

68038

UNITED NATIONS
ECONOMIC
and SOCIAL
COUNCIL

Distr.
LIMITED

E / CN.14 / CART / 254
16 November 1970

Original : FRENCH



ECONOMIC COMMISSION FOR AFRICA

Seminar on Cadastre

Addis Ababa, 25 November - 9 December 1970

NOTE ON THE SYSTEM OF LAND REGISTRATION
IN MOROCCO

(Submitted by the Government of Morocco)

NOTE ON THE SYSTEM OF LAND REGISTRATION IN MOROCCO

by

Mr. Boubker FASSI-FEHRI
Conservateur Général
Chief of the Land Conservation and Hypothec
Service of Morocco

SYSTEM OF LAND REGISTRATION IN MOROCCO

A. PRINCIPLES

The system of land registration is based on the following principles:

- (1) The provision of a kind of "purge" which provides a valid root of title since it frees the land from all previous real rights and charges which were not disclosed in due time.
- (2) Extensive publicity of real rights.
- (3) Probative force (force probante) of inscriptions referred to in the land registers (livres fonciers).

CHARACTERISTICS

The system of registration, based on the above principles has the following characteristics: Each accurately delimited property is inscribed in a land register under a name and number and with topographical and legal data which show clearly and accurately the right of its owner.

The real rights, charges, transfers of ownership and changes concerning a property are indicated in the land registers which constitute, in short, the complete and detailed record of each registered property.

The system of land registration is based on the principle of publicity of real rights and consequently particularizes each property by defining it physically and legally.

Furthermore, it mobilizes real property in a number of ways designed to ensure the transmission of imovable properties and to facilitate the establishment of charges on land.

B. REGISTRATION (OR PRE-REGISTRATION) PROCEDURE

APPLICATION FOR REGISTRATION

The first formality in asking for a property to be registered is to deposit an application with the Conservation Unit within whose jurisdiction the property is situated.

AN APPLICATION FOR REGISTRATION MUST CONTAIN:

- (1) The name of the property;
- (2) The full name, civil status and domicile of the owner or co-owners, and in the case of land held in undivided shares, a statement of the share held by each;
- (3) The full names and addresses of adjacent owners;
- (4) The full names, civil status and address of persons owning real rights;
- (5) The area, situation, market value and number of parcels;
- (6) Documentary evidence.

The application is then entered in a special register and allocated a number which remains assigned to it until registration.

PUBLICITY

As soon as the application has been entered, an abstract of the application giving all the particulars contained in it is published in the Bulletin Officiel.

The publication of this abstract is the first act in the very extensive publicity on which the whole system is based, and its purpose is to inform the public that a certain person has applied to register a certain property by virtue of certain deeds.

DEMARCATIION

The second phase of the procedure is the demarcation.

Demarcation is carried out by a sworn surveyor of the Cadastral Office acting as delegate of the Conservateur.

The Conservateur summons to this operation, the importance of which we shall see later, the applicant or applicants, the adjacent owners, the owners of real rights, the purchasers, the representatives of certain administrations concerned and any person wishing to attend.

In addition, the public is informed through the posting of a notice of demarcation at the headquarters of the local authority, in the Tribunal du Saded and at the Land Conservation Office.

The purpose of demarcation is to delimit the perimeter of the property by means of boundary marks, each bearing a number, and the parts contained within the perimeter in respect of which third parties have objections.

This delimitation, which is carried out in accordance with the instructions of the applicant or his duly empowered representative, is entered in a report (procès-verbal) of demarcation signed by the surveyor and the parties concerned. A summary sketch is attached to the report.

The importance of this operation is that, in addition to demarcating the property, it assembles on the spot a large number of people concerned with the case in various ways, including any objectors who can have the parcels they claim demarcated without cost.

The demarcation report is then transmitted to the Land Conservation Office. It is checked by officials from the procedural sections who make a thorough examination of the document. These officials deal with the statements of those concerned, enter any objections in a register kept for this purpose, keep absent adjacent owners informed and ask them for their comments.

THE PLAN

After demarcation, there is the "survey" of the plan which is only transmitted to the Conservation Office after several months because of the extremely precise technical work which has to go into the preparation of that document.

NOTICE OF CLOSURE

Upon receipt of the plan and fresh examination of the dossier, the Conservateur has published, in the Bulletin Officiel, a notice called "Notice of closure of demarcation", by which he informs the public that, upon the expiry of a period of two months from the date of publication of the notice, no further objections can be accepted. The next step is posting of this notice under the same conditions as those applying to the abstract of the application.

It should, however, be pointed out that this period of two months is not an inflexible time-limit; an objection may be lodged after the two months have expired under special conditions laid down in the land dahir.

PURPOSE OF PUBLICITY

Reference has been made to the extensive publicity surrounding the registration procedure. The main reason is to safeguard the rights of third parties against the dealings of dishonest applicants.

Furthermore, anyone concerned may consult the dossier of the property at the Conservation Office, acquaint himself with the deposited documents and ask the Conservateur to send him a statement concerning the data which interest him.

OBJECTIONS

Any person is entitled to object to registration. Objections may be lodged either at the Conservation Office, or during demarcation, or through a declaration made at the Tribunal du S'adad.

Objections are immediately entered in a register kept for this purpose. A copy is forwarded to the applicant. The objector receives two formal notices asking him:

(1) to produce the documentary evidence justifying his claim;

(2) to pay the legal fee within three months.

Non-payment of this fee, the rate of which is very low, within the prescribed period definitively invalidates the objection unless the objector proves he has obtained or at least sought legal assistance.

Moreover, it should be noted that "throughout the procedure, and so long as the dossier has not been transmitted to the competent jurisdiction, the Conservateur is empowered to reconcile the parties and to draw up a report (procès-verbal) of conciliation. The agreements of the parties inserted in this report are privately binding".

JUDGEMENT OF CLAIMS

Any application against which an objection is lodged is transmitted to the appropriate Regional Tribunal, which pronounces judgment only on the existence, nature, consistency and scope of the right claimed by the objectors, but not on the applicant's rights, which it is the Conservateur's task to assess.

C. REGISTRATION

DECISION ON REGISTRATION

When there have been no objections or when there are no further grounds for them as a result of conciliation or decisions of the court, the Conservateur who is an "administrative land judge", explains the procedure he has followed and upholds the applicant's rights by pronouncing the registration of all or part of the property in question, or, on the contrary, rejects them and refuses to register if he finds the application irregular or lacking in documentary evidence.

The applicant whose request is rejected has two possibilities of appeal:

- one gratuitous, before the Conservateur Général, who is entitled to reverse the Conservateur's decision;

- the other judicial, before the Regional Tribunal.

EFFECTS OF REGISTRATION

The land title is definitive and unquestionable. It frees the property from any real rights and charges which were undisclosed during the procedure, annuls any previous titles and constitutes the point of departure for the registered property.

DESCRIPTION OF THE LAND TITLE

The land title includes the following particulars:

- a number definitively assigned to it;
- the name of the property;
- the situation, and number of parcels and area of each;
- the full name civil status and domicile of the owner or co-owners in the case of land held in undivided shares, with a statement of the share held by each;
- the real rights and charges encumbering the property.

A plan of the property is attached to the land title.

A duplicate copy of the certificate is issued to the owner or one of the co-owners; the others can obtain a special certificate of co-ownership.

BENEFITS OF REGISTRATION

Registration frees the property from real rights which were undisclosed at the appropriate time and thus lapse.

Furthermore, the land title indicates with certainty and irrefutably the owner's right, the real rights and charges encumbering the property as well as the area and boundaries.

In addition, the owner is fully guaranteed against any eviction by third parties who can no longer contest his right or the boundaries of his property. The owner can absent himself for many years and on his return he will find his property as he left it without difficulty simply through the existence of the land title. No more actions for possession, no more prescriptions of any kind.

The logical consequence of this system is that it mobilizes the landed property, enables it to play its part in the economic life of the country and facilitates capital formation in reality for development, the guarantee of prosperity.

D. INSCRIPTIONS

The land title, as we have said, constitutes the starting-point of the property, annuls all previous deeds and frees it from any real rights which were undisclosed during the procedure and which accordingly were not upheld during registration.

Henceforth all changes in ownership, every establishment of real rights and all changes concerning either the owner's person or the legal and topographical position regarding the property must be based on this title.

The title, in fact, can only retain its value and significance if it is able at any time to give accurate information to those concerned regarding any changes to it since it was drawn up.

Publicity concerning landed properties, the basic purpose of the land register system, is achieved through the completion of the various formalities provided for under Articles 65, 66 and 67 of the fundamental dahir which constitutes a charter for inscription.

ARTICLE 65 READS AS FOLLOWS:

"All acts and agreements between living persons, whether on a gratuitous basis or subject to payment, all reports (procès-verbaux) of seizure of real property, all absolute judgments intended to constitute, transmit, declare, modify or extinguish a real property right, all leases of properties exceeding three years, and any receipt or transfer of a sum equivalent to over one year of rent or farm rent which is not due must be made public through an inscription in the land register (livre foncier).

ARTICLE 66 READS AS FOLLOWS:

"Any real right relating to a registered property only exists in respect/ of third parties by dint of and from the day of its inscription in the land register by the Conservateur of Landed Property".

ARTICLE 67 READS AS FOLLOWS:

"Voluntary deeds and agreements designed to constitute, transmit, declare, modify or extinguish a real right take effect, even between parties, only from the date of the inscription without prejudice to rights and reciprocal actions of the parties for inexecution of their agreements".

It is clearly apparent from these articles that a right, if it is to be valid against third parties and to take effect between parties, must be inscribed and that it is this inscription and not the contract which upholds the right.

In other words, the proof of the right originates from the day of its inscription and not from the day of the deed drawn up by the parties.

This is the consequence of the probative force (force probante) attached to inscription.

Thus it is in the interests of any owner of a right relating to a registered property to have it inscribed in the Land Conservation Office as quickly as possible.

SUPERVISION BY THE CONSERVATEUR

Inscription is a very important formality.

It is on the basis of the inscription that the right takes effect and becomes valid against third parties.

Furthermore, it engages the responsibility of the Conservateur.

This is why the law has given the latter the right of very strict supervision over deeds which are presented for inscription.

E. SERIOUS RISKS INCURRED BY OWNERS OF RIGHTS WHO NEGLECT TO INSCRIBE THEIR DEEDS - KEEPING LAND TITLE UP-TO-DATE

FAILURE TO INSCRIBE AND ITS CONSEQUENCES

It is absolutely essential that a person owing a right inscribe this right at the Land Conservation Office as early as possible. So long as this right is not inscribed, it does not exist legally and has no effect, even between parties. A negligent purchaser exposes himself to serious injury.

Here are a few examples:

- Let us suppose that an unscrupulous owner sells his property simultaneously to two different persons; it is the purchaser who has had his deed inscribed who will be deemed to have purchased the property, even if the deed of the other purchaser is the earlier one.

- The negligent purchaser will have only one other course open to him - to take legal action against the dishonest vendor and to take him to court for reimbursement of the price and, if necessary, damages.

- A hypothec inscribed on a particular day will have priority over another hypothec presented later for inscription even if the title deed of the latter is of an earlier date than that of the former.

- An inscribed attachment will prevent the negligent purchaser from registering his deed of purchase even if this purchase is prior to the attachment. The attached property will be sold by public auction to the detriment of the negligent purchaser.

KEEPING LAND TITLES UP TO DATE

When the owners register their rights, they give those rights a legal existence and, as a result, keep their titles up to date, i.e. make them conform with the real situation regarding the properties.

In the contrary case, the land titles are not kept up to date and the references which they contain are inaccurate. This is serious because one of the essential functions of the land title is to provide the public with accurate information at any time on the condition of a property.

This shows the disastrous consequences of neglecting properties, and the extreme importance of the inscription of deeds under the registration system can never be overstressed.

SAFEGUARDS ADOPTED BY THE LEGISLATOR

Aware of the risks incurred by negligent persons and anxious to avoid any deterioration in the registration system and to ensure that it continued to play its role of basic instrument in the country's economic development in the country's economic development and advancement, His Majesty the King issued the royal decree providing for act No. 08-68 of 18 Jumada I 1388 (5 August 1968), thereby completing the fundamental dahir of 9 Ramadan 1331 (12 August 1913). This text lays down that inscription should be made within definite time-limits:

- in the case of successoral devolutions, one year from the day of decease;
- in the case of judicial decisions, six months from the day when they became definitive;
- in the case of other deeds, six months from their date.

It is up to the parties to have their deeds inscribed within the prescribed time-limits. In so doing, they will safeguard and maintain their rights and thus help keep the land titles up to date and the registration system fully effective.

EXPANSION OF LANDED PROPERTY CONSERVATION ACTIVITIES - RURAL LAND CONSOLIDATION AND GROUP REGISTRATION

Under the national agricultural development programmes, the scope of registration is being increasingly expanded:

Under the 1968-1972 Five-Year Plan it is planned to:

- launch registration operations over an area of 150,000 hectares in the land consolidation sectors of the provinces of Marrakech, Kenitra, Nador, Oujda, Beni Mellal and El Jadida, and over an area of 75,000 hectares in the group registration zones in bour (uncultivated) lands (provinces of Fez, Meknes, Agadir and Tetuan).

In both the land registration sectors and group registration zones, land registration is achieved, following a special procedure, more simply and speedily and in circumstances which are particularly advantageous both for the owners and the authorities.

This expansion of the Land Conservation Office's activities result stems from the role devolving upon the land title in the country's development operations. This main role vividly shows that the land title is one of the essential instruments in the development and progress of Moroccan agriculture.

CONCLUSION

It is interesting to note, in conclusion, that a very substantial part of Moroccan territory is registered. Thus, on 31 December 1968, 124,930 land titles - covering an area of 2,094,073 hectares - had been drawn up.

This considerable achievement would have been impossible if the registration system had not won the support of both rural and urban owners, who have discovered that the land title guarantees their lands against any usurpation and contestation and helps them in the constitution of charges on land-factors contributing to economic and social progress.
