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Procedural Organization of Non-Jordanian Ownership of the Real Estate in the Hashemite Kingdom of Jordan

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Abstract

This study dealt with the procedural organization of non-Jordanian ownership of real estate in the Hashemite Kingdom of Jordan. This is due to the importance of this issue for the economic and social development in the Kingdom. The policy of self-sufficiency or isolation from the world by some States is currently not possible, no matter how rich or poor the state is, strong or weak, advanced or developing, it cannot meet all its needs from within. Therefore, it is necessary to use foreign capital to assist and contribute to the process of economic and social development that takes place within the state region. This issue has been addressed by highlighting the legal controls of non-Jordanian ownership of the real estate in the Kingdom, whether natural or moral. In addition to that, a statement of procedures for real estate and the law must be applied, and indicate the limitations on non-Jordanian property ownership rights. This study concluded with a basic result that is the decision of the competent authority to refuse to grant non -Jordanian permission to ownership of the property is not subject to appeal or censorship from any party. If its decision is granted non -Jordanian ownership permission, then its decision is subject to appeal or censorship. This study recommended the necessity of amending the text of Article (137) of the Real Estate Property Law to ensure that the decisions of the competent authority to deny non-Jordanian permission to ownership of the real estate in the Kingdom are subject to the higher administrative authorities and to appeal before the administrative judiciary.

Keywords

Procedural Organization, Ownership, Real Estate, Administrative

Judiciary.

Introduction

The legislator has permitted the natural or moral ownership of the real estate in the Kingdom by a non-Jordanian in accordance with the regulations imposed by the Real Estate Property Law No. (13) of 2019. Moreover, the legislator also outlined the path that a non-Jordanian must follow for the purposes of owning real estate in the Kingdom. Thus, a non-Jordanian acquires ownership of the real estate in the Kingdom and has the right to dispose of it as he pleases, taking into account the restrictions imposed on him by the legislator and account the economic and social interests of the state in this regard.

The problem of this study lies in a statement to what extent the Jordanian legislator in the Real Estate Property Law No. (13) of 2019 can create a balance between the Kingdom's need to attract foreign investments, by meeting the desires of non -Jordanians to own real estate in the Kingdom for housing and investment purposes that is by following facilitated procedures and conditions in this aspect, and the necessity of preserving of the real property funds in the Kingdom in a manner commensurate with the Jordanian citizen's purchasing power, maintaining the population composition of the Kingdom, and maintaining its security and stability.

Methodology and procedures

In our study of this topic, we will rely on the analytical approach by addressing the texts of the Real Estate Property Law No. (13) of 2019 and other national legislation related to the subject of the study by analysis and branching to determine its contents and objectives. As well as the same applies to judicial rulings and the opinions of commentators to derive solutions from them and apply them to practical reality.

Therefore, the statement of the procedural organization of non-Jordanian ownership of the real estate in the Kingdom requires us to detail the procedures that he must follow for the purposes of his ownership of the real estate in the Kingdom. Then determining the law to be applied to disputes involving real estate owned by non-Jordanians in the Kingdom through two requirements as follows:

The first requirement: Non-Jordanian property ownership of the real estate procedures

The judgment on the availability of the conditions for non-Jordanian ownership of real estate in the Kingdom or not is from the competent authority as the case may be. So the non-Jordanian ownership of real estate goes through a series of procedures to be followed in order to acquire ownership of the property

and register it in his name (1) in accordance with the provisions of the Real Estate Property Law.

Article (136) of the Real Estate Property Law No. (13) of 2019 indicated the practical procedures that a non-Jordanian must follow for the purposes of owning real estate in the Kingdom, starting from submitting an application for ownership. In accordance with the instructions issued by the Director General of the Land and Survey Department to register the property in his name. Therefore, we can summarize the practical procedures for non-Jordanian ownership, whether natural or moral, of real estate in the Kingdom as follows (2):

First: Submit a request for permission to ownership of the property or acquisition of the kind right to the Land and Survey Department in accordance with the procedures specified with instructions issued by the Director General of the Land and Survey Department in this regard. It should be noted that these instructions are not issued until the date of preparing this study. Thus, the work is still underway according to the foundations based on the repealed Act, and until the issuance of these instructions is provided the request is provided in accordance with the pre-prepared form by the department for this purpose. It includes the statement of personal details of who submitted the application for ownership, provided that the request is attached to a copy of a passport for those who submitted the request for natural ownership, or a copy of the certificate of registration of the sapiential person, indicating his goals and is it allowed to possess the required property or not according to the case, and a summons indicates the purpose of ownership, lands scheme, and organizational chart for the plot of land to be purchased.

Second: The Director General of the Department of Land and Survey addresses the Jordanian Ministry of Foreign Affairs to verify the Kingdom's recognition of the country of which a non-Jordanian holds its nationality in accordance with the provisions of Article (135) from the Real Estate Law and to ensure that the state of the applicant for ownership, in the event of a non-Arab natural person, treats Jordanians reciprocally allowing them to own real estate in it without practical obstacles.

Third: The Director General of the Department of Lands and Survey addresses the concerned authorities to express their opinion on the ownership application based on the provisions of Article (136/b) of the Real Estate Property Law. Furthermore, Article (136/d) of the same law entrusted the Council of Ministers with the power to determine the parties concerned with expressing their opinion on the ownership application. These parties differ according to the purpose of the ownership application and the location of the property to be acquired as we have already explained. In all cases, he takes the opinion of the security services

 1 Al-Zoubi, Awad Ahmed, Al-Wajeez in the Jordanian Code of Civil Procedure, 4th edition, Ithraa for Publishing and Distribution, Amman, Jordan, 2019, p. 13.

² Al -Assaf, Tayseer Abdullah Al -Makid Al -Ali, possess the foreigner for the movable property under Jordanian law a comparative study with some Arab laws, Master Thesis, Institute of Research and Studies, Cairo, 2002, p. 165; Website: dls.gov.jo/ar/pages/defauutl. For the Jordanian Land and Survey Department, Amman.

in addition to any other concerned party because of the importance of this in verifying the behavior of the foreigner and his eligibility to own real estate in the Kingdom.

Fourth: After the responses of the official authorities concerned with the subject matter of the request are received, the director issues his decision on the request to grant permission to own or not. This is in the event that the decision on the application falls within his jurisdiction according to the area of the property to be possessed as we have already shown. But in the event that the decision on the request is out of the jurisdiction of his competence, he makes a recommendation to the competent authority to approve the ownership application.

Fifth: After approval of the ownership application the property shall be registered in the name of the ownership applicant after paying the necessary legal fees.

The question may arise in this regard about the extent of the possibility of a grievance or appeal against the decision of the competent authority to grant or refuse to grant non-Jordanian permission to own real estate in the Kingdom. In other words, the question can be formulated as follows:

Does to whether the competent authority's decision to grant or deny permission to non-Jordanians to own property in the Kingdom could be complained about or challenged?

To answer this question, we refer to the text of Article (137) of the Real Estate Property Law No. (13) of 2019, which states that" in the application of the provisions of this chapter the competent authority has absolute authority to grant or refuse permission to own a property, and its decisions are not subject to appeal to grant permission to challenge or censor by any party".

It is clear from the aforementioned legal text that the decision of the competent authority to refuse to grant non-Jordanian permission to own property is not subject to appeal or oversight from any party, but in the event that her decision was to grant non-Jordanian permission to own property, then her decision is subject to appeal or censorship.

It is understood that the decisions issued by the public administration, whatever their level are administrative decisions, therefore the general rule in this regard is that these decisions are subject to appeal before the administrative judiciary, and grievance before the administrative authority higher than the authority that issued the decision (¹). In addition to the text of Article (137) of the Real Estate Property Law, if the competent authority's decision is to grant permission to own the property, then this decision is subject to appeal or grievance before the higher administrative authority. For example, if the Director General of the Department of Lands and Survey granted permission to own property outside the limits of his powers, or if his decision was tainted by harm to the stakeholder.

 1 Al- Qabilat, Hamdi, Administrative Law, Part Two, 2nd Edition, Wael Publishing Dar, Amman, Jordan, 2016, p. 70.

In this case, the stakeholder can appeal this decision before the administrative court, or file a grievance against it before the Finance Minister. The Finance Minister is also entitled to repeal it on his own initiative, as an administrative decision subject to administrative control (1).

In application of this, the Jordanian High Court of Justice ruled in its jurisprudence that it stated: "The legislator allowed the foreigners' ownership of the real estate in the Kingdom as an exception and stipulated a precautionary restriction on that, which it be sufficient for the foreigner to reside in Jordan. Accordingly, the contested decision issued by the Council of Ministers allowing a Saudi person to own real estate in Jordan is based on the recommendation of the Minister of Finance, which includes that he does not own immovable property in the Kingdom, and since this incident was proven to be incorrect by owning more than one plot of land previously on the recommendation of the Minister of Finance, the decision is flawed for a defect the reason and in violation of the law" (2).

On the other hand, if the competent authority's decision is to refuse to grant permission to own property, then, according to the explicit text of Article (137) of the Real Estate Property Law and it is not subject to an administrative oversight, as a non-Jordanian has no right to complain about it and nor is the higher administrative authority entitled to cancel it. However, according to the general rules, if the Director General of the Department of Lands and Survey exceeds his powers by issuing a decision refusing to grant permission in a case that is within the powers of the Minister of Finance. Then the Minister of Finance may intervene and cancel this decision because the decision of the Director General of the Department of Lands and Survey, in this case, is invalid because it exceeded his powers and therefore has no immunity (3).

Also, the decision of the competent authority to refuse to grant non-Jordanian permission to own real estate in the Kingdom is a final decision that is not subject to appeal before the administrative court, following the explicitness of Article (137) of the aforementioned Real Estate Property Law. As it appears that the legislator considered this decision as an act of sovereignty that cannot be appealed and reviewed by any party, as stipulated in Article (5) of the Administrative Judiciary Law No. (27) of 2014. Which stipulated that: "The Administrative Court is not competent to consider requests or appeals related to the works of sovereignty" (4). Thus, sovereignty acts are "actions issued by the executive authority as a ruling authority, not management, and are characterized by a prominent political character and special considerations aimed at achieving the higher interests of the group and ensuring its safety and security at home and

¹ Abu Shanab, Ahmed Abdel Karim, Rights in rem according to the provisions of the Civil Code and Real Estate Property Law, 1st Edition, Dar of Culture for Publishing and Distribution, Amman, Jordan, 2021, p. 47.

² High Court of Justice ruling Decision No. (188/1993), dated 12/2/1993, Publications of Adalah.

³ Abu Shanab, the previous reference, pg. 47.

⁴ Article (5) of the Administrative Judiciary Law No. (27) of 2014 published on the page No. (4866) of Official Gazette No. (5297) dated 17/08/2014.

abroad" (1).

The researcher believes that the position of the Jordanian legislator, considering the decision of the competent authority to refuse to grant non-Jordanian permission to own real estate in the Kingdom as an act of sovereignty that does not accept appeal or oversight, needs to be reviewed and re-examined. For it is no secret to anyone the seriousness of the acts of sovereignty; As it gives the executive authority the freedom to carry out its work without the possibility of imposing any kind of control over it. Therefore, the researcher believes that the work of sovereignty should be restricted and not expanded, which should be amended in Article (137) of the Real Estate Ownership Law to ensure that the decisions of the competent authority refusing to grant non-Jordanian permission to own real estate in the Kingdom are subject to oversight by the higher administrative authorities and to appeal before the administrative judiciary.

In application of this, the Supreme Court of Justice ruled in its jurisprudence that it stated: "The decisions related to the work of sovereignty are the decisions that are issued by the executive authority and related to the general sovereignty of the state and related to the implementation of the constitutional basic laws and the movement of other authorities such as the government's links with the parliament, and the state's links with foreign countries. It is not considered such a decision issued by an administrative authority in the implementation of laws and regulations with the intention of creating a specific legal position whenever it is legally possible and permissible, such a decision is subject to appeal before the High Court of Justice."(2).

It should be noted that the legislator has entrusted the Director General of the Department of Lands and Survey to issue the necessary instructions to organize the mechanism for maintaining special records that include all the details of the ownership of non-Jordanians and legal persons in real estate in the Kingdom. Article 155 of the Real Estate Ownership Law states that: "For the purposes of this chapter, the manager shall issue the necessary instructions to organize the mechanism for keeping records of the ownership of any person or entity following the provisions of this law, provided that these records include the name of the owner and any information related to him and what he owns. of real estate, its descriptions, its areas, the purpose of its ownership, the date of its ownership, the duration of the project's completion, and any actions were taken against the property he owns.

The researcher believes that the legislator has done well by requiring him to keep records of non-Jordanians' ownership of the real estate in the Kingdom, because of the importance of this in ensuring that the real estate ownership law achieves its objectives of encouraging non-Jordanians to reside in the Kingdom and invest in it, thus contributing to the support and prosperity of the national economy. Also, keeping this type of record makes it easier for the Department of Lands and

¹ Kanaan, Nawaf, Administrative Law, Book Two, Dar of Culture, Amman, Jordan, 2009, p. 195; In the same kind of context: Shatnawi, Ali Khattar, Al-Wajeez in Administrative Law, 1st Edition, Dar Wael, Amman, Jordan, 2003, p. 575.

² Jordanian High Court of Justice Decision, No. (333/2005), dated 20/10/2005, Adalah Publications.

Surveys to follow up on non-Jordanians' compliance with the restrictions imposed on their properties. This will also facilitate the identification of the competent authority to grant the ownership permit or not, depending on the area of real estate owned by a non-Jordanian in the Kingdom. It would also facilitate providing the concerned authorities with information related to the properties of non-Jordanians when needed.

Second requirement: The law that must be applied to real estate non -Jordanians

The jurisdiction of the Kingdom's courts is not limited to purely national disputes. Rather, it extends to include disputes tainted by a foreign element in their parties, place, or subject as well. However, this competence is not absolute. It is limited to some of these disputes only; This is in keeping with the principle of effectiveness, or the principle of penetration power; That is, the power to compel decisions issued by the courts and to ensure their implementation(1).

Therefore, the courts of the Kingdom are competent to consider disputes involving a foreign in the event that the subject of the dispute is money, whether it is real estate or movable located within the territory of the Kingdom, without paying attention to the person of the defendant, whether a national or a foreigner, residing or not residing in the Kingdom. This is due to the sovereignty of the state and its general jurisdiction over all the funds located on its territory, regardless of the nationality of the parties to the relationship, and because the money site court is the most capable court to adjudicate disputes related to it(2).

And after the jurisdiction of the Kingdom's courts to consider disputes involving real estate located in the territory of the Kingdom, regardless of the nationality of the parties thereto, the problem of determining the law applicable to this type of dispute arises, since purely internal disputes do not raise the same problems as private international disputes. Where the task of the judge in relation to the internal dispute is limited to discussing the subject matter of the case, carrying out the trial procedures, and issuing the judgment in accordance with his national law(3), whereas, when faced with a special international dispute involving at least one foreign element, he must first resolve the conflict of laws problem to know the law applicable to the dispute before entering into the subject matter of the case or discussing its facts(4).

To resolve this conflict, private international law establishes its mechanism through attribution rules that are used to determine the relevant law. However,

¹ Al-Nimr, Amina, Laws of Pleadings, 1st Edition, Mansha'at Al-Maaref, Alexandria, 1982, p. 389.

² Al-Zoubi, previous reference, p. 151.

³ Al-Asadi, Abdul Rasoul, Private International Law, Nationality and Domicile, Center for Foreigners and International Conflict of Laws and International Jurisdiction, 1st Edition, Al-Sanhouri Library, Iraq, 2015, p. 317; Thar, Ali, Foreign Law before the National Judiciary, Comparative Study, 1st Edition, Zain Human Rights Publications, Beirut, Lebanon, 2017, p. 152.

⁴ Al-Masry, Mohammad Walid, Al-Wajeez in Explanation of Private International Law, A Comparative Study in Arab Legislation and French Law, Dar of Culture for Publishing and Distribution, Amman, 2019, p. 35; Al-Kiswani, Amer Mahmoud, Encyclopedia of Private International Law, Conflict of Laws, Dar of Culture for Publishing and Distribution, Amman, 2010, p. 47.

defining the specific rule that will be applied to the dispute requires adapting the proposed relationship to link it to one of these rules of attribution(1).

The rule of subjecting real estate to the law of its location is one of the prevailing principles in private international law and is adopted by most of the world's legislation². The Jordanian legislator took it in Article (19) of the Jordanian Civil Law No. (43) of 1976, which states: "The law of the site applies to possession, ownership, and other rights in rem. The law of the place in which the movable is located shall apply to the movable at the time of the realization of the cause that led to the acquisition or loss of possession, ownership, or other rights in rem."

Therefore, the judge must first determine the nature of the money in question, whether it is real estate or movable, so that he can determine the applicable attribution rule. There is no way to do that except with the help of the judge's law, and Article (53) of the Jordanian Civil Code defines real estate as: "Everything that is stable in its fixed space and cannot be moved from it without damage or changing its shape is real estate, and everything other than that it is transmitted."

If the court concludes that the subject matter of the dispute is the ownership of real estate or any other real right over it, then Jordanian law is applicable as the law of the location of the real estate³. Article (20/2) of the Jordanian Civil Code stipulates that: "The law on the location of the property applies to the contracts concluded in the matter of this property."

In application of this, the Jordanian Court of Cassation ruled in its jurisprudence that it stated: "The court finds that the plaintiff's claim to terminate the contract is due to the defendant's breach of the terms of the contract in terms of not submitting a bond guaranteeing the wages due to her. With this description, it is a personal real estate lawsuit that the legislator left, as stated in Article (37/3) of the Civil Procedures, the option for the plaintiff to establish it in the court in which the property is located, or in the defendant's domicile because the dispute is not related to a dispute over the ownership of the property or any rights in rem that is related to it so that the case is within the jurisdiction of the court in which the property is located, Nor is it stated that the law of the location of the property applies to the contracts concluded in the matter of this property under Article (20/2) of the Civil Code, as long as it is not a real estate lawsuit, and one of the rights in rem provided for in Article (19) of the Civil Code.

Whereas Article (27/1) of the Code of Civil Procedure has entrusted the regular courts in the Hashemite Kingdom of Jordan the right to judge on behalf of all persons in civil matters, and since the spatial jurisdiction in the subject matter

 $^{^{1}}$ Al-Aboudi, Abbas, Conflict of Laws and International Jurisdiction, Al-Sanhoury Library, Baghdad, Iraq, 2015, p. 55.

² Al-Masarweh, Haitham Hamed, Regulation of the Provisions of the Domicile of a Natural Person in Jordanian Private International Law, Vol. (3), p. (2), The Jordanian Journal of Law and Political Science, Mutah University, Jordan, 2011, p. 25.

³ Bashabsha, Ziyad Muhammad Faleh, The Role of the Will of the Contracting Parties in Choosing the Applicable Law in International Contractual Obligations According to Jordanian Law, Comparative Study, Volume (1), P. (30), Journal of Al-Quds Open University for Research and Studies, Ramallah, Palestine, 2012, p. 357.

of this particular case is not from the public order, but rather is the right of the litigants, and it is permissible to agree that it be held at the place specified by the contract"(1).

The researcher believes that the legislator has done well to make Jordanian law the one that applies to disputes relating to real estate located on the territory of the Kingdom. This would achieve stability in dealings between individuals, as they can easily identify the law governing the property, and this would facilitate litigation to the court and litigants according to the ease of moving to the neck of the property when needed.

Conclusion

After we reached the end of this study, in which we dealt with the provisions of non-Jordanian ownership of real estate according to the Real Estate Ownership Law, we reached a set of results and recommendations as follows:

First: Results

- 1. The verdict on the availability of the conditions for non-Jordanian ownership of the real estate in the Kingdom shall be made by the competent authority, as the case may be. Therefore, the ownership of real estate by a non-Jordanian goes through a series of procedures that must be followed in order to acquire the ownership of the property and register it in its name in accordance with the provisions of the Real Estate Ownership Law.
- 2. The decision of the competent authority to refuse to grant non-Jordanian permission to own property is not subject to appeal or oversight from any party, but if its decision is to grant non-Jordanian permission to own property, then its decision is subject to appeal or oversight.
- 3. The courts of the Kingdom are competent to hear disputes involving a foreign element in the event that the subject of the dispute is money, whether it is real estate or movable located within the territory of the Kingdom, without paying attention to the person of the defendant, whether a national or a foreigner, residing or not residing in the Kingdom. This is due to the state's sovereignty and general jurisdiction over all funds located on its territory, regardless of the nationality of the parties to the relationship, and because the money-site court is the most capable court to adjudicate disputes related to it. If the court concludes that the subject of the dispute is the ownership of real estate or any other real right over it, then Jordanian law is applicable as the law of the location of the real estate.

Second: Recommendations

The necessity of amending the text of Article (137) of the Real Estate Ownership Law to ensure that the decisions of the competent authority to refuse

 $^{^{1}}$ Decision of the Jordanian Court of Cassation in its capacity as a human rights defender No. (8661/2018) dated 27/3/2019, Adalah Publications

to grant a non-Jordanian permission to own real estate in the Kingdom are subject to oversight by the higher administrative authorities and to appeal before the administrative court.

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