



The Role of the Real Estate System in Algeria's Economic Development

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Received: 29/01/2024

Accepted: 24/02/2024

Abstract:

Real Estate regulation is a technical process that aims to register the various actions that occur in the real estate realm at the concerned administration in a matter that makes them clear and available to everyone. Most legislation aims, especially in Algeria, to regulate real estate ownership and secure the stability of real estate transactions that have a major role in economic development. The aforementioned technical process consists of two systems, the Personal System and the In-kind System of Real Estate.

Keywords: Gift, Will, Real Estate, Personal System of real estate, Torrens system of real estate, real estate card, land registry

Introduction

Real estate ownership has been a crucial factor in the development of nations throughout history. It has served as a valuable resource for progress and economic growth. By effectively managing real estate investments, various economic sectors, including industrial, agricultural, and urban, can be controlled. The connection between real estate ownership and an individual's or country's social status is undeniable. With the proper organization and expansion of real estate ownership, the economy thrives. As a result, legal regulations have been put in place worldwide to govern all real estate activities. In light of this, we have chosen to examine the Personal and Torrens real estate systems within the Algerian legal framework and their impact on economic development.

Part One: Personal Real Estate System.

The Personal Real Estate System is the first system that appeared in modern Algeria, so we will address in this part the conceptual framework for this system, while the second will deal with its evaluation and effectiveness.

Section 1: the conceptual framework of the Personal Real Estate System.

-The concept:

The Personal Real Estate System is one of the oldest real estate regulations. It is established in one country as one general register or several ones in different centres for each region that unites real estate administration and monitors all the actions. The personal Real Estate System adopts announcing real estate actions on the names of the people in charge of it, not according to the property and accordingly the designation of the system of the personal real estate came, which indicates that the person is considered in real estate actions. Thus, this system makes the person's name the essence of the real estate actions that are issued by him, so that the real estate specifications are not used to deal with a location, borders and areas. This system verifies the complete identity of property owners and those who have dealt with it. If someone wants to buy

a property, they must direct their inquiry to the Real Estate Registration Authority in order to search and verify the name of the property owner. If the name of the owner is found in any of the records, it means that they are still the rightful owner of the property. if there is no name in it, the evidence for the real estate exit from his hand was issued or several behaviours from others, who will be recorded in his role in prepared records for that, in which the name, the title, identity, the names of the assets and their identity are fully intended. The owner of a property only knows the person who manages it, and may not be aware of all the responsibilities.

This record system is based on the names of the individuals involved in the real estate transactions, with their names arranged alphabetically. Each letter of the alphabet is allocated one or more pages in the record, with precedence given to more common names. If a name is rare, it may only be allocated one page, but if a name is common, it may be allocated several pages to account for all the actions taken by individuals with that name.

Section 2: Principles of the Personal Real Estate System.

First: The personal registration system for real estate does not hold any legal weight, as the transactions recorded in this system are not subject to scrutiny and validation. They are simply recorded as they are, whether they are legitimate or not. The person responsible for managing the real estate registration does not interfere with the authenticity of these transactions, which makes the system flawed. The real estate governor also does not play an active role in verifying the validity of the real estate deed. Therefore, if the transactions are correct, they remain valid, and if they are not, they remain invalid. This makes the system unreliable, as it does not correct any errors or deficiencies contained in the statements.

Second: The basis and axis upon which the personal system is based are the names of the persons who do the real estate transactions which must be recorded and published, and not on the basis of real estate, as is the case in the Torrens system.

Third: If a person wants to buy a property, he must go to the Land Registry to search and verify the name of its owner. If his name is included in one of the records prepared for the month, it is current, meaning that he is still the owner of the property. If his name is not included in it, this is evidence that the property has left the property. He has the right to issue one or more transactions from him to someone else, who will in turn be recorded in records prepared for that purpose, in which the name, surname, identity, names of the assets and their identities are fully recorded. The interested party does not know the person who dealt with the property and this does not enable him to know all the rights he has over it.

Fourth: The process of advertising a property for real estate bonds doesn't have any impact on creating a real right. The only purpose of such advertising is to inform the public of their rights. The real estate right becomes valid only after the contract is completed and the form stipulated by the law is considered. Once created, the real estate right remains valid, unless it is annulled or declared invalid. It is important to note that the principles of personal registration include two important rules:

1-When a person has transferred a right that is subject to rescission or invalidity, or when they are burdened with certain costs or obligations, the month does not purify the right or the disposition. This means that the right or disposition remains threatened by all malicious defences or appeals. The system used for registering contracts and actions is the personal record system, which records all actions as they are, without considering their validity or invalidity. This system is widely used in Latin countries, especially in France and its former colonies.

2- A person may sell a property to another person and then a third person appears who is the real owner of the property, either because he has a valid document or because he claims ownership of the property by statute of limitations and requests the return of the property. Here, this system of real estate does not prevent this recovery.

Section 3: The Evaluation of the Personal Real Estate System

First: Pros

1- This system does not require a land survey, as is the case with the in-kind system, which requires exorbitant costs that not all countries can afford.

2- Despite all the criticism directed at the personal registration system, a self-contained system plays its role in informing the public of the occurrence of certain real estate transactions. The person who registered the transaction considers the mere publication of these transactions; even if this presumption is The law is simple and can be proven to the contrary. It is often noted that it is difficult to prove the opposite for one reason or another, in addition to the fact that it often happens that the person disposing of the property is the real owner, and therefore the issue of appeal against publicized transactions does not arise. Also, permitting an appeal against publicized transactions is considered a protection for the owner. The real thing is from someone else's disposal of their property.

3- It contributes, even if a varying percentage, to achieving the goals of real estate registration, especially ensuring the stability of real estate ownership and supporting real estate credit, which contributes to a cycle of sustainable economic development and contributes to reviving the budget.

Second: Cons

1-The property owner does not provide adequate guarantees to the buyer regarding the establishment of their ownership rights. This could lead to several legal disputes and the possibility of losing the acquired right, resulting in a lower credit score in future real estate transactions.

2-If the beneficiary verifies the condition of the property being dealt with, it is necessary to search and discover the person who is the real owner of this property.

3- As long as registering a specific disposition under the personal real estate system does not protect the right of the person to whom it has been disposed of. He is not only protected from the risk of filing a lawsuit for entitlement or recovery, but he is also not protected from another risk, which is represented by the appearance of another third-party claiming ownership of the property through the statute of limitations. In addition, the possessor may not announce his ownership acquired by the statute of limitations, and thus we are in the process of having two owners of one property a hidden owner, who is the possessor, and an apparent owner, who is the one whose name is recorded in the registers. Thus, these records are incapable of providing the correct statement regarding ownership of the property and the signatures on it.

4- In terms of public interest, the loss has a greater impact on the national economy in a country that adopts this system, and this is represented by the inability of owners of real estate, such as agricultural land, to exploit it. A person who does not receive financial support with which to buy seeds, machinery, and fertilizers will inevitably fail to cultivate his land or abandon it. This is harmful to the individual and the group. Therefore, this system must be abandoned and replaced with another system that is compatible with the development of real estate exploitation and is an incentive to invest money and agricultural and non-agricultural real estate, especially if we know that the legal rule must reflect the interests of the entire society.

5- The possibility of appeal under the personal real estate system responds to the claims of justice and the necessity of protecting the real owner, or the owners of the right whose consent was marred by a defect. However, it contradicts the absolute authority that must be available to the real estate authority after its completion and leads to the instability of real estate ownership. Because allowing defamatory actions to be challenged is a dangerous matter that people do not feel comfortable with. It must be avoided.

6- One of the prominent defects in the personal real estate system is the risk of the possibility of a conflict between several titles of ownership of a single property. This

happens when a person disposes of a specific property believing that he is its true owner by selling to a second person. The latter is surprised by a third person who claims ownership of this property according to a document issued by the owner. Therefore, we have two people who have a title for the same property, and therefore the problem of knowing the real owner of the property falls between two people, each of whom has a title deed.

Part Two: The In-kind Real Estate System (Torrens System)

Unlike the personal system, the in-kind real system is based on notifying real estate transactions on the basis of the property being disposed of and not according to the names of its owners or holders of real rights over it. The Torrens system is a system that most countries aspire to rely on to regulate real estate ownership and preserve the real rights contained therein.

Section 1: The conceptual framework of The Torrens Real Estate System.

The first country to know the in-kind system was Australia. The credit for the emergence of this system goes to Mr. Torrens's program related to regulating real estate ownership and the various rights related to it. The in-kind system is based, unlike the personal system, on notifying real estate transactions on the basis of the place of disposal and not according to the names of its owners or the most significant real rights over it. Every property in this system has a special card in the real estate registry, which records all of the transactions on this property. It also contains the physical description of this property, specifying its area and location.

One: The concept of the In-kind Real Estate

In this system, the property is considered a subject of consideration. In contrast to the personal registration system, real estate advertising is limited to the property data, so that all the rights contained therein are recorded in the margin of the real estate card in a way that makes its condition known to everyone. It aims to be contracts of ownership

and transfer of rights. The real estate property is so strong, durable, and reassuring that it is impossible to waste the rights.

The Torrens real estate system makes it easy for the beneficiary or the recipient to know the truth about the property or the owners who succeeded it. The Torrens real estate is not carried out except after investigating the validity of the bond to be invested and monitoring the extent to which it fulfils its formal and substantive conditions. These are tasks legally authorized in Algerian legislation to the real estate governor at the level The authority within whose jurisdiction the property is subject to disposal is located, as indicated in Article 22 of Order No. 75/74 dated 11/1/1975, which includes the preparation of the public land survey and the establishment of the real estate registry.

“The Land Registry shall investigate the identity and legal capacity of the parties present on the means of proof, as well as the “The nature of the documents required for registration.” Article 105 of the same law states: “The Land Registry shall verify, upon reviewing the data contained in the deposited document, that the subject or reason for the contract is not illegal, immoral, or contrary to public order.” These provisions mentioned by the Algerian legislator to work to stabilize real estate ownership, prevent speculation, and reduce chaos in real estate transactions, which is what Article 2 of the decree referred to above indicates, “The main role of the real estate agencies referred to in Article One above is to identify and work to know Methods of ownership and other real rights over real estate through real estate advertising.

If the Algerian legislator and its French counterpart added an administrative character to this system, most of the countries that adopt it, such as Germany and Australia, make it based on a judicial system that assigns the task of establishing and maintaining the real estate registry to a judge from the judicial authorities called the commercial registry judge.

Two: The emergence of the Torrens Real Estate System

This system appeared thanks to the efforts of Mr. Robert Torrens, who laid the foundations and rules of this system in Australia at the beginning of the second half of the nineteenth century. This system later became called by his name (the Torrens System) or Torrens Rules.

Torrens is considered an Australian citizen who held the position of observer in the Customs Administration and then Secretary-General for Contracts. Torrence started his idea by noticing that lands were transferred to their owners in two ways, either through a grant from the government or through a normal method, i.e. sale, gift, will, etc. Likewise, for the first method, the government recorded in its books the names of those to whom it granted lands in the event of a dispute over the ownership of one of the lands. It was thus easier for it to determine the owner by reviewing the entries in its books.

The Torrens method was built on five main rules that can be summarized as follows:

- 1- Facilitating the trading of real estate ownership by facilitating the procedures for transferring ownership and other real rights.
- 2- Conduct a pre-audit of all contracts subject to registration before registering them in the register.
- 3- The necessity of registering all real estate rights and changes that occur to real estate so that the registration is consistent at all times with the real situation of these changes.
- 4- Giving full evidentiary force to the real estate records recorded in the real estate documents and thus the attribution data in general.
- 5- Liquidation of ownership and the disappearance of all real rights and burdens that were not announced at the appropriate time, and then the creation of a real estate title deed, thus creating a new ownership based on new assets.

Indeed, the Australian Parliament was convinced of his proposals in this regard and on July 2, 1858, it issued a law called Real Property. It was later called the Torrens Method or Law, and the Torrens Method was completed in 1861 by introducing numerous amendments to it, and these amendments were put into effect in 1973.

Section Two: Torrens System Principles

The principle of legality:

The employee in charge of the registration process in the real registry must ensure and verify all the documents according to which the registration process is carried out in the real registry. Only legitimate rights are recorded, such as verifying the availability of the elements of legal action and the conditions for its validity, such as verifying the extent to which the disposers are qualified and that their will is free from defects, It is also proven by the ownership deed of the alienated right.

The principle of not acquiring rights subject to the statute of limitations:

In the in-kind registration system, there is nothing that justifies and proves the rights of the owner except the registration process. as there is no other owner except the one registered on this page in the real estate card. Therefore, it is not possible to accept the statement that real rights are acquired by the knowledge of others, on the basis of confidence in this official value of the register. In-kind can be revoked by the knowledge of the person who can prove a sufficient position of possession to acquire by prescription, as this would undermine the authority of the in-kind registry.

The absolute strength of stability:

The adoption of this principle results in the fact that every real estate right that has been declared by this system is considered an argument against everyone, which provides confidence in the real estate registry data and leads to the stability of real estate ownership. It is a self-diagnosis of this property without any regard to the person managing it. To know the legal and physical condition of the property, it is enough to

look at the newspaper or the real estate card assigned to it to know that with complete accuracy and ease.

Section 2: The Evaluation of the Torrens Real Estate System

One: The Cons of The Torrens system.

The negatives of the Torrens System are very few in comparison to the many benefits that accrue when it is implemented into reality. These negatives lie in the fact that the initial procedures that must be taken in order to declare real estate rights require a lot of time and heavy financial costs to reach the process of general land surveying. There is no optimal application of this system unless it is preceded by an accurate identification of the properties.

Land survey is conducting a technical field investigation at the level of the territory of each municipality to record the surveyed properties and make a material basis for the real estate registry that is established at the level of each real estate registration department. This case is evident from the text of Article 02 of Order 75/74, which stipulates, "The general land survey determines and defines the natural extent of real estate and serves as a material basis for the real estate registry."

Countries must work hard to harness the necessary amount of funds to reach the generalization of Torrens application in various parts of the country to preserve the stability of real estate ownership as it is a mirror that reflects the legal and physical condition of the properties. This is in addition to the fact that accurate identification of real estate enables it to count real estate owners and facilitates the process of imposing fees on its owners, which in turn constitutes returns to the public treasury.

Two: Pros of the Torrens Real Estate System

1- Controlling the area of the property ensures that no part of it is seized due to its identification and drawing of a map based on which registration is based, and thus reduces the disputes that arise between people regarding ownership and borders. This would result in a reduction in lawsuits imposed on the judiciary in this regard.

2- There is no fear of losing the surveyed property, whether completely or partially because it has a specific number registered in the name of its real owner, and a title deed is delivered to him, which is considered a deduction of real estate ownership in the real estate system. This administrative document, i.e. title deed contains the same data. In this sense, Article 19 of Order No. 75/74 referred to above: “All rights existing on a property at the time of publication shall be registered in the real estate registry that constitutes its title deed.”

3- This system also cleanses the contract of the defects that distort it. It is not permissible to challenge it with invalidity even if the transaction that was notified in the register was from someone other than the owner of the property. The land registry would transfer ownership due to the absolute power attributed to it. The legislator decided this rule based on the guarantees provided by the real estate registry system, which requires prior and careful scrutiny of an owner's documents upon concluding the first registration so that this registration is not done in the name of anyone other than the real owner. If it is assumed that damage occurred as a result of the application of this rule, the law takes charge of the harmed person. The right to demand compensation from the cause of harm, thus preserving considerations of justice without disturbing the stability of transactions.

Conclusion:

Although most civilized countries have adopted the real estate registration system, they did not follow a single path in organizing properties. This resulted in the establishment of two real estate registration systems, a system that relies on the names of holders as a basis for registration known as the personal system, and a system that depends on real estate known as the In-kind (Torrens) system. The latter which came in contrast to the personal system to achieve what the personal system was unable to achieve, which is to support real estate credit achieve stability of real estate ownership and restore confidence. As a result, many countries began to abandon the personal system and tended to introduce a new real estate legislation system that would address the

prevailing real estate situation in all its aspects through land surveying, which entails developing organized plans, as well as regulating real estate transactions. Thus, establishing an effective real estate system that takes into account at the same time the link between the real estate system and development projects. Legislative Decree No. 75/74 dated November 12, 1945, included the preparation of a general land survey and the establishment of the real estate registry, which came into effect on the ground in 1976, which aims to comprehensive real estate cleansing, which in itself is a work that requires a long time and mobilizing significant human and material resources.

Sources and references

- 1- Abdel Hamid Al-Shorabi, Real Estate Registration Management in the Light of Judiciary and Jurisprudence, Mansha'at Al-Maaref, Alexandria, p. 03.
- 2- Yasin Ghanem, Real Estate Judiciary, second edition, Syria.
- 3- Halfouni Majeed, The real estate registration system in Algerian law, second edition, Dar Houma.
- 4- Jamal Bouchnafa, The Real Estate Transactions in Algerian Legislation, Dar Al-Khaldounia.
- 5- Moawad Abdel Tawab, Al-Sajil Al-Aini (The Torrens Register) Knowledge and Practice, Dar Al-Fikr Al-Arabi, Egypt, p. 15.
- 6- Adly Amir Khaled, Acquiring Real Estate Ownership by Possession, Dar Al-Fikr Al-Jami'i, Egypt.
- 7- Omar Sadouq, Real Estate Dispositions in Algerian Law, Master's Thesis, Algeria.
- 8- Asaad Diab and Judge Tariq Ziadeh, Research on Identification, Registration, and the Land Registry, second edition, Lebanon.
- 9- Hassan Abdel Basit Jami, Real Estate Registration in Egyptian Law, Dar Al-Taawoun for Printing.
- 10- Abdul Hakim Abbas, Real Estate Registry in the Syrian Republic, League of Arab States.
- 11- Decree 76/63 of 03/25/1976 establishing the real estate registry.
- 12- Edward Eid, real estate regulations, specifying and editing the real estate registry, second layer.