

The Legal Framework of tribe Lands Exploitation in Algeria

الإطار القانوني لإستغلال أراضي العرش في الجزائر

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RECEIVED
25 - 06 - 2020

ACCEPTED
08 - 09 - 2020

PUBLISHED
30 - 09 - 2020

Abstract:

The modes of Tribe lands exploitation in Algeria vary between new and old modes, and perhaps the most important of them is "The permanent usufruct" created according to the law N° 19-87, which is carried out by agricultural investor, but the disharmony between the members of investment and due to the difficulties of benefit sharing of loans and the debt accumulation, this mode of exploitation was cancelled and was replaced by the agricultural concession mode enshrined in the law N° 10-03, that defines the conditions and modalities of agricultural lands exploitation, belonging to the private property of the state. However, the process of implementation has faced many difficulties, especially for Arch lands that are exploited without constraints and without the possibility, to convert the right of usufruct to a concession right.

key words: Tribe lands - agricultural lands - concession- usufruct- Exploitation.

المخلص :

تتعدد أنماط استغلال أراضي العرش في الجزائر بين الأساليب القديمة والحديثة، ولعل أهمها حق الانتفاع الدائم المستحدث بموجب القانون رقم 87-19 والذي يتحقق من خلال المستثمر الفلاحية، لكن عدم الانسجام بين أعضاء المستثمر وصعوبة استفادتهم من القروض وتراكم الديون أدى لإلغاء هذا الأسلوب واستبداله بنمط الامتياز الفلاحي الذي كرسه القانون 10-03 الذي يحدد شروط وكيفيات استغلال الأراضي الفلاحية التابعة للأمالك الخاصة للدولة، غير أن عملية تطبيقه عرفت العديد من الصعوبات لاسيما بالنسبة لأراضي العرش المستغلة دون سندات، والتي يتعذر فيها تحويل حق الانتفاع إلى حق امتياز.

الكلمات المفتاحية : أراضي العرش - الأراضي الفلاحية - حق الامتياز - حق الانتفاع

- الاستغلال.

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Introduction:

The subject of Tribe lands is one of the sensitive subjects that give rise to many law cases, especially those relating to the legal status of its occupants and their relationship with the State that owns these lands.

Tribe lands considered as a kind of agricultural estates that witnessed many historical phases in Algeria, since the Ottoman period where customary rules have been applied in terms of their organization and exploitation; during the colonial period the colonizer tried to takeover these lands for the benefit of the colonists, but faced its important feature, namely their inalienability.

As a first step, the occupant decided to attribute these lands for beneficiaries by integrating them into the rest of the property, determined in the act of 16 June 1851. This came in preparation for buying them later, then the French law and regulations continued that perpetual partial investigation, then total investigation about those lands to free them from the burden of the debts and to change its legal nature, from Tribe property to private property regulated under French real estate legislation. Many beneficiaries in that period had bonds, whether in sales formula Standing on rental clause, or final property bond, however these procedures have not been completed.

After the independence the Tribe lands formed a considered part of the real estate assets in Algeria. The Algerian state's neglect of its legal regulation contributed to the increase of the exploiters' demand to reclaim it and the spread of the seizing practices and relinquishing vast areas of unexploited tribe land, adjacent to the urban areas. The situation remained the same until 1971 when was enacted the legislative order N° 71-73 of November 8, 1971, containing the Agrarian Revolution Law. The Tribe lands were attached to the Agrarian Revolution Fund, to become the state's property. The Law N° 90-25 of Real Estate Guidance, amended and supplemented, issued on 18/11/1990¹ classified the real estate property, without including the Tribe lands; however, when this law amended by the order 95-26, the article N° 13 of the Act stipulated that the Tribe lands shall remain as a property of the state, that users enjoy the right to use it within the framework of peasant investors.

The Tribe lands were finally classified as private property of the peasant-oriented state; their holders may not act on it in any way, for this right belongs to the owner which is the state. But of course, this classification did not settle all the problems that are still raised within the Tribe lands, especially in the absence of its legal regulations. The most prominent of which is the indeterminate status of the exploiters, who possess property contracts issued by French authorities

during the colonial period; unclarity on how to exercise the right of permanent usufruct by the exploiters; amid these problems, the pattern of exploitation changed to concession. The exploitation of the Tribe lands has seen a shift from the general usufruct to the concession, for this, the paper aims to analyze the various forms of exploitation of the Tribe lands in Algeria, via posing the following problematic: **How effective are the legal frameworks of the Tribe land exploitation in balancing the right of ownership of the state and the rights of the exploiters?**

To answer this problem, I relied on the analytical approach to analyze legal texts pertaining to the subject; this is in addition to the descriptive approach, relied on when explaining the legal relationships between the users of the Tribe lands and the state. Consequently, the paper has been divided into two major points, as follows:

Section I: The Exploitation of Tribe Lands From The Permanent Usufruct Mode To The Concession.

Section II: The Exploitation of The Tribe Lands Classified as Areas of Development.

Section I: The Exploitation of Tribe Lands From The Permanent Usufruct Mode To The Concession

The right to permanent usufruct is a traditional formula for the exploitation of the Tribe lands in Algeria, and that is achieved within a framework agricultural investor, In view of the problems that had been encountered, the legislature had replaced it with the method of agricultural excellence, this is what we will address in the following points:

A- The Exploitation of Tribe Lands according to The Permanent Usufruct Mode:

The doctrine provided many definitions of the Tribe lands, including: Tribe means a tribe, i.e. the country of the Tribe, land of tribe is a collectively owned land, as each member of that tribe has the right to use and benefit from it, As long as he is able to grow it, in the same circumstances, he transferred it to his male heirs without women², It was also known as: “the interior lands founded on the edge of the semi-desert lands, exploited by tribes and families that component Tribes According to the inherited traditions centuries ago, which is to be used collectively and jointly, is neither divisible nor sold nor inherited”³.

The Tribe lands were exploited randomly among members of the Tribe, according to the traditional permanent usufruct based on local customs, which lacked a legal basis to regulate it, usufruct is defined in general, the right in kind,

which is focused on benefiting from something owned by others. Provided that the same thing is kept to be returned to the owner at the end of the right of benefit, which must inevitably end with the death of the beneficiary. this right is practised in the context of the relationship between the State as the owners and users of the Tribe lands, in which The state is committed do not to expose those users, enable them to free exploitation that is not subject to any supervision, yet some practices have been initiated by the users, which are incompatible with the right to use it and waived it, under customary contracts or the rent of usufruct right⁴.

Therefore, the country began to move towards trying to regulate tribe lands use this is through its incorporation into the Agricultural Revolution Fund and its distribution under allocation contracts, in case that the land is not used and neglected, it will return to the fund With the possibility of granting it to another beneficiary, who guarantees the land service of the national properties and specifies the producers rights and duties, But the failure of the cooperative system is due to the limited possibilities available given the wide range of agricultural spaces, replaced by the agricultural investor system⁵, We therefore address to the exercise of the right of permanent usufruct of the Tribe lands, within the framework of agricultural investors, hence, its most important legal and practical forms in the following points:

1- The exercise of the right to Permanent usufruct of Tribe lands within the framework of agricultural investors:

Following the repeal of the Agricultural Revolution Act, the real estate steering Act referred the exploitation of the Tribe lands to the Agricultural investors Act No. 87-19 of 8-12-1987, which includes how to control the exploitation of the agricultural lands⁶, the Agricultural investor is established within the framework of civil company under an administrative contract, it enjoy a legal personality and financial autonomy, also the investors enjoy the right of a permanent usufruct of territories constituent the investor, with the domiciled state ownership, the Agricultural investor may be created collectively or individually.

The members of the investor are obliged to be insured against risks, and the participation among them in the exploitation of the investor land, with keeping it United and continuous, but practical reality has shown that there are many disputes among members of collective agricultural investors, whether over workload distribution, profits and other things, some of them even chose to exercise the right of usufruct individually, by exclusivity piece of land. Peasant producers with the right to usufruct of an investments on Tribe land or other

State land may relinquish their shares in the investor to others, subject to the conditions set forth in article 25 of Act No. 87-19, The State has to exercise the right of first refusal, the right to permanent usufruct also passes to males but not females⁷ it should be noted that the right of permanent usufruct in this framework is an inalienable real estate property right, mortgage and book it⁸, in this sense it is not much different from the right to usufruct in the general rules.

2- Problems of the right of permanent usufruct of Tribe lands within the framework of Agricultural investors:

Looking to the many and variety of these problems arising from the privacy of the Tribe lands, we will see the important one as follows:

- The exacerbation of the phenomenon of sub-lease:⁹

Although article 21 of the law of agricultural investors N°87-19 the members of the investor exploited on the territory of the State, including the tribe lands, are required by using directly and personally from it, However, they often make Sub-lease contract for a long time, it was noted that some subtenants did not exploit the land within their own agricultural destination, which was contrary to the objectives of this Act, in confirmation of this prohibition, the Algerian Supreme Court has issued several judicial decisions emphasizing the absolute nullity of all Sub-lease of the agricultural investors territory¹⁰.

- The lack of informing the state about disputes between members of the investor:

The ordinary courts are competent to hear disputes between members of the investor, and it requires that the State is aware of the subject of the dispute in advance however, the beneficiaries resort to justice without informing the interests concerned with the states property about the subject of these cases i.e. they act as its owners.

More dangerously, there are people who have nothing to do with agricultural investors who file lawsuits against the State in which they are required to give up some land items, on a basis of exceeding the limits of ownership, without introducing the Directorate of the state domain or the governorate in the dispute, and the strange fact that some courts and tribunals have responded to them¹¹.

Besides these legal problems, there are other practical problems, the most prominent of which is that the agricultural investors did not benefit from bank loans, because banks doubt the validity of the benefit bonds of the permanent usufruct, whether they are administrative contracts or the states decisions, which led to the accumulation of debts on investor¹² For these reasons and others, the

Algerian legislature has abandoned the method of exploited agricultural investors, in accordance with the right of permanent usufruct and replaced it with the method of agricultural concession.

B- The Tribe lands exploitation according to agricultural concession method:

1-the Legal regulation of the right of agricultural concession:

After the promulgation of the Law N° 08/16 dated on 03 August 2008 which includes the agricultural guidance, The general right of usufruct has been converted to the concession right¹³, Then the Act N° 10/03 of 05 August 2010 that sets out the conditions and modalities for the exploitation of the agricultural lands belonging to the private domain of States¹⁴ to devote a single formula as an exclusive right to the exploitation of these lands that represented by agricultural concession, through which article 34 of Act No. 87/19 on agricultural investors is abolished¹⁵.

in according to the Fourth article of the Act 10/03, The concession is defined as “The contract which granted by the State to a natural person of Algerian nationality, the concessionaire investor at the heart of this text, the right of exploit the agricultural lands of the private domain of the state, as well as the related property, Based on a book of conditions determined by the regulation, for a maximum period of forty years renewable in exchange for payments of royalty, that sets out the modalities of its allotment, collection and allocation under the Finance Act”, This Act applies to the agricultural lands belonging to the private domain of the State, Since the Tribe lands were finally classified in this properties, they could not be exploited except in accordance with the agricultural concession method.

To benefit from the right of concession each member of the agricultural investor must put a file in the National Office of agricultural Lands for examination and referred to the domain Department of the state for the purpose of issuing the concession contract, If the beneficiary has fulfilled all of his obligations under the Act N° 87/19 and his ownership is fixed by a formal and well-recognized property contract in the real estate conservation, the right to permanent usufruct is transferred to a right of concession, Who is entitled to it that shall be authorized to use the agricultural land and field as agreed upon and as prepared.

The concessionaire investor may waive his right of concession under the Act N° 10/03 either free of charge or in exchange fees after informing the National Office of agricultural Lands and the amount of the waiver and the

identity of the candidate for the acquisition of the right of concession shall be determined according to the Executive Decree No. 10/326 specified the qualifications of the application of the right of concession, for the exploitation of the agricultural lands belonging to the private domain of the State, as the right of concession entitles the investor to inherit his right as a inheritable Real-estate In-kind rights¹⁶ In addition, the possibility of mortgage on this right as a guarantee for bank loans, for example, that may be needed to finance its investment projects, The concession mortgage constitutes a departure from the general rules, particularly the article 884 of the Civil law, in order to facilitate investors access to sources of financing¹⁷.

2- The Problems resulted from the application of agricultural concession method to the Tribe lands:

The application of the concession method as a pattern of the Tribe lands exploitation had known several legal and practical problems, the most important of which are:

- Clan conflicts between heirs:

The process of granted contracts of agricultural concession was marked by significant delay despite the two Warning, the reason Because of the reluctance of the Tribe lands holders to apply to the competent departments to settle their files, is the internal conflicts between the heirs¹⁸,The process of converting the permanent usufruct into concession right imposes the A heirs proxy, which is contrary to the idea of participation that the Tribe lands based on. The fear that the agent may have acquired all rights has prevented the proceedings from being completed.

-Lack of title document:

One of the conditions for converting public usufruct into a concession is that investors must have formally contract in the real estate conservation (administrative formally contract or formally Notarial contracts)¹⁹,Or have decisions issued by the governor, This is considered as a problem within the Tribe lands because many of its holders lack such documents and use the land either under customary contracts or under formal not Notarial contracts or without any contracts, which makes them threatened to lose this right if their situation is not settled, the trusteeship body therefore extended the 18 month deadline set out in the Act N° 10/03 n to convert the permanent usufruct contracts into concession contracts, however, this extension did not define its maximum dates and sees that this is logical, given the great number of pending situations, especially within the Tribe lands that occupy a significant area of the agricultural lands in Algeria.

In this situation, Some local authorities found in a number of governorates found that the solution lies in conducting a real estate expertise, whereas It has entrusted a group of real estate experts to prepare a technical card on the Tribe lands and municipalities in its territory²⁰,this demonstrates the difficulties faced to the move toward concession contracts as an exclusive form of exploitation.

- The Conflicts between Tribe lands exploiters:

The Tribe lands are characterized by many disputes between the Tribes over the right of usufruct, Thus, under the Act N° 87/19 many of them are granted administrative contracts allowing them to exploit under the framework of the agricultural investor, but some clans intervened to recover these lands by force, and they continued to benefit from it, this has resulted two categories under one description which is the investor, one of them a legal investor who has an administrative bond and the other an actual or realistic investor, that exploits without bonds, of course, with the promulgation of the Act N° 10/03 only the legal investor benefited from a concession contract, This led the actual investor to use force to defend his tribe land²¹,We were surprised that some notaries were not writing concession contracts in these areas.

Section II: The Exploitation of The Tribe Lands Classified as Areas of Development

The Algerian legislature was adopted by the Act No 83/18 of 18 August 1983 related to the Possession of agricultural real estate ownership²²,the possibility of acquiring property by reclamation under certain clauses, However, the second article excluded the lands that were integrated in the agricultural revolution fund before its texts were cancelled, Since the tribe lands have already been incorporated into this fund, they may not be owned by reclamation, Although practical reality has shown that this legal text has not been respected, because many of these lands have been granted in the application of this law.

In accordance with the articles 18, 19 of the real estate guidance Act, the executive decree N° 97/483 was issued in 18/12/1997which defines the modalities of granting the agricultural concession in the land parts of the private domain in the reclamation spaces, its burdens and conditions²³,Amended by the Executive Decree N° 98/372 dated on 23/11/1998²⁴ which included many spaces Geared for reclamation, including the tribe lands, thus, the classification of the tribe lands within these spaces allows them to be granted for exploitation according to the concession contracts, then several ministerial Circulars was issued in this area, the most important of which is joint ministerial publication No

108 of 23 February 2011, which includes the creation of new investments for agriculture and animal husbandry, also, joint Ministerial Publication N° 1839 of December 14, 2017, which includes the use of the agricultural real-estate in the private domain of the State, for investment in land reclamation through concession, that will be addressed as follows:

A -the Reclamation of tribe lands under concession contracts, in the framework of the executive decree N° 97/483 amended and supplemented:

The amended and supplemented Executive Decree N° 97-483 introduced the method of concession within the private domain of the State, The Article II of the conditions Book annexed to this Decree defines the concession as an act whereby the State grants for a certain period the right of usufruct to available lands of private domain to every natural or moral person in the context of reclamation in deserts and mountainous steppe regions.

The tribe lands in these regions, which is the majority, It may be reclaimed with the concession method, therefore the text extended the territory exploitation through concession, that reflecting the activation of the State's policy of supporting investment²⁵.

These lands required to be limited by the boundaries, and the beneficiaries are obliged to complete the reclamation program within the time limits specified in the Terms Book, paying an annual allowance, when they breach these obligations or entering into sub-lease or converting land from its agricultural destination, the concession contract is to be annulled by the courts, Although the plot of land may be waived by consent for persons with the right to own property, the Executive Decree No 97/483 amended and supplemented has not been elaborate in the waiver procedures, thus leading to the further dilation of the administration of domain in the organization of concession contracts²⁶.

Although reclamation is important as one of the most effective legal formulas for the investment role of the agricultural real estate, However, there are many problems that have limited its role in this context, especially the poor censorship of reclamation in the areas allocated for this, and this what encouraged the emergence of numerous abuses by management and by users whose sole concern was the ownership, not investment and development of these land, as well as the inaccuracy and effectiveness of some studies on the determination of reclamation spaces²⁷. In addition to some disputes between the concessionaires and others, we refer here to disputes between the franchisors as legitimate users and others, who are the Tribees members who used to exploit the lands without proof of their right.

B- The establishment of new investors in the framework of the concession:

As a result of the above-mentioned problems that has been raised in connection with the implementation of Executive Decree N° 97/483 as amended and supplemented, the Joint Ministerial Publication N° 108 dated 23 February 2011 was issued, The new investment in agriculture and animal husbandry is a part of the state's drive to expand the agricultural production base by creating a new investments in the private lands of state domain²⁸, including the tribe lands, in which landowners apply for concession to the National Office of agricultural lands.

this later shall sign the burdens book with the meaning and then send the file to the Directorate of domain and the publication N° 108 referred to the conditions Book annexed to Executive Decree N° 10/326 dated on 23/12/2016, which is specified the modalities of the implementation of the concession right to the agricultural lands exploitation of the private domain. The concession period shall also be 40 years renewable and the other conditions set in this Decree shall be the same.

The concessionaire on a piece of 10 hectares can benefit from loans supported by the Agriculture and rural development bank, and benefit from in-depth studies, free accompaniment from state institutions and exemption from payment of royalties within ten (10) years.

Then the ministerial instructions and Circulars followed in succession to try to find solutions to the problems arising from the application of the Law N° 10/03 which sets out the conditions and modalities of the exploitation of the agricultural lands belonging to the private domain of the State, Through the concession method, including the ministerial joint instruction of the Ministry of Interior, local groups and Ministry of Finance N° 654 dated on September 11, 2012, which includes the processing of files for the transfer of the right of usufruct to the concession right by the governorate committees, in order to finally clear the situation that is detrimental to the rational exploitation of lands and to ensure the sustainable real estate security of the lands exploiters of agricultural lands, where they decided:

–The cancellation of the administrative contract of the investor who waives his right to usufruct to the others, whether the waive is in a customary contract or a notarized contract not published in the real estate conservation, this will settle some of the outstanding cases in the Tribe lands.

– For the exploiters who have built illegal buildings, this situation is addressed by the relationship between the building in question and the agricultural investor or by its disappearance.

–The instruction also confirmed that in order to continue the preparation of concession contracts and to end the process of converting the right of usufruct to a concession, and to avoid disputes the governor's masters must undertake a quick study of the files concerned by the governorate committees, taking all necessary measures in this area. Thus, the jurisdiction was granted to the governorate committees rather than the central bodies, as was the case under the Executive Decree N° 97/483 amended and supplemented.

C- The Continued issuance of instructions and ministerial Circulars related to the concession:

On 13 February 2013, a joint ministerial instruction was issued by the Ministry of Interior, local communities and the Ministry of Finance N° 162, addressed to the governors masters of these governorates: Adrar, Agawat, Baskrah, Bashar, Tamanrasset, wergula, Ilizi, Tindouf, Al Wadi, Gardaya, on the subject of the re-activation of the agricultural real estate machinery in the desert governorates, where it decided:

– The acquisition of agricultural real estate property by reclamation remains valid but is now applied only in the desert governorates, meaning that the application of this method to the tribe lands will be not possible only on the Tribe lands located in the desert governorates.

– concerning the case of the transfer of the right to acquire agricultural real estate property to a concession right, it will be only in the interest of the beneficiaries who actually exploit their lands.

–For land investors without a bond: the studies have shown that many of the people who reclaimed lands were on their own initiative without having any legal bond to fill that lands, This group undoubtedly contributes to agricultural production in many desert regions, so the instruction N° 162 stipulate that the governors must be charged the Technical Committee of the department for inspection of reclamation and enabling investors to assign the waive contracts.

In 2017, the Inter-Ministerial instruction N° 1808 dated on 5 December 2017 was issued to process files for converting the right of permanent usufruct to a concession by governorate committees, in which it emphasized that in the case where the exploiters conclude agreements with the others, the governorate committees should take into account the expiration of the relationship between the parties prior to the referral request date or its settlement²⁹.

Finally, it should be noted that the tribe lands classified as reclamation spaces are affected by the provisions of the Joint Ministerial Publication N° 1839 dated on 14/12/2017 that included benefit from the agricultural real estate of the State private domain devoted to investment in lands reclamation through concession³⁰, which includes:

- Appoint Activation and Steering Committee of the governorate's agricultural investment as a tool for consultation and accompanying to the development of the governorate's agricultural sector.
- Designation of spaces the theme of concession in common character between the designated governorate Director in charge of Agriculture and the President of the popular Assembly of the Municipality.
- List projects eligible for concession under reclamation to micro-agricultural projects and other agricultural investment projects.
- The publication also regulated procedures for the demarcation of the concession, preparation of the concession contract, procedures for the granting of such a concession, as well as its dissolution provisions.

Conclusion:

Through this Resetribution on the legal framework of the Tribe lands in Algeria, we draw up a set of Results and suggestions which we elaborate as follows:

The Results:

- The Tribe lands, as historical heritage in Algeria, and after the many disagreements that erupted over their legal nature, the Algerian legislature settled this problematic by classifying it as a private domain of the state, but it gave its holders the right to exploit it while remaining a property right of the state. Despite this adaptation the Tribe lands still pose many legal and practical problems because of tribal disputes and the absence of proper justifying documents of its holders.

-The classification of the tribe lands as private property of the State requires that the modes of exploitation, devoted that the Algerian legislature to this property, shifting, first, from the traditional permanent usufruct mode, based on customary rules, to the right of permanent usufruct for the benefit of agricultural investors, to be converted in 2010 into a single exclusive mode of concession, that has not yet been finalized.

Recommendations:

-The state must strengthen the real estate expertise in the area of Tribe land;the continuity of the process of preparing technical cards on these territories

and the rest of municipalities in their territory, and work on to provide protection to these experts to enable them to complete their tasks.

-The multiplicity of conflicts over the exploitation of the Tribe land cannot be resolved in a short time, which has rendered the situation of the exploiters more difficult, in terms of exploitation, concession, waive and other matters. The Algerian legislature should, therefore, organize it, particularly by addressing the various issues, taking into account the specificity of these lands, for it has only detailed the subject of property, while the other subjects remain pending.

-It is noted that only a small number of Tribe lands has been normalized by formal and well-recognized concession contracts, while vast areas remain without documents, enabling their users to obtain concession contracts, which leaves them under the threat of having these lands resituated by the State.

- The State facilitate the obtention of loans for the Tribe lands exploiters to enable them to develop these lands.

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