of the decision of the lands without ownership document (articles 147 and 148) by the registration office, this was done earlier in manual form and the expert and the technical drawer had numerous problems for determination of the exact place of the property and identification of the registered plate of the property. For this reason, some property ownership documents got issued that belonged to another registered plate and further complications occurred in the time of the property sale.

Many judicial files were brought to the courts for the cancellation of such unauthorized ownership documents. Now due to the Cadastre maps, the possibility of occurrence of such mistakes and errors has reached the minimum and as a result, lesser judicial files are taken to the court. Moreover, in the discussion of the evaluation of the properties for setting them as warrants by the courts or for mortgage purposes by banks the expert would be deceived by such complications and this will lead to possible abuses. This will in turn increase the number of the judicial files that are brought to the court. But by operationalization of the Cadastre and the registration of the exact location of the property address on the single page ownership document, such abuse is prevented.

III. CONCLUSION:

Among the foundations of the progressive and pioneering law, one can refer to the preventive approach to legislation. Therefore, one of the preventive functions in the field of legislation of land (land law) is the numeral Cadastre. Numeral Cadastre is an example of futurism in the field of legislation of registration. The preventive approach not only eradicates the grounds of dispute rather it serves as a platform for standardization of the techniques; it also contributes to the refinement and adoption of law. The implementation of the comprehensive Cadastre plan is directly related with the decrease of the land grabbing crime and can reduce the possible crimes in the field of the registration inquiry through bringing transparency to the official transactions and registration of the limits and information of properties and issuance of the Cadastre ownership document which cannot be forged.

¹ Article 21- After the accomplishment of Cadastre operation in every registration region in all property claims and registry affairs, the Cadastre maps and information are replaced with the traditional method.

² Article 21.

³ Clause 5 of Article 25 of Registration Law: The Supervisory Board is in charge of investigation of the dispute of the ownership documents.

The registration crimes in the field of fraud constitute a huge group of crimes related to the land grabbing: request of registration of the land of others, pretensions of ownership, being a trustee, collusion or trust breaking, deforce through registration claims of the properties of others, refusal of delivery of right to the owner of right and refusal of the confirmation of the claims of the real owners or persons of the whole or parts of a property whose documents have disappeared due to war or natural disasters. This group of the crimes have been restricted by the implemmentation of the Cadastre project.

The ownership layer in the desirable Cadastre includes all ownership records of the property as well as the means and distinctions. Moreover, due to the connection of this layer with the system of property transaction, its changes are immediate and updated. Moreover, by the definition and design in the desirable Cadastre system one can have access to the owners and the geographical location of the properties and larger lands that have been dissected in recent years and sold. This in turn will prove effective in discovery of land grabbing. Registration and update of the ownership layer is one of the most significant pillars of the legal Cadastre.

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