vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

THE SOCIO-ENVIRONMENTAL FUNCTION OF BRAZILIAN RURAL PROPERTY AND DISAPPROPRIATION FOR SOCIAL INTEREST FOR PURPOSES OF AGRARIAN REFORM

A FUNÇÃO SOCIOAMBIENTAL DA PROPRIEDADE RURAL BRASILEIRA E A DESAPROPRIAÇÃO POR INTERESSE SOCIAL PARA FINS DE REFORMA AGRÁRIA

Grace Ladeira Garbaccio[1]
Ana Paula Chagas[2]
Marcelo Feitosa de Paula Dias[3]

Resumo
O presente artigo consubstancia estudo sobre a função socioambiental da propriedade rural. A partir de uma interpretação sistemática da Constituição Federal de 1988, da legislação ordinária, amparada pela doutrina e pela jurisprudência do Supremo Tribunal Federal, defende-se a ideia de que a propriedade rural no Brasil, embora possa figurar como "produtiva" sob o ponto da economicidade, nos moldes preconizados no artigo 185, inciso II, da Carta Republicana, é passível de sofrer a desapropriação-sanção para fins de reforma agrária prevista no artigo 184 do mesmo diploma, se constatado o descumprimento da condicionante função social ambiental da propriedade prevista no inciso II, do artigo 186, da Carta Magna.

Palavra-Chave: Função socioambiental, Reforma Agrária, sustentabilidade

Abstract
The present article establishes a study about the socio-environmental function of rural property. From a systematic interpretation of the Federal Constitution of 1988, of ordinary legislation, supported by the doctrine and jurisprudence of the Federal Supreme Court, the idea is defended that rural property in Brazil, although it may appear as "productive" under the point Of the economy, in the manners recommended in article 185, item II, of the Republican Charter, is liable to suffer the expropriation-sanction for the purposes of agrarian reform provided ruled by article 184 of the same law, if it is verified the noncompliance with the conditional social environmental function of the property envisaged In section II, of article 186, of the Constitution.

Keywords: Socio-environmental function, Agrarian Reform, Sustainability

SOCIO-ENVIRONMENTAL FUNCTION OF RURAL PROPERTY

Before going into the specific subject of this study, it is relevant to define some considerations about the environmental element, which integrates the content of the modern

[1] Pós-Doutoranda pela Universidade de Limoges. E-mail: a.chagas@rolimvlc.com
[2] Mestre em Direito Ambiental pela Université Paris I - Panthéon-Sorbonne. E-mail: a.chagas@rolimvlc.com
[3] Mestre em Direito Agrário pela Universidade Federal de Goiás. E-mail: marcelo@vianafeitosa.adv.br

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

concept of the social function of agrarian property, its evolution throughout the years, its causes and effects, as well as considering some definitions that are essential to better comprehending the subject.

The discussions that grasses over the socio-environmental function of agrarian property involve several actors, interests and complex discussions. Understanding the evolution of Brazilian legislation, constitutional and infraconstitutional, is a sine qua non condition to dispel the debate on the issues of Agrarian Reform.

It is in the environmental element where our concern focused in relation to the components of the social function of the property, given the current picture drawn around the current Brazilian land panorama.

The Federal Constitution of 1988 enshrines in its art. 186 that the social function of rural property is fulfilled when it accomplishes certain criteria and levels of exigency established by law, including "proper use of available natural resources and preservation of the environment".

In order to regulate the constitutional provision inscribed in the Constitutional text in the Chapter of Agricultural, Land and Agrarian Reform Policy (articles 184 et seq.), The country's legal system came into brazlian's legal system in 1993, with the establishment of Law 8,629, concerning about the National Policy on Agrarian Reform, which, highlighting the provision in the constitutional text regarding the fulfillment of the social function by real estate rural properties, innovates in its art. 9, §§2 and 3, regulating that:

> Art. 9º The social function is fulfilled when the rural property meets, simultaneously, according to degrees and criteria established in this law, the following requirements:
> II - adequate use of available natural resources and preservation of the environment;
> Paragraph 2 The use of available natural resources is considered adequate when the exploitation is done respecting the natural vocation of the earth, in order to maintain the productive potential of the property;
> Paragraph 3. Environmental preservation is considered to be the maintenance of the characteristics of the natural environment and the quality of environmental resources, as appropriate to the maintenance of the ecological balance of property and health and quality of life of neighboring communities; (Emphasis added).

However, according to federal prosecutors, "the law, before and after, is a mixture of interests and submissions: if, on the one hand, it traces the agrarian reform, on the other, it creates mechanisms that hinder its accomplishment. If it were read only from private interests, it could be understood as a law against agrarian reform, but it could not be because the

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

constitution is in favor, so it is necessary to modulate the law inscribed in this law, according to the principles And the system and not against them "(p.19).

The political aspect or position can influence its interpretation and, in this way, present a positive or negative connotation depending on the interest to be defended. The theme of agrarian reform, in fulfillment of the social function of rural property, is and always has been the object of divergent understandings, which reflects in the difficulty of applying the mention legislation.

ECOLOGICALLY BALANCED ENVIRONMENT: DUTY OF RURAL OWNERS / STATE OBLIGATION

For purposes of this constitutional and infraconstitutional vision change, we understand that private property changes its legal conception, going from the individual sphere of absolute use to the environmental social function, which corresponds to its use according to the public interest (collective), including The proper use and enjoyment of the good by the owner, motivated in the protection of the indispensable environmental goods, considering the preservation of the environmental good, belonging to all.

Particularly in relation to the socio-environmental function of the property, it is evident that:

> [...] As far as property is concerned, an individualistic view of an absolute right to property over natural resources is essentially still found today. There is undoubtedly a transition on the way under this aspect, which seems to lead to the environmental social function. In this sense, Antonio Herman Benjamin says: "In a first historical moment, by virtue of the Welfare State, a social function is recognized to the property right, legitimating, for example, the intervention of the State to protect diverse categories of subjects, like the workers. More recently it is required that property also fulfills its social environmental function, as a condition for its recognition by the legal order. (WOLKMER e LEITE, 2003, p. 191, emphasis added).

In this way, the conclusion that can be reached is that the social function and the environmental protection begin by means of this new modality of legal thinking to integrate the very content of the modern property right. The current use of rural property in the development of economic and routine activities should, in addition to meeting the particular needs of owners, perfectly harmonize with the interests of society, combined with the preservation of existing environmental resources. The Federal Constitution of 1988 innovates by linking the fulfillment of the social function to the obligations of the environment protection.

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

It is no longer possible, in accordance with the constitutional and infraconstitutional norms, according to the existence laws, therefore, to speak on absolute and unlimited private property. Rural property is subject to limitations as regards its use and exploitation, failing which it will be distressed by the sanction of expropriation for social interest for the purposes of Agrarian Reform, since it must fulfill, in addition to the purely private interests of the owners, their social and environmental function, to conserve and preserve the natural resources existing in it, both for present and for future generations, under the terms established in art. 225 of CF/88.

In other words, modern rural property must be exploited, respecting the sustaining pillars enshrined in the Sustainable Development theory, namely the economic, social and environmental pillars.

There is no property law in its modern conception without respect for the limitations enshrined in the theory of the social function of property.

According to Ost:

> From the overcoming of the understanding of absolute property we can take the notions of profit and abuse of dominion to a new model, to a usufruct property, destined to generate economic, social and environmental benefits, in terms durable and in the long term, in view *of the* Future generations. This new model will lead the owner and usufructuary to play the relevant role as guardian of nature, logically depending on this model of widespread environmental awareness. [...] (WOLKMER and LEITE, YEAR, 2003, p.191).

Therefore, it should be pointed out that, based on a systematic and teleological interpretation of the Federal Constitution of 1988, with the lens directed to ordinary legislation, invoking the best doctrine and the signs of the jurisprudence of the Federal Supreme Court, it is concluded, in summary, that rural property in Brazil, although it may appear as "productive" from the economistic point of view, according to the art. 185, item II, of the Republican Charter, may be subject to expropriation-sanction for the purposes of agrarian reform provided for in art. 184 of the Federal Constitution, if it was verified the noncompliance with the conditioning social environmental function of the property, foreseen in item II, of art. 186 of the constitutional text, if the owner does not make effective use of the available natural resources and preservation of the environment, as well as the elements contained in items III and IV of said article, as pointed out in the previous topics.

This is because one of the reasons for being of the social function - the productivity element - must be achieved by maintaining the environmental preservation of natural resources and the ecological balance, since only production can not be understood and absorbed without the attention that deserves the protection of the environment. In other

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

words, what we maintain is that property, to be considered productive, must not degrade its relevant ecological functions in none of an exacerbated productivity. The productivity of rural properties, therefore, should be obtained by means of a rational exploitation, in the exact terms established by the Federal Constitution and Law of the National Policy of Agrarian Reform. Albeit, in our view, that's the reason why environmental rationality is contained in the concept of productive property.

Following this same path of reasoning, the Federal Supreme Court did not remain unaware of the discussion and, through a judgment of Supreme Court Justice Celso de Mello's, has already expressed its opinion on the possibility of expropriation in the aforementioned hypothesis, which, for pertinent and elucidative, *verbis:*

> [...] The defense of the integrity of the environment, when it becomes an object of predatory activity, can justify a state reaction to measures such as expropriation-sanction that reach the property right, since rural property that does not Is adjusted, in its process of economic exploitation, to the ends listed in art. 186 of the Constitution clearly disregards the principle of the social function inherent in property, thereby legitimating, under the terms of art. 184 c / c or art. 186-II of the Political Charter, the edition of presidential decree consubstanciador of expropriatory declaration for the purpose of agrarian reform. [...] (SUPREME FEDERAL COURT, MS 22.164-0SP, MINISTER RECTOR CELSO DE MELLO, BRASÍLIA, DF, DJ 17.11.1995, emphasis added)

Our great discontent lies precisely in the fact that until the present day, the Executive Power is invoking in its administrative practice, as a basis for expropriation-sanction for the purposes of Agrarian Reform, in an unreasonable manner, Only the productivity element factor, foreseen in item I, of art. 186, of the Federal Constitution of 1988, as if it were reduced only to the measurement of GUT (Earth Use Rate) and GEE (Grade of Efficiency in Exploration), by pure and cold application of art. 186, I of CF/88 and Law no. 8.629 / 93.

As an example of the above situation, we present the decision of the Federal Court of First Instance of the State of Tocantins, case nº 2010.43.00.001132-8, referring to a property in the Municipality of Crixás do Tocantins/TO against INCRA. The action aimed at the declaration of productivity of the rural property denominated Fazenda Consolação / Uirapuru, located in the mentioned municipality. INCRA claimed that the property was unproductive, having as parameters the agronomic inspection report. The authors argued that this property possessed GUT and GEE levels compatible with the indices required to fulfill its social function. In judicial review, it was found that the GEE index was higher than the legal limit required and considered to be a large productive property. As for the GUT, the issue of the legal reserve area as a usable and unused area loomed, since it was not registered in the property registry, INCRA's position,

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

or the exclusion of the legal reserve as a usable area. Article 10 of Law No. 8.629/93 does not consider areas of effective permanent preservation and other areas protected by specific legislation as usable. INCRA, on the other hand, defended the thesis that the legal reserve area was not registered in enrollment and thus should be considered in the calculation of the GUT. If this were the correct interpretation, the property would have a coefficient below that required in Article 6, § 1 of the said law and would be considered unproductive. The interpretation of the Institute is all wrong, since the areas of legal reserve and permanent preservation, such as administrative limitations, are exempt from property registration, since the effectiveness of such a limitation is due to legal and non-real property. And Law no. 8.629/93 itself, a rule that regulates constitutional provisions, does not require such an obligation, which demonstrates flaws in the interpretation and application of legislation by the competent administrative body to do so.

This understanding was corroborated by several other decisions, such as:

> jurisprudence of the Federal Regional Court of the 1st Region, AC 2005.35.00.001301-1/GO, TRF1 Case Law Bulletin nº 105, Session from 08/09/2010 to 08/13 / 2010 Third Class; 2008.33.00 AC. 017116-3/BA, Third Class, e-DJF1, p. 134, of 04/29/2011; AC 2005.38.00.020927-3/MG, Third Class, e-DJF1, p. 251, 10/28/2010. In all these cases, INCRA was condemned and the expropriatory acts filed by the administrative body were canceled.

In addition, we must point out that we strongly disagree with this form of application of the constitutional and infraconstitutional text invoked since, in addition to being the simplest form of interpretation provided for in legal hermeneutics (literal interpretation), it is also noted that the interpretation By the Agrarian Authority, in casu, INCRA, is bound to apply the rules governing the matter in isolation, transforming into a tabula rasa the conglomerate of devices that govern the matter.

However, to reinforce the argument invoked, suffice it to say that our opinion on the definition of productive property, foreseen in art. 6, of Law no. 8,629/93, is diametrically opposed, since, according to our understanding, the definition of productive property refers to environmental, labor and welfare aspects as indicators of the rationality of exploitation, Of the productivity effectively protected by the law, that is, what results to be obtained by means of simultaneous harmonic equation of the variants of the social function.

We can cite action no. 2009.35.00.009735-3/GO, civil appeal, whose interpretation of the INCRA on the GUT and GEE of a rural property disregarded the existence of thirteen perennial springs and six intermittent springs, covering an extension of 3,000 meters, as well as

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

an environmental protection area (APA), created by Municipal Decree no. 145/2008, which occupies a portion of 909.2908ha. The decision of the Third Class, on 11/11/2016, was due to the lack of area for the implementation of an agrarian reform project, with environmental issues as a restrictive argument for its use.

It is therefore concluded that, in doing so, the supervision of the social function of the land agency would be more effective and better. In addition, impaired properties of other aspects of the social function, in addition to those related to productivity, of a merely economicist approach, would also be subject to state sanction, in order to maximize the effectiveness of constitutional norms, especially from the environmental point of view.

Well, as if that were not enough, the perception, even delayed, of the essentiality of the ecologically balanced environment made it worthy of recognition by Law as an integrated, immaterial system. More than that, the 1988 Constitution, pioneering in Brazilian constitutional history, presents a specific chapter on the environment, raising this important issue to the status of a fundamental human right, on an unprecedented scale of values.

As reported by MACHADO, "the Forest Code anticipated the notion of diffuse interest, and was a forerunner of the Federal Constitution when it conceptualized the environment as a common use of the people" (MACHADO, Paulo Affonso Leme, Brazilian Environmental Law, Ed. Pp. 740).

In this sense, this is how his art. 225, which, pertinent and elucidative, now transcribes, in *verbis*:

> Article 225. Everyone has the right to an ecologically balanced environment, a common use of the people and essential to a healthy quality of life, imposing on the Government and the community the duty to defend and preserve it for the present and future generations.

Moreover, as regards the incidence of expropriation-sanction on hypotheses of nonfulfillment of the social function by the other grounds of article 186, at least in relation to the "ecological-environmental function" (item II), there is express provision for administrative sanction, contained In paragraph 3, of article 225, of the Federal Constitution, according to which:

> Conduct and activities considered to be harmful to the environment will subject natural or legal offenders to criminal and administrative sanctions, regardless of the obligation to repair the damages caused.

Therefore, doubts do not remain when we affirm and defend vehemently that although productive from an economistic point of view, it should be sanctioned with the expropriationsanction for the purposes of agrarian reform of art. 184, of the Federal

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

Constitution, rural property that does not comply with the legal rigor to its socio-environmental function, inscribed in art. 186, item II, of our Magna Law.

Of course, a real supremacy of the economic element of the social function over other environmental elements, productive and labor well-being, is regrettably noted, but the disparity, above all, focuses on the environmental element. And for this reason it is worthy of recognition that erroneously art. 185, item II, of the Federal Constitution has prevailed over Articles 184 and 186 of the Great Text, causing, at the very least, an irreparable damage to the collectivity as regards the conservation of natural resources. In the name of unbridled productivity driven only from the economic point of view, we are far from reaching the pillars of Sustainable development and constitutes fertile ground for the exercise of poorly exercised, abusively degrading agricultural activity which, if not monitored by the State, could result in extremely harmful consequences for the environmental balance of ecosystems.

For this reason, Umberto Machado de Oliveira teaches in his lessons that:

> [...]We can not bow to the activity of agriculture in such a way as to admit its practice without the least respect and concern for the preservation of the environment, for if millions today call for food production, perhaps billions tomorrow will be starving due to Ambiental degradation. In this regard, we can see the impression of Castro Filho: "The newspapers and magazines of great circulation, and especially television, are showing daily that millions of people everywhere are crying out For food. The whole world, indeed, is hungry. Therefore, more and more, producing is an urgent requirement. And in the eagerness to respond to this desperate demand, entire forests have been destroyed, contaminated lakes and rivers, once-fertile land areas have been razed to the ground with the application of agrochemicals. All in the name of progress and in order to quench the hunger of humanity.
> However, it is not possible, to satisfy the just demands, by neglecting the harmonization of the need to produce with the obligation to preserve, not to pollute. If, on the one hand, the life and well-being of men depends on production, on the other, they do not lack preservation. Therefore, this harmonization, although difficult, will have to be pursued at all costs "(OLIVEIRA, 2008, p.282)

For these and other reasons, we are not convinced of the reason why the antagonists of the antagonistic current insist on affirming the supremacy of the productivity element over the other components of the social function, so that in this sense there would be a clear increase in the clause of inexpropriability Contained in article 185, item II, of the Constitution on articles 184 and 186 of the same constitutional text.

By the same procedure and following the same understanding, to reinforce our opinion, we find the Joint Opinion/CPALNP-CGAPJP/CJ/MDA/Nº 011/2004, of the lawyers of the Union Joaquim Modesto Pinto Júnior and Valdez Adriani Farias, emphasizing that:

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

> [...]The Constitution leaves in the single paragraph of art. 185: "The law shall ensure special treatment of productive property and shall lay down standards for the fulfillment of the requirements relating to its social function. This device seems clear: productive property will have special treatment because it fulfills the social function, not because it produces profit. (PINTO JÚNIOR and FARIAS, 2005).

And, further on, he concludes:

> [...] Let's focus more closely on profitability and productivity. The land is destined to bear fruit for all generations, repeating the production of food and other goods, permanently. Your depletion can bring immediate profit, but you liquidate your productivity, that is, the profitability of a year, the profit of the year, may be the loss of the following year. And here, not only financial damage, but translated into desertification, which means hunger, misery and lack of supply. It is too selfish to imagine that productivity as a constitutional concept means individual and immediate profit. On the contrary, productivity means repeated production capacity, which means at least the conservation of the soil and the protection of nature, that is, respect for what the Constitution has called an ecologically balanced environment.

In this sense, the interpretation of the chapter on agricultural and land policy and agrarian reform, especially of arts. 185 and 186 combined with the emancipatory and pluralist character of the whole

> Constitution leads us to the certainty that protected by the Constitution is the productive property that fulfills its social function, because the one that does not fulfill it, however profitable it may be, is not productive In human and natural terms (PINTO JÚNIOR and FARIAS, 2005, p.15).

Therefore, we conclude that the exploitation of agrarian property, which causes environmental damages, will imply the noncompliance of its social function, giving rise to expropriation by social interest for agrarian reform purposes.

Thus, the condition of the social function (productivity), listed in article 186, item I, of the Federal Constitution, must be reached to have validity in the legal world, maintaining the ecological balance, because productivity can not be understood and absorbed without Protection of the environment. That is to say, productive property must not harm the ecological function of a given ecosystem where it is in the name of unbridled production.

Finally, as noted for Roxana Cardoso Brasileiro Borba:

> [...]The property that even productive disrespects the norms of environmental and agrarian law, in order to seriously threaten the environment, imposes it be expropriated, so as to ensure the preservation of natural resources, ecological balance and maintenance of human life, which are sustained Precisely on the environment being destroyed. (BORGES, 1998, p. 310).

The legal obligation of rural landowners, as well as the legal obligation of the land agency responsible for the inspection of the attributes inherent to the fulfillment of the social

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

function of the property, of following strictly the compliance and the inspection of the environmental element of the properties Rural areas, failing which they do not endanger the fundamental human right of a healthy and ecologically balanced environment for both present and future generations.

CONCLUSION

Private property, as demonstrated, unquestionably represents an important legal concept and one of the most complex institutions of contemporary societies. Their respect, combined with their full fruition, depends infallibly on the degree of evolution that a given society possesses at a given historical moment.

As stated throughout this exhibition, the social function and environmental protection began to integrate the very content of the modern conception of property rights. The use of property in the development of economic activities should - in addition to meeting the particular needs of the owner or possessor - be in full harmony with the interests of society and also, unison, with the preservation of the environmental resources in it. The Federal Constitution of 1988 innovated in a pioneering way in linking the fulfillment of the social function to the obligations of the environemnt defense. There is more to talk about absolute and unlimited private property. Property has limitations, as it must fulfill, in addition to the interests of the individual, also the socioenvironmental function.

In this particular, the social function acts as an element of transformation of the property right and as a conditioning factor of the legitimacy of its attribution. It does not constitute a simple limitation of this right, quite the opposite, since it is not located in the external part of the domain. It penetrates harmoniously in its interior, defining its content, which is why it constitutes an essential element of the property right.

In relation to rural real estate, José Afonso da Silva, referring to the lessons of Fernando Pereira Sodero, teaches that the doctrine according to which all productive wealth has a social and economic purpose, and its holder must make it fruitful for its benefit and In your community. In this context, it states:

> [...]Brought a new concept of rural property law that informs that it is a good of production and not simply a patrimonial asset; Therefore, who owns or owns a rural property has the obligation to make it produce, according to the type of land, with its location and with the means and conditions provided by the Public Power, which also has responsibility In the fulfillment of the social function of agricultural property ". (SILVA, 2001, pp. 797-798).

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

With the Federal Constitution of 1988, the principle of the social function of property was elevated to the condition of fundamental right, present in article 5, subsection XXIII. In its article 186, the Magna Carta also describes the requirements that make up the functional use of property, among which we can highlight the proper use of natural resources and the preservation of the environment. This modality of functionalization has been given the name of "environmental social function".

The legal forecast of functionalization of the relationship between private property and the environment does not mean that there are mechanisms to verify compliance with it. The analysis of the reports made by the National Institute of Colonization and Agrarian Reform (INCRA), through our professional performance, shows that the current dominant criterion for the purpose of observing the social function of rural real estate for purposes of Agrarian Reform still refers exclusively to the economic productivity of the property referred to in article 186, item I, of the Federal Constitution of 1988.

In creating a specific chapter to deal with agricultural and land policy and land reform (Chapter III), within the title for the Economic and Financial Order (Title VII), the Federal Constitution of 1988 demonstrates its commitment and mission in the transformation of reality Agrarian reform of the Country with the accomplishment of the agrarian reform, in what, in this tuning for, differs from the previous letters.

In this sense, article 186, item III, of the Constitution was happy to affirm that the social function is fulfilled when rural property meets, simultaneously, according to criteria and degrees of exigency established by law, the following requirements: adequate use of natural resources and preservation of the environment.

By means of this profile change, it is demonstrated, therefore, that property passes from the individual sphere of absolute use to the environmental social function, which corresponds to the use of it according to the interest of the collectivity, including the use and not Abuse of good by the owner, consubstantiated in the protection of the indispensable environmental goods, considering the preservation of the common good of all (environment).

In this way, we conclude that the social function and environmental protection began to integrate the very content of modern property rights. The use of rural property in the development of economic activities should, in addition to meeting the particular needs of the owner or possessor, be in line with the interests of all citizens, combined with the preservation of the environmental resources that may exist in it. Our 1988 Citizen Charter innovates by linking the fulfillment of the social function to the obligations of defense of the environment.

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

Therefore, it is no longer possible to speak of absolute and unlimited private property. Rural property is subject to limitations, under penalty of being expropriated, since it must fulfill, in addition to the merely private interests of the owners, its socio-environmental function of conserving and preserving the natural resources existing in it.

Therefore, it should be pointed out that, based on a systematic interpretation of the Federal Constitution of 1988, comparing with the ordinary legislation, referring to the best doctrine and invoking signs of the jurisprudence of the Federal Supreme Court, it is concluded, in summary, that rural property In Brazil, although it may appear as "productive" under the point of economicity, in the manner recommended in article 185, item II, of the Republican Charter, it is liable to expropriation-sanction for agrarian reform contemplated in article 184 of the same law, if The environmental social function of the property provided for in item II, of article 186, of the Magna Carta, namely: adequate use of available natural resources and preservation of the environment, as well as of the elements contained in items III and IV of the device.

This is because one of the determinants of social function - productivity - must be achieved by maintaining the environmental balance, because productivity can not be understood and absorbed without the attention that deserves the environmental quality of ecosystems. In another twist, what we are saying textually is that property to be considered productive should not degrade the environment in the name of unbridled production. The productivity of rural properties, under the terms of the Federal Constitution and Law 8639/93, should be obtained through a rational exploration. Hence, in our view, why environmental rationality is contained in the concept of productive property.

In this line of reasoning, our final conclusion admits that those rural properties that are not only complying with the minimum rates of GUT (Degree of Utilization of the GUT) will be considered as complying with the social function and not eligible for being expropriated by the Union for Agrarian Reform purposes. Land) and GEE (Level of Efficiency in Exploration) drawn up by Law 8.629/93, are strictly complying with the other elements of the social function, namely: the environmental element, the labor element and the social element, drawn up in terms of article 186, subsections II, III and IV, of the Federal Constitution of 1988.

REFERENCES

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

BRASIL. Constituição (1988). **Constituição da República Federativa do Brasil**. Brasília: Senado Federal, 2005.

_____**Lei nº 8.629, de 26 de fevereiro de 1993**. Dispõe sobre a regulamentação dos dispositivos constitucionais relativos à reforma agrária, previstos no Capítulo III, Título VII, da Constituição Federal. Brasília, 1993. Disponível em: <http://www.planalto.gov.br>. Acesso em: 25 março 2007.

_____SUPREMO TRIBUNAL FEDERAL, MS 22.164-0-SP, RELATOR MINISTRO CELSO DE MELLO, Brasília, DF, DJ de 17.11.1995.

BORGES, Roxana Cardoso Brasileiro. Função ambiental da propriedade e reforma agrária*. In:* SILVEIRA, Domingos Sávio Dresch da; XAVIER, Flávio Sant'Anna. **O direito agrário em debate**. Porto Alegre: Livraria do Advogado, 1998.

GRANZIERA, Maria Luiza Machado. **Direito Ambiental**. 3. ed. São Paulo: Atlas, 2014.

GRECO, Leonardo. **Competências Constitucionais em Matéria Ambiental**. Revista dos Tribunais, vol. 687, p.78, São paulo: RT, 1993.

HABERMAS, Jürgen. **Direito e Democracia: entre facticidade e validade.** – vol. I; 2ª ed.; tradução: Flávio Beno Siebeneichler – Rio de Janeiro: Tempo Brasileiro, 2003.

LEFF, Enrique. **Epistemologia Ambiental.** (Tradução de Sandra Venezuela). 5ª edição. Ed.Cortez. São Paulo. 2010

LEITE, José Rubens Morato. AYALA, Patryck de Araújo. Novas tendências e possibilidades do Direito Ambiental no Brasil. In: WOLKMER, Antônio Carlos (org.). LEITE, José Rubens Morato (org.). **Os novos direitos no Brasil: Natureza e perspectivas.** 1ª ed. São Paulo: Saraiva, 2003.

MACHADO, Paulo Afonso Leme. **Direito Ambiental Brasileiro.** – 9ª. ed., 2ª. Tiragem – São Paulo: Malheiros, 2001.

MELLO, Oswaldo Aranha Bandeira de. **Princípios Gerais de Direito Administrativo**. 2. ed. Rio de Janeiro: Forense, 1979, vol. 1

MILARÉ, Edis. **Direito do Ambiente, Doutrina e Jurisprudência.** 4ª ed. São Paulo: RT, 2005.

NASCIMENTO, Luiz, Sales do. **Direito Constitucional comparado**. Pressupostos teóricos e princípios gerais. São Paulo: Verbatim, 2011.

NALINI, José Renato. **Ética Ambiental**. 4. ed. São Paulo: Editora Revista dos Tribunais, 2015.

OLIVEIRA, Umberto Machado de. **Princípios de Direito Agrário na Constituição Vigente**. 1ª ed. Curitiba: Juruá, 2008.

PADILHA, Norma Sueli. **Fundamentos Constitucionais do Direito Ambiental brasileiro**. Rio de Janeiro: Elsevier, 2010.

PINTO JÚNIOR, Joaquim Modesto; FARIAS, Valdez Adriani. **Função social da propriedade: dimensões ambiental e trabalhista.** Brasília: Núcleo de Estudos Agrários e Desenvolvimento Rural, 2005.

vol. 09, nº 3. ISSN 2317-7721
DOI: 10.12957/rdc.2017.29170

REALE, Miguel. Lições Preliminares de Direito, 26 ed., Editora Saraiva, São Paulo. 2008.

SILVA. José Afonso da. Curso de Direito Constitucional Positivo. 22ª edição. Editora Malheiros. São Paulo.2003.
_____Aplicabilidade das Normas Constitucionais. 6.ed.São Paulo, Malheiros, 2003.

Trabalho enviado em 13 de junho de 2017.
Aceito em 27 de junho de 2017.