vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.51979

URBAN LAND REGULARIZATION AS A MEANS OF FIXING THE RIGHTS TO PROPERTY AND WORTHY DWELLING: A WAY TO SOLVE THE SOCIAL PROBLEM OF INFORMATIVE CORES IN LARGE URBAN CENTERS

A REGULARIZAÇÃO FUNDIÁRIA URBANA COMO MEIO DE GARANTIR OS DIREITOS À PROPRIEDADE E À HABITAÇÃO DIGNA: UMA FORMA DE RESOLVER O PROBLEMA SOCIAL DOS NÚCLEOS INFORMAIS EM GRANDES CENTROS URBANOS

Adalberto Simão Filho[1]
Erwin Rodrigues Ricci[2]

ABSTRACT

In this scientific article will be analyzed the provision brought by Law 13.465 / 2017 and Decree 9.310 / 2018, more precisely regarding Urban Land Regularization. The focus of this paper will be the analysis of fundamental rights to housing and property. A correlation will be made on how urban land regularization can serve as an effective tool in the realization of these fundamental rights. For this, the analysis of its concepts and procedures, its characteristics and functions will be realized. It also analyzes the consequences and legal effects of the acquisition of property through Urban Land Tenure Regulation, based on the principles and effects deriving from Public Registries, as well as the fundamental role of this extrajudicial procedure for the adjudication of demands.

Keywords: Urban Land Regularization; Fundamental rights; Property; Public Records;

RESUMO

Neste artigo científico será analisada a disposição trazida pela Lei 13.465 / 2017 e pelo Decreto 9.310 / 2018, mais precisamente em relação à Regularização Fundiária Urbana. O foco deste artigo

[1] Possui graduação em Direito pela Faculdades Metropolitanas Unidas (1981), mestrado em Direito das Relações Sociais pela Pontifícia Universidade Católica de São Paulo (1991), doutorado em Direito das Relações Sociais pela Pontifícia Universidade Católica de São Paulo (2002) e Pós-Doutor pela Universidade de Coimbra (2009-2011). Universidade de Ribeirão Preto – UNAERP - Brasil. ORCID id: https://orcid.org/0000-0001-7441-8715 Lattes: http://lattes.cnpq.br/7493963807438580 E-mail: adalbertosimao@uol.com.br

[2] Mestrando em Direitos Coletivos e Cidadania pela Universidade de Ribeirão Preto-UNAERP, Pós-graduado em Porcesso Civil pela Faculdade de Direito de Ribeirão Preto-USP, Tabelião de Notas titular do Ofício do 2º Tabelionato de Notas de Areado-MG. Universidade De Ribeirão Preto – UNAERP, Brasil. Lattes: http://lattes.cnpq.br/8234280656049184 E-mail: erwin.ricci@gmail.com

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.51979

será a análise dos direitos fundamentais à moradia e à propriedade. Será feita uma correlação sobre como a regularização fundiária urbana pode servir como uma ferramenta eficaz na realização destes direitos fundamentais. Para isso, a análise de seus conceitos e procedimentos, suas características e funções será realizada. Também serão analisadas as consequências e efeitos legais da aquisição de imóveis através da Regularização Fundiária Urbana, com base nos princípios e efeitos derivados dos Registros Públicos, bem como o papel fundamental deste procedimento extrajudicial para a adjudicação de demandas.

Palavras-chave: Regularização fundiária urbana; Direitos fundamentais; Propriedade; Registros Públicos;

INTRODUCTION

Fundamental rights stem from legislative developments worldwide, and it is a constant concern in several countries to guarantee minimum rights to any individual on a universal basis. Brazil has followed this need and worldwide concern to safeguard fundamental rights, and inserted them in our Federal Constitution of 1988.

Among the most diverse foreseen fundamental rights, the right to housing and the right to property will be studied in this study. These are different but closely linked. The duty of the State is to guarantee the protection of these rights, even against public acts or facts, and also to promote the realization of these rights, enabling individuals to be members of the society in a suitable and efficient way to reach their aim.

In this context, and in view of the peripheral housing informality in large urban centers, the urban land regularization, as a proposal for facilitating the acquisition of urban property, and consequently housing, is proposed to solve the recurrent problem of informal settlements in large urban centers.

The urban land regularization is not simply a concession of property, and its social reach is more comprehensive, since the right to property is a form and tool for the individual to achieve the right of decent housing in a stable and permanent form for them.

The stability and permanent character of the dwelling provided through the right to property with the Urban Land Regularization is linked to the inherent principles in Public Registers,

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.51979

with the registration of Urban Land Regularization being a security, bringing authenticity and enforceability vis-à-vis third parties.

In this way it was sought a procedure that would be swift and that would enable individuals, who live in an irregular situation, to obtain title to property and the realization of the right to property and decent housing, as well as other social rights arising from it, as will be studied in the present work.

1. RIGHT TO SOCIAL HOUSING AND PROPERTY AS A FUNDAMENTAL RIGHT

With the evolution of law worldwide, it has become a constant concern that minimum rights are guaranteed to any individual, these rights are called fundamental rights. In our current legal system, we see that fundamental rights were highlighted in our Federal Constitution of 1988, in which it was predicted an immediate application of them and that they are hard clauses, as foreseen in the articles 5 and 60 of our Constitution.

The Role of rights, considered fundamental by our Federal Constitution is generic and comprehensive, These include social and political rights, freedom, equality, among others

For the definition and conceptualization of fundamental rights, according to Dimoulis, we must:

> Fundamental rights are public-subjective rights of persons (physical or juridical), contained in constitutional provisions and, therefore, have supreme normative character within the State, with the purpose of limiting the exercise of state power in the face of individual freedom.[3]

The above view contains one of the most important elements in the normalization of fundamental rights, the limitation of state power in relation to the minimum guarantees of individuals in society, which is the first premise of the creation of fundamental rights.

Complementing this idea, exposing the second premise, or second degree of the function of fundamental rights, we have the concept brought by Aronne, where:

> The fundamental rights begin to express a horizontal efficacy, of exigibility in interprivate relations. The Constitution regulates matters previously

[3] DIMOULIS, 2012. p. 40.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.51979

> committed to private law, since fundamental rights cease to be a right of defense against the State and become the element that conforms to the social minimum that ensures the dignity of the human being, which is required not only in relations with the Public Administration, as well as in the interpersonal.[4]

Thus, the fundamental function of fundamental rights is not only based on the protection of the individual in relation to the State, but also, ends up being a normative legal provision that confirms the need to respect and protect these rights also in private relations.

The fundamental rights have this force mentioned above due to the constitutional character provided at the moment of its insertion in our Brazilian legal system. Concerning this constitutional character, we see, according to Marmelstein:

> (a) constitutional principles have strong ethical-evaluative content (b) modern theory recognizes the potentialized normativity of principles, that is, principles and rules are species of legal norms; (c) the Constitution is the most conducive environment to the existence of principles; (d) therefore, the Constitution came to occupy a prominent role in the science of law.[5]

In this context of fundamental rights, foreseen constitutionally in our Brazilian legal system, inserts the fundamental right to housing and the fundamental right to property.

Regarding the right to housing, we find its concept and definition in the words of Marcelo Benacchio and Denis Cassettari:

> The human right to housing is a social right in its positive dimension, informed by the principles of solidarity, material equality and the social state. In this way, states must protect and assist those most in need of effective access to decent housing that enables the realization of other human rights[6]

According to these authors, the basic human right to housing is not limited to a ceiling, but a right with positive dimensions, in which the State is required to provide the minimum conditions for effective access to decent housing, an important step towards the realization of other human and social rights.

[4] ARONNE, 2001. p.422
[5] MARMELSTEIN, 2011. p. 13
[6] BENACCHIO, 2014. p. 60.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.51979

To complete the definition of the right to housing, we have in the words of Rangel and Silva:

> The right to housing is a complex right, rich in attributions, which goes beyond the right to own a home, although this is an essential complement to the realization of this right. It does not only have the connotation of housing but directly involves the quality of life, endowed with adequate conditions of hygiene and comfort, preserving personal intimacy and family privacy. In short, it requires a decent and adequate housing. A person can not be deprived of a dwelling nor prevented from obtaining one, and it is up to the State to promote both the defense of this right and its guarantee and effectiveness in relation to those who do not have it. The right to have a decent home has the same degree of importance of the rights to life and health, since they are completed and reflected directly in the personality of the social actors, covering the moral and material sphere - certainly one can not imagine the dignity of a person who wanders about the streets without decent living.[7]

Despite its breadth, it differs from this right, the right to property. The right to property is a real right over a property, as a fixed and stable form of housing. Regarding this relation, we see more explanatory the words of José Herbert Luna Lisboa:

> The right to housing can not be confused with the right to property. For this reason, this social value has now been given greater jurisdictional protection. It is the duty of the Government to develop specific plans of action and to implement a legislation that observes the principle of equality and non-discrimination, in order to offer all persons a security of tenure, such as the Special Use Concession for Housing Purposes and Concession of Real Right of Use, institutes used for the attainment of the social function of public property, registrable in the real estate chain, considering real rights in relation to other matters pursuant to Article 1.225 of the Civil Code.[8]

By definition of this right, we have in the words of Lafayette Ferreira that "the right of property, in a generic sense, covers all the rights that form our patrimony, that is, all rights that can be reduced to pecuniary value. In this sense is the locution right of property used in the Constitution."

In other words, property rights are constitutional protection for assets and rights that may have economic or pecuniary value in some way. It is through this, a form of the tutelary State the protection of the patrimony of the individual in the society.

[7] RANGEL, 2009. p. 65
[8] LISBOA, 2017.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

In order to complement this definition, Maria Sylvia Zanella di Pietro also shows us the implications of this right, exposing us to other rights that may be exercised by the individual who has the right to property over a given property.

> Individual law which guarantees its holder a series of powers whose content is the subject of civil law; understands the powers of using, enjoying and disposing of the thing in an absolute, exclusive and perpetual way. However, these powers can not be exercised unlimitedly, because they coexist with the rights of others, of the same nature, and because there are greater public interests, whose trusteeship is incumbent upon the Public Power to exercise, albeit to the detriment of individual interests. This is where the police power of the state comes to the point where the study of property leaves the orbit of private law and becomes subject to public law and subject to the legal regime exorbitant derogation from ordinary law.[9]

Thus, in order that the individual can fully exercise the rights to use, enjoy and dispose of the property, he must be the owner of his property. However, it diverges from part of the narrated part above, because the right of property is not absolute.

In our current legal system, property rights may suffer from a number of limitations, one of which is the most expressive example is the social function of property.

> Only an urban planning aimed at achieving the social function of the city enables the development of a healthy environment, self-sustaining and endowed with infrastructure that enables the quality of life of its inhabitants. The social function of urban property is under the regiment of the social function of the city, in the condition of essential element for the realization of a sustainable city. [10]

It is a limitation to the property right the social function of the property, by imposing minimum requirements for the use of the property so that its owner remains with that real right over the thing. In this sense, and considering the fundamental role of asserting the social function of property, it is important to note that:

> There are those who argue, in my view rightly, that the right to property only makes sense if coupled with the principle of social function. In fulfillment of its social function, the right to property deserves State protection, since the Constitution consecrates it as a fundamental right. On the other hand, not

[9] DI PIETRO, 2000, p. 119.
[10] RANGEL, 2009. p. 62.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

> fulfilling the social function, this right no longer deserves any protection on the part of the public power, since the Constitution demands that the use of the thing be conditioned to the general well-being.[11]

Thus, despite the fact that they are different rights, we see that the right to property is a form and tool for the individual to achieve the desired right to decent housing. Moreover, the right to housing can be satisfied in a variety of ways, for example with temporary dwelling places, however, when the right to property of an immovable property is realized, the individual has a stable and permanent housing potential.

In this way, the real right to property as well as the fundamental right to housing are constituted as fundamental rights inherent to the human being, different but closely linked, both are object of the Constitutional protection in our Brazilian legal system. Not only does the State's duty exceed the simple duty of protection, but it also extends to the duty of realizing these rights, providing adequate and efficient means for individuals to reach them.

2. URBAN LAND REGULARIZATION AS A MEANS OF FIXING THE RIGHTS TO PROPERTY AND WORTHY DWELLING

As seen from the previous item, the State's duty does not extend to the simple protection of private property, also encompassing the facilitation to obtain the property right through adequate and efficient means so that the individuals can hold the property of an immovable property and consequently they can have a decent home.

Despite the fact that they are different rights, they are closely linked, and with the State providing individuals with the possibility of obtaining the right to property, it is also facilitating the stable acquisition of the right to housing.

Urban Land Regularization thus emerges, being an institute whose purpose is to serve as a facilitating tool in obtaining urban property, and consequently to housing, mainly by the low income population in urban informal settlements.

To a certain extent, with the urban land regularization, there is a new "popular urban planning order"[12], since there is an adaptation of the urban legislation to the real social situations,

[11] MARMELSTEIN, 2011. p. 165.
[12] SUNDFELD, 2002.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

so that the individuals living in irregular zones can reach the rights to worthy dwelling in a stable way and to have a property.

Urban Land Regularization is currently regulated by Decree 9.310 / 2018, "which establishes the general norms and procedures applicable to urban land regularization and establishes the procedures for the evaluation and disposal of real estate of the Union", which started to regulate Law 13.465 / 2017.

This decree establishes legal, urban, environmental and social measures for the incorporation of informal urban settlements into urban land planning and the titling of its occupants, as provided in its first article.

In this context, we have to say:

> Land regularization becomes necessary, useful and adequate in cases where the illegality of ownership or possession presents itself as a social problem with the potential to generate great urban or rural conflicts or jeopardize the physical and patrimonial integrity of persons, besides generating or aggravating social inequity and environmental impacts. For both agricultural and livestock productivity improvements (for rural areas) and for environmental or social equity reasons (in both cases, urban and rural), land regularization is an important element for sustainable development, which should reconcile the use (wealth generation), promote social equity and ensure the protection of the environment. [13]

The urban land regularization is not a simple instrument of granting property, but a form of regularization of large irregular and precarious urban centers.

According to Cartilha of the Union of Notaries and Registrars of the State of Espirito Santo, about Urban Land Regularization, this is the process that includes legal, urban, environmental and social measures with the purpose of incorporating informal urban settlements into urban land planning and titling of its occupants "[14].

We can see even more explanations in the words of Arícia Fernandes Correia.

> In this sense, it has already been possible to observe that the full land regularization of precarious settlements in Brazil is presented in different facets: the dominial-registry, which guarantees security of tenure or title of property, through the most diverse legal instruments; urban planning, as a

[13] REIS, 2019.
[14] SINOREG-ES. 2017.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

> result of which legislation is guaranteed for use and occupation of the land itself, urban infrastructure, collective equipment, fundamental right to address, connection with the city (mobility); and socio-environmental, in a way that guarantees the maintenance of the people entitled preferably in their places of belonging, in an integrated way to the environment in which (about) they live, and should be characterized, finally, as sustainable, not only from the environmental point of view, but also social. [15]

Thus, the regularization of irregular urban centers takes place with the guarantee of the right of property to its real owners, and also, with the use and occupation of the soil in a correct way, with an adequate urban infrastructure, in an environmental and sustainable way, thus integrating in fact this irregular urban zone to the rest of the city, taking its occupants of social informality.

Complementing this idea of the main functions of urban land regularization, we also have:

> The main purpose of urban land regularization is, in addition to the legalization of ownership and possession of dwelling places, to adapt and integrate the regularized area into social, economic and environmentally sustainable urban space, thus requiring the implementation of an infrastructure which allows residents access to public and private goods and services specific to cities. Therefore, the process is not merely to legalize illegal ownership and possession, but to make the basic right of housing viable, ensuring a good quality of housing life.[16]

In accordance with the Urban Land Regularization procedure, we have the first phase in an administrative procedure carried out by the Municipal Government, so that the legitimation of land tenure or legitimation can be recognized, with the consequent issuance of the Certificate of Land Regularization (CRF). Those entitled to make such a request are provided for in art. 14, Law 13.465 / 17, being among these the Union, State, Federal District or the Municipality itself, the beneficiaries, property owners, the Public Defender and also the Public Prosecution Service.

In the processing of this request, the Municipality shall classify the informal urban core so that it fits into one of the urban land regularization modalities provided for in the legislation, with a later period of 30 (thirty) days for the manifestation of the interested parties and notification.

[15] CORREIA, 2017.
[16] REIS, 2017.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

If there is an objection, the municipality itself will carry out an extrajudicial procedure for the composition of the conflict, and if there is no objection or after it has been overcome, the land regularization project will begin, with the end of this first phase the issuance of the land regularization certificate (CRF) by the Municipality.

For the issuance of the Certificate of Land Regularization (CRF) by the Municipality, the municipality has to observe in the project some measures, such as:

> The legal measures correspond, in particular, to the solution of the dominical problems, concerning situations in which the occupant of a public or private area does not have a title that gives him legal security on his occupation. It is the aspect of the lack of a "document" that gives full ownership to the direct beneficiary of Reurb.
>
> The urban measures are related to the solutions to adapt the installments to the regularized city, such as the implementation of essential infrastructure (pavement, sewage, energy, water supply), resulting from the allotments implemented without complying with legal regulations. The relocation of housing in the face of being subject to landslides, floods, contaminated, unhealthy places, among others, also enters this aspect.
>
> The environmental measures seek to overcome the problem of settlements implemented without environmental licensing and in disagreement with urban legislation and environmental protection.
>
> Social measures, in turn, concern the solutions given to the Reurb beneficiary population, especially in low-income families (but not excluding other populations), in order to promote the dignified exercise of the right to housing, citizenship, providing quality of life.[17]

This certificate of land regularization (CRF) must be submitted, which is equivalent to a protocol, with the Real Estate Registry of the place where the property is located, thus initiating a second phase of the Urban Land Regularization procedure.

This title will pass through the registration qualification of the Real Estate Registry Officer. About this, Afrânio de Carvalho tells us that:

> ... there is a need to interpose between the title and the inscription a mechanism which ensures, as far as possible, the correspondence between the presumed ownership and the true ownership, between the registration situation and the legal situation, and the stability of the real estate business. This mechanism must act as a filter that, at the entrance of the registry, prevents the passage of titles that break the law, either because the available

[17] SINOREG-ES. 2017.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

> one lacks the ability to dispose or because the provision is loaded with ostensible vices.[18]

Accordingly, it is incumbent upon the Real Estate Registry Officer to review the administrative procedure performed by the Municipality, and it is incumbent upon it to make subpoenas and receive the appeals from them, in case they have not been carried out, and may reject them from the plan or forward them to the competent judge if it considers the challenges well founded.

After all the appeals have been resolved, or if there has not been, the Real Estate Registry Officer must approve the Urban Land Regularization project, opening a new registration for the property, if applicable, together with the opening of individualized registrations for the lots and public areas resulting from the approved regularization project, and finally carrying out the registration of the Certificate of Land Regularization (CRF) in the registrations, conferring the real right of ownership to its holders.

An important detail to note is that the procedure before the Office of Registration of Real Estate must have a maximum duration of sixty days, extendable only once for an equal period if there is a reasoned justification, being a fast and totally free procedure for those interested.

3. THE IMPORTANCE OF PUBLIC RECORDS AS A FORM OF ACQUISITION OF PROPERTY IN THE URBAN REGIONAL REGULARIZATION

The Public Registers have the primary function of giving the public the publicity, effectiveness, authenticity and legal certainty in the acts practiced. This precept is inscribed in article 1 of Law 8.935 of 1994, these being the fundamental principles that govern Public Registers.

As a principle of advertising, Oliveira says that:

> Real estate registration advertising [...] therefore consists of technically organized registros designed to promote the knowledge of the legal situation of immovable property by any interested party, the effect of which is at least the unassailable presumption of knowledge.[19]

[18] CARVALHO, 1977. p. 78.
[19] OLIVEIRA, 2010. p 15.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

A lot of national doctrine has already dealt with this subject, much, concluding that the advertising of registration is in reality a potential or presumptive advertising. In order to assert that Public Records are in fact public, it is not necessary for them to be known by all, but only their potential for knowledge, through unconditional access by anyone, suffices.

In this sense, affirms Hernández Gil, who tells us:

> In principle, advertising may be obtained by any means capable of making it possible for any third party to be aware of certain legal changes; but as the advertising function requires the document representation of the published act, this requirement - as is the preservation of documentation - is only achieved through the records.[20]

This type of advertising is referred to as advertising in the broad sense, for its potential for knowledge by all, which is also called “advertising of the states of fact." [21] It differs from advertising in the strict sense, in which the information actually received by the final recipient, and not only being offered the possibility of knowledge of such information.

In this statement, we find in Souza's words that "Advertising guarantees the security of legal relations insofar as it allows any interested party to know the collection of the services"[22], and, complementing this idea, we see the words of Nalini:

> The principle of publicity is related to transparency, that is, the act of registration must reflect the legal reality, not admitting that there are elements of doubt or ambiguity. For this reason there are no secret registrations. There is no obligation to do the act known, but only to make the public act, allowing anyone who has interest to know it.[23]

As for the Registral system, in order for the Publicity Principle to be effective, that is, to achieve its crucial objective of making the registration acts known to any interested party, it is necessary to have a cohesive and organized system that concentrates information in one place.

As a way of making possible an organized system with easy access to registry data, the legislator, in drafting Law 6,015 of 1973, made a change in the provision of registry information,

[20] HERNÁNDEZ GIL, 1963. v. 3. p. 16.
[21] ALTERINI, 1974. T. 2. p. 32.
[22] SOUZA, 2018.
[23] NALINI, 2011. p.1082.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

which was previously based on people, to unify the information according to real estate. It went from the personal folio system to the actual folio system.

In the real folio system, all registrations in the broad sense are concentrated in files, called enrollment, and each property must have only one enrollment. Only in this way, we have technically organized registrations, so that all information about a property must be included (which is a type of registration form). In the words of Serra :.

The enrollment is the cadastre of the property from which the events that influence some real right on the said property must be settled there in a sequence of linked acts. We can not confuse the enrollment with stricto sensu or the registration, which are the acts on it launched, aiming to express the constitution, transmission, alteration or extinction of the real rights referring to the property registered in the enrollment.

> The enrollment is the cadastre of the property from which the events that influence some real right on the said property must be settled there in a sequence of linked acts. We can not confuse the enrollment with stricto sensu or the registration, which are the acts on it launched, aiming to express the constitution, transmission, alteration or extinction of the real rights referring to the property registered in the enrollment.[24]

Regarding the Principle of Concentration of acts in the registration of the property, Marcos Alberto Pereira Santos emphasizes:

> The principle of concentration consists in the convergence of all relevant information about the property in a single place, which in the case would be its registration, which would facilitate the life of the users, since they would have as a single certificate, the precise knowledge of the situation property. We are not forgetting that the Public Registries are precisely aimed at granting this publicity and general knowledge of the transcription, so it is important to focus on the registration of all information pertaining to the property.[25]

We can thus see that, as the main aspect brought by the legislature in the Law 6,015 of 1973, concerning registration advertising, it is the certainty for the population that all necessary

[24] SERRA, 2013. p. 113.
[25] SANTOS, 2014.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

and relevant information about a property must be duly registered in its enrollment, under penalty of not having effects before third parties and therefore are not valid and effective in law.

Regarding the legal consequences of not registering data in the property registry, says Francisco José Rezende dos Santos:

> The legal security of a real estate business should be given only by the situations contained in the registry, and not from other situations that, even if existing in the administrative or procedural world, were not taken and were not included in the property registry. This is the idea and purpose of concentrating the acts on the registration of the property, the so-called Concentration Principle. The facts that may have effects on the property, the registry or their owners, must be posted on the property's registration, otherwise they will not be considered by the legal world.[26]

Thus, if there is no corresponding registration or registration in the property, a certain act or fact may be considered non-existent or ineffective for the legal world.

In this context, João Pedro Lamana Pavia clarifies to us:

> No legal fact or legal act that relates to the legal situation of the property or subjective changes, may be indifferent to enrollment. In addition to the translative acts of property, of real rights institutions, judicial acts, acts that restrict property, constrictive acts (attachments, seizures, embargoes), even of a precautionary nature, declarations of non-availability, the reipersecutory personal actions and the real ones, public utility decrees, immission in expropriations, decrees of bankruptcy, overturns, lending, administrative easements, protests against the alienation of property, leases, partnerships, all acts and facts that may imply legal alteration of the thing, even in a secondary character, but which may be enforceable without the need to seek other information from others, which would conspire against the dynamics of life.[27]

As seen in the words mentioned above, in addition to the acts of registration itself, being those that imply in modification or extinction of the property, we also have the obligation to register the other acts that may imply in modifications of rights and facts about the real estate.

And so the essential importance of the registration of urban land regularization is inserted. Without this, without the publicity of the acquisition title of property through the Urban Land

[26] SANTOS, 2011.
[27] LAMANA PAIVA, 2000.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

Regularization duly registered in the registration of the property, there is no real property right in the legal world.

The right to property becomes effective only after being duly registered at the competent Registry of Real Estate, when the acquisition is listed in the registration of the property in a public manner and that may be opposed against third parties.

Thus, we can say that "the Registry of Real Estate is the guardian of the property right, the holders of said right, its extension and effects. In Brazil, it is constitutive of rights that are born within the Real Estate Registry that exercises the function of control of the real estate traffic "[28].

In this way, the Office of Real Estate Registry is a great ally in the acquisition of real estate property in the Urban Land Regularization, once in a fast and free procedure, with a maximum term of sixty days, renewable once only for an equal period, with opening of registrations of individualized properties, performs all the records due conferring the real right of ownership to the right holders, still serving as official repository of the right to property conferring security and authenticity to it.

4. THE ROLE OF THE EXTRAJUDICIAL PROCEDURE IN THE URBAN LAND REGULARIZATION FOR REDUCING JUDICIAL INVOLVEMENT OF DEMANDS

In the current legal scenario, there is a great movement towards REDUCING judicial involvement of demands. Several fronts and initiatives aim to remove the burden that our Judicial Power currently suffers, and for this have arisen new legal tools of alternative solution of conflicts that do not have to pass through the sieve of the judiciary.

An example of this is the great movement and incentive of mediation and conciliation, and the growth of arbitration in Brazil. Not only did other forms of withdrawal from the judiciary bring unnecessary demands and pronouncements that merely generated overburden.

In a downward trend of judicial involvement, Notary and Registrars have been expanding their range of competencies, solving issues that would have to pass through the judiciary. In these new competencies, for example, divorce, separation, inventory and partition are included, as provided for in Law 11.441 of January 4, 2007.

[28] MELO, Marcelo Augusto Santana de. NOVO CÓDIGO FLORESTAL E O REGISTRO DE IMÓVEIS. Disponível em http://irib.org.br/obras/3974 Acesso em 15 de dezembro de 2018.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

On this subject, important are the words of the Illustrious Professor Vitor Frederico Kumpel, who:

> ... a changing reality, we have a postmodern society marked by technology and the extreme speed of information, legitimate sources gives the sensation of acceleration of the passage of time, making even many believe to be a physical phenomenon, the reduction of hours and minutes throughout the day. Hence one of the needs of the creation of a new Code of Civil Procedure to replace the current Code of the seventhies, which prevailed by cognition to the detriment of the realization of substantive rights. The Project meets the cry for speed and efficiency. It is in this sense that a functional extension of the notarial and registry activity should be inserted in the assistance of the Judiciary. Genetically based on efficiency and speed, out-of-court activities have increased in recent years, increasingly receiving new assignments, receiving, increasingly, new charges in the area of adjudication, in line with EC 45/04.[29]

As an example, according to data from the Brazilian Notary College, an official agency of Notarial Services throughout Brazil, in 2018 alone, 221,125 thousand cases ceased to join the judiciary, 69,470 thousand of which were divorces and extrajudicial separations and 152,655 extrajudicial records.

The urban land regularization situation was no different. The legislator envisaged a completely extrajudicial and fast procedure in Law 13.465 / 2017, which begins at the City Hall and is terminated at the Office of Real Estate Registry, not requiring at any stage of approval by the Judiciary.

With this advent, the procedures that were previously time-consuming and expensive, and new procedures such as urban land regularization, had the speed imposed by Notary and Registry Services, which has a relevant social role in guaranteeing fundamental rights, fulfilling its role with the legal certainty imposed by Law.

CONCLUSION

[29] KUMPEL, 2014.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

Urban Land Settlement is shown as a free and expeditious extrajudicial procedure, provided for in Law 13.465 / 2017, which has two phases, starts with the municipality and ends with the registration in the Office of Registry of Real Estate.

This legislative forecast shows itself as a legal advance in the protection and protection of fundamental social rights. In this way, individuals living in informal settlements will be able to use this tool in order to realize their right to property and decent housing.

By envisaging a completely extrajudicial procedure, which does not require approval by the Judiciary, the legislator imposed Urban Land Regularization, speed and gratuity, together with the legal certainty and authenticity inherent in Notary and Registry Services. Thus it was thought and was made conferring in its final result the publicity, effectiveness, authenticity and legal certainty in obtaining the immovable property next to the competent Office of Registration of Real Estate.

In this way, urban land regularization, as envisaged in our legal system, is an important tool for solving the social problem of informal settlements in large urban centers, giving citizens the possibility of obtaining and realizing the rights to property and decent housing, as well as other rights arising from them.

BIBLIOGRAPHIC REFERENCES

ALTERINI, Jorge H. **La buena fe y la publicidad inmobiliaria registral y exxtrarregistral.** Ponencias y comunicaciones presentadas al II Congreso Internacional de Derecho Registral. Madrid: Colegio Nacional de Registradores de la Propriedad y Mercantiles de Espanã, 1974. T. 2. p. 32.

ARONNE, Ricardo. **Por uma Nova Hermenêutica dos Direitos Reais Limitados**: das Raízes aos Fundamentos Contemporâneos. Rio de Janeiro: Renovar, 2001. p.422

BENACCHIO, Marcelo; CASSETTARI, Denis. **Regularização fundiária urbana como efetivação do direito humano à moradia adequada.** LEVY, Wilson; NALINI, José Renato (org.) Regularização Fundiária. 2. ed. Rio de Janeiro: Forense, 2014. p. 60.

CARVALHO, Afrânio de. **Registro de Imóveis**: comentários ao sistema de registro em face da Lei 6.015, de 1973, com as alterações da Lei nº 6.216, de 1975. 2a ed. Rio de Janeiro: Forense, 1977. p. 78.

CORREIA, Arícia Fernandes**. Direito Da Regularização Fundiária Urbana E Autonomia Municipal:** A Conversão da Medida Provisória N. 759/2016 na Lei Federal N. 13.465/2017 E as Titulações da Prefeitura da Cidade do Rio de Janeiro no primeiro quadrimestre de 2017. Disponível em

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

https://www.e-publicacoes.uerj.br/index.php/geouerj/article/viewFile/32061/22979 Acesso em 10 de janeiro de 2019.

DI PIETRO, Maria Sylvia Zanella. **Direito Administrativo.** Editora Atlas, 13ª edição, 2000, p. 119.

DIMOULIS, Dimitri; MARTINS, Leonardo. **Teoria Geral dos Direitos Fundamentais.** 4ª Ed. São Paulo: Atlas, 2012. p. 40.

FERREIRA, Lafayette. **Direito das Coisas.** Rio de Janeiro, 1956, p.77

KUMPEL, Vitor Frederico. **O novo Código de Processo Civil:** o usucapião administrativo e o processo de desjudicialização. 2014. Disponível em: < http://www.portaldori.com.br/wp-content/uploads/2015/03/Artigo_Lamana_Paiva_Usucapiao.pdf>. Acesso em: 22 de fevereiro de 2018.

LAMANA PAIVA, João Pedro. **Revista de direito imobiliário** n. 49. Julho a dezembro de 2000.

LISBOA, José Herbert Luna. **Direito à moradia e ao meio ambiente equilibrado:** ponderação entre direitos internacionais dos direitos humanos. Disponível em https://jus.com.br/artigos/59593/direito-a-moradia-e-ao-meio-ambiente-equilibrado-ponderacao-entre-direitos-internacionais-dos-direitos-humanos/1 Acesso em 12 de dezembro de 2018.

MELO, Marcelo Augusto Santana de. **Novo Código Florestal e o Registro De Imóveis.** Disponível em http://irib.org.br/obras/3974 Acesso em 15 de dezembro de 2018.

MARMELSTEIN, George. **Curso de Direitos Fundamentais.** 3ª Ed. São Paulo: Atlas, 2011. p. 165.

NALINI, José Renato. **Os princípios do direito registral brasileiro e seus efeitos.** Direito Imobiliário Brasileiro: Coord. Alexandre Guerra e Marcelo Benacchio, São Paulo, abr./jun. 2011. p.1082.

OLIVEIRA, M. S. de. **Publicidade Registral Imobiliária.** JACOMINO, S. (coord). Registro de Imóveis e Meio Ambiente. 1. ed. São Paulo: Saraiva, 2010. p 15.
HERNÁNDEZ GIL, F. **Introcucción al derecho hipotecário.** Madrid: Revista de Derecho Privado, 1963. v. 3. p. 16.

RANGEL, Helano Márcio Vieira; SILVA, Jacilene Vieira. **O direito fundamental à moradia como mínimo existencial, e a sua efetivação à luz do estatuto da cidade.** Veredas do Direito, Belo Horizonte, v. 6, n. 12, Julho-Dezembro, 2009. p. 65

REIS, Émilien Vilas Boas Reis; OLIVEIRA, Márcio Luís de. **A regularização fundiária urbana e rural: necessidade de marcos teóricos e de políticas públicas distintos.** Disponível em https://www.publicacoesacademicas.uniceub.br/RBPP/article/download/4748/4748. Acesso em 15 de janeiro de 2019.

SANTOS, Francisco José Rezende dos. **O princípio da concentração no registro de Imóveis.** Revista do SFI. Revista do SFI - Sistema de Financiamento Imobiliário - Ano 15 - Nº 33 - 12/05/2011.

vol. 12, nº 4. ISSN 2317-7721
DOI: 10.12957/rdc.2020.47669

SANTOS, Marcos Alberto P. **Novo Código Florestal não exige averbação da reserva**. Disponível em https://www.conjur.com.br/2012-jun-14/marcos-santos-codigo-florestal-nao-exige-averbacao-reserva-legal Acesso em 17 de dezembro de 2018.

SERRA, Marcio Guerra, et. Al. **Registro de Imóveis I:** Parte Geral. São Paulo: Saraiva, 2013. p. 113.

SINOREG-ES. **CARTILHA - REGULARIZAÇÃO FUNDIÁRIA URBANA** – ASPECTOS PRÁTICOS DA LEI 13.465/2017. Disponível em https://www.sinoreg-es.org.br/_Documentos/Upload_Conteudo/arquivos/CARTILHA_REGULARIZACAO_FUNDIARIA_URBANA_2017.pdf Acesso em 17 de janeiro de 2019.

SOUZA, Eduardo Pacheco Ribeiro de. **Os Serviços Notariais e Registrais no Brasil.** Disponível em: http://www.irib.org.br/obras/os-servicos-notariais-e-registrais-no-brasil. Acesso em: 01 de janeiro de 2019.

SUNDFELD, Carlos Ari. **O Estatuto da Cidade e suas diretrizes gerais.** In: DALLARI, Adilson Abreu e FERRAZ, Sérgio (Orgs) Estatuto da Cidade (Comentários à Lei Federal n. 10.257/2001. São Paulo: Malheiros, 2002.

Trabalho enviado em 23 de junho de 2020
Aceito em 03 de dezembro de 2020