

The mechanism of owning the mewat lands after Their acquisition.

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How to cite this article: Mamdouh Mohd Mamdouh Alresheidat, Mohammad Owad Hammad Zubid (2024) The mechanism of owning the mewat lands after Their acquisition. *Library Progress International*, 44(3), 9659-9665.

The introduction :

Real estate is characterized as stable money suitable for production and exploitation over time. The legislation of these rights has evolved in Jordan and the Arab and Islamic countries since the Islamic conquest until today in many periods. Its cruelty and tyranny have been mitigated by what Islamic legislation and jurisprudence have introduced to it of the principles of justice, fairness, equality, and compassion for the oppressed classes in the land that the Holy Qur'an heralded with sincerity, liberation, and sovereignty. Today, however, the Jordanian legislator has set out to develop a special and integrated legislation that regulates real estate ownership, with the Real Estate Property Law No. (13).) for the year 2019 (), and that the property system and related provisions of original in-kind rights are among the systems that are not subject to mere artistic industry and abstract explanatory logic only, due to the connection of its causes to the social and economic entity of each society and because it is in rapid development and dynamic movement. The fact that real estate and the goal is to compile a large number of laws into one law, but the position of the legislator was not clear in his division of real estate, and his treatment of the mechanism of individual ownership of real estate by squatting in a clear manner, and when we deal with the reasons for acquiring ownership represented by obtaining what is permissible and possession, and how to transfer ownership, we find that they are inconsistent with the text Article (60) of the Civil Code, and this leads us to the next question: Does seizing real estate owned by the state by means of these two reasons lead to the transfer of ownership to individuals? Pre-recorded (), since the study of the new law, and the previous laws, which varied between them, due to the difference in the legislative philosophy that coincided with the development of these legislations, which in turn were affected by circumstances that varied between them from one legislation to another, and some of which reached the point of executing any effect on the contract of sale of real estate other than Registrar that required registration to conclude this contract, or to delay the transfer of ownership, or to invoke it among the contracting parties, or with regard to others, to a varying extent between the legislative texts that stipulated registration for that, and an indication of whether the new law under study solves these issues or not.

Noting that this study does not address the study of the two reasons for acquiring ownership referred to, but rather seeks to answer the following question: How is ownership of real estate transferred to individuals through settlement or registration?

The answer to this question will be the focus of our study, as follows: The first topic: - **Definition of real estate.**

The second topic: - The real estate settlement mechanism.

The third topic: - The mechanism of registering real estate that has not been previously registered

The fourth topic: the authenticity of registration documents.

The first topic

Introducing real estate

The jurisprudence differed in this regard, as some jurisprudence went to the division of real estate into two types (), real estate that has been settled, and real estate that has not been settled or outside the settlement. Others held that real estate in Jordan is of two types in terms of ownership: real estate owned by the state and real estate owned by its individuals () ().

Either the Jordanian legislator with the new real estate property law was affected by the Ottoman laws, just as the Jordanian legislator was previously affected by all the Jordanian laws related to real estate, with regard to legal concepts related to real estate, including the types of real estate, which are five types, the first of which are: owned lands, whose owner has the right to use, exploit and dispose of them in kind and benefit And princely lands, which are owned by the state, and the right to benefit from them is for individuals, and this type and classification has been abolished in support of Article (8 / a) of the Real Estate Property Law, and it is good for the Jordanian legislator to do, because in reality the result is one between the right to own and the right to dispose of In terms of the nature of ownership, and endowed lands, which are lands that were endowed by their owners, so they were withheld from ownership, ownership and mortgage, and their revenues were allocated to a specific party, and they remain as such, unless they are replaced by a legitimate replacement, and abandoned lands, which are left to usufruct for the general public, and dead lands, which are lands Empty that is not the behavior of anyone.

And real estate owned by the state, is matched by real estate owned by individuals (), where it is possible to transfer real estate owned by individuals to the state and vice versa, and real estate owned by the state includes real estate registered in the name of the treasury and unregistered.

Jurisprudence has defined state-owned real estate as: (real estate not owned by individuals (individual property), which is in the interest of the public and their benefits, and the state has the right to exploit, manage, supervise and dispose of it just as individuals dispose of their private property () and real estate

There are three types of state-owned property (), which we study as follows:

The first requirement: real estate owned by the state allocated for the public benefit:

It includes real estate owned by the state allocated for the public benefit that the general public benefits from, such as rivers, seas, roads, streets, and public squares (), as it is very similar to the abandoned lands in the Ottoman law that we referred to previously, so jurisprudence went, that these (properties are not subject to the provisions of the civil law regarding It is related to ownership, but it is subject to the principles and provisions of administrative law, and it cannot be disposed of, nor can it be owned by the lapse of time, and it is not permissible to seize it) ().

Article (60) of the Jordanian Civil Code stipulates that: ((1- All real estate and movables belonging to the state, or public governmental persons, which are actually earmarked for public benefit under the law or system, are considered public funds. 2- It is not permissible in all cases to dispose of them. In these funds, seizing them, or owning them over time)) ().

The second requirement: real estate

Resorting to the competent court

The Court of First Instance in whose area the real estate is located shall have jurisdiction over the appeal against the decisions of the Committee submitted by the person affected by the decision of the Committee, whether he was the applicant for registration by refusing his application, or if he was a third party affected by the registration of the property in the name of the applicant, within thirty days of notification of the decision, and the court shall consider the case as pleadings And it shall have the right to ratify the decision of the real estate registration committee that has not been previously registered or to revoke it according to the facts and evidence of the case ().

All decisions issued regarding applications for real estate registration that have not been previously registered shall be notified to the concerned persons by the Registration Director or whomever he delegates from among the other registration managers in the event that the person required to be notified resides in an area outside the jurisdiction of the Registration Director, and after the lapse of (45) forty-five days from the date of notification of the decision The committee to the stakeholders, the director completes the real estate registration transaction in the name of the registration applicant according to the committee's decision, unless a notification is received from

the court during this period to stop the process, and if the court's decision is final, the registration director is obligated to implement the content of the decision ().

Article (92) of the Property Law confirms what some jurisprudents have gone to, "that after the completion of the registration transaction in the records of the registration department, the deed of disposal issued on the basis of this transaction is considered a document that cannot be appealed before the courts by the objector, but the absent, the insane, the imbecile and the minor have the right to From filing a lawsuit against the one whose name, ancestors, or descendants registered the land, and against the husband and wife, in the event that the ownership of the land is transferred to any of these people in any way, and if it is transferred to others, the provisions of Article (13) of the Real Estate Property Law shall apply, and a decision of the Court of Cassation came That: ((It is clear from the text of Article (8/c) of the Law of Registration of Immovable Property that has not been previously registered, that the law has limited the right of claim to appeal to the registration deed issued in application of the provisions of this text if this claim is based on one of the aforementioned reasons, which is absence Or dementia or minors, and the case is based on a reason other than the aforementioned reasons is unacceptable), and these bonds are acted upon without evidence and may not be invalidated, and the persons who owned immovable funds with new disposal deeds have the right to completely empty them, lease them, or put them as insurance religion, and each one of them has the right to dispose of it completely."

The third requirement

Registration and its impact on sales contracts

We talked about that real estate owned by the state or individuals would have devolved to them, according to the settlement, and the study of this topic centers on answering the question that may be raised: Is it possible to apply the text of Article (63) of the Real Estate Property Law to sales contracts of real estate owned by its owners under registration Real estate that has not been previously registered, and are the contracts for selling it outside the registration department valid or not?

There is no provision in the real estate property law in this regard, such as what came in the article referred to above, and we hoped that the legislator would add to the article after a phrase in the areas where the settlement was completed or the real estate that was registered in the registration department, since the real estate property law is a comprehensive law for most of the laws related to In real estate, however, by referring to the definition of the registration transaction mentioned in the text of Article (2) of the same law, I defined it as (registration of a disposal, contract, change in ownership, modification, deletion of it, attachment or indication regarding real estate, which the law requires the registration of any of them in the real estate register in accordance with According to the provisions of the law) and thus the law required the registration of all transactions and contracts within the registration department, and any contract outside the registration department is considered invalid because it violates a text or an order. Considering the real estate sale contract as a formal contract, as is the case with regard to the security mortgage (), then it is based on the explanatory memorandum of the civil law that came as follows: (As Article (1148) stipulates that neither ownership nor real rights in real estate materials shall be transferred except by registration, And when the registration is done, the ownership is considered transferred from the time of the contract, not from the time of registration, because the reason for the transfer of ownership is the contract, and in this case the contract of selling the property outside the registration department is considered a valid contract, because the principle is in consensual contracts, and thus registration is not considered a constituent element because there is no legal text that requires that .

In addition, non-payment of registration fees is not considered a legal basis for the invalidity of the legal disposition upon failure to pay the registration fees, as the registration fee system did not provide for this invalidity, nor is it invalid without text, down to the provisions of the law ().

The fourth topic

Authenticity of registration documents

When talking about the authoritativeness of registration, we must distinguish between two stages, the first stage is the authoritativeness of the registration deed issued by the Registration Department to the owner by taking possession through settlement or registration of real estate that has not been previously registered, and the second stage is the authoritativeness of the registration deed if the ownership of real estate has been transferred to others, We talk about this in two matters as follows:

The first requirement

Authenticity of the registration deed issued by the Registration Department to the owner by hand

That the registration document by which individuals own real estate according to the settlement or according to the registration of real estate, it is considered an official document with what it contains and an argument against all, that is, in other words, if the reason for owning the real estate is according to settlement or registration works, and he receives a registration document, then no individual has the right Or acted prior to settlement, authorization or registration works, proving the opposite of what came in the registration deed, and his right to claim compensation is limited only, and the evidence for that is as follows:

The first requirement

Real estate registration committee that has not been previously registered

It is formed in each governorate or district, and it is composed of three members, who are each of the administrative governor, the membership of the director of finance and the director of registration, and each of them is in his area. Which it deems appropriate, and among its powers is to postpone the decision on the application until the settlement works are applied in the area in which the real estate is located, and the committee that postponed the decision on the real estate registration transaction may reverse its decision and resume the decision on the application if it becomes clear to it in a letter from the director that there is no intention. The Department has the authority to announce the settlement in the area in which the property required to be registered is located within its scope, and its decisions shall be by majority, within sixty days, and its decision in this regard shall be communicated to the concerned parties, and if no objections are received regarding the application for registration of the property that has not been previously registered, the committee formed in accordance with the provisions of Article (87) of this law is its decision to register the property in the name of the applicant ().

The second requirement

Resorting to the competent court

The Court of First Instance in whose area the real estate is located shall have jurisdiction over the appeal against the decisions of the Committee submitted by the person affected by the decision of the Committee, whether he was the applicant for registration by refusing his application, or if he was a third party affected by the registration of the property in the name of the applicant, within thirty days of notification of the decision, and the court shall consider the case as pleadings And it shall have the right to ratify the decision of the real estate registration committee that has not been previously registered or to revoke it according to the facts and evidence of the case ().

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The fourth topic

Authenticity of registration documents

When talking about the validity of the registration, we must distinguish between two stages. The first stage is the authenticity of the registration deed issued by the Registration Department.

Conclusion:

As for having finished this study, in which I dealt with a topic that is considered one of the most important topics in practical life, we tried hard to mix theory and practice, analyzing and criticizing the subject, looking at jurisprudential opinions and citing judicial rulings. We have come to the following conclusions and recommendations:

First: the results

- 1- There are three types of state-owned real estate: the first is real estate designated for the public benefit, and the second is state-owned private real estate, i.e. registered in the name of the treasury or one of its institutions, and de jure state-owned real estate, i.e. unregistered real estate.
- 2- The transfer of ownership of real estate owned by the state to individuals includes registered and unregistered lands, whereby individuals can register state lands in their name, provided that the state obtains permission, through the implementation of the provisions of the real estate property law, whether through settlement or registration.
- 3- If ownership devolves on individuals, according to the settlement of lands and waters, or the registration of immovable property that has not been previously registered, then its title deed is considered an official document, and it is not possible to challenge what it contains in any way of appeal, not even by fraud or forgery. The title deed after that, and it is entitled to appeal against it, for any defect in the elements of the contract or failure in the implementation of the contract, before the regular courts, to claim the invalidity or rescission of the disposal.

Second: Recommendations

Given that the real estate property law compiled many laws related to the transfer of real estate ownership in

Jordanian law, it caused confusion in the legal texts and their inconsistency with each other, which is reflected in the opinion of Jordanian jurisprudence and the accuracy of the judicial decisions that will be issued in this regard. It should be necessary for the legislator to intervene again, some provisions of the real estate property law, which meets the needs and requirements of civil security and the stability of real estate transactions, and to surround it with strict protection, preventing abuse and exploitation of it, especially since real estate is the core of the national economy for all countries.

And the Jordanian legislator did well, at this stage, to unify it by law, to put in place the precise legal and field organization of the most important element of the national wealth, and to know the returnees of these real estate with records that enjoy absolute authority in the face of all, in response to those who called for the existence of a single law that makes people see what they have and what they owe, through Inventory of the real estate, indicating its types, owners, history, dispositions contained therein and the rights arising therefrom, taking into account that these procedures are not a restriction that prevents the movement of these economic real estate, but rather that they require a great benefit by knowing the owner of the real estate and preventing it from being sold more than once, and also limiting the Possibility of selling the property of others, preventing transgression between owners, protecting state lands and not encroaching on them and excluding some people from them.

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