

A Comparative Study of the Fundamentals of Expropriation in the Laws of Iran and Islamic Jurisprudence

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Abstract: Obviously, every sentence that comes in jurisprudence and law has been the basis of a resource such as a text or narrative come wisdom. This is one of the expropriation case law and jurisprudence on its own. Protection of tenure in most cases, property protection, because it is actually seized the semblance of a legal situation that is often consistent with the fact that, in most cases the owner of the occupants as well. So support the capture, protection of the property.

Keywords: expropriation, mergers, takeovers, rights in of Iran, Islamic Jurisprudence

1. Introduction

According to the Basic Education Law, it is necessary to promote public awareness of the need to pay for it. To make the community a special order, it is necessary that the parties towards each other regulations and laws relating to property ownership in the mainstream respect. So as long as the illegitimate relationship between persons and the property has not been proven, these relationships should be protected by law and should support these relationships with this act of disruption and inconvenience this will avoid relationships because they are required to maintain public order. The expropriation of these cases is due to the similarity with duress and should be evacuated, many people can be confused by so after hearing the dispute and prorogation time ever to be a positive result. The case study is jurisprudence and legal basis for the expropriation and the requirements of modern society.

2. Eviction fight

The expropriation of the word as meaning something out of someone's hands, to hold one end of something (Dehkhoda, 1959), anything by law, one out of power and domination, interference or influence someone to do something to end (Anvari, 2002) is the meaning of the term, the tenant eviction and rent, is captured by virtue of a court order or by law to

certificate (Langroodi Jafari, 2000: 189). The expropriation case it can be claim ownership rights to said one of the teachers (Katoozian, 2000, p. 122), interpreted confiscation case, the legislature has not defined in the statute. Most legal scholars and writer's duress claim ownership against claims for their work and the ownership dispute. Legal writers, claim ownership to explain different ways as follows:

- Seemed to claim ownership of legal regulations meant the same argument to prove ownership or rights (such easement, usufruct) on the property (Article 332 of the former Code of Civil Procedure)
- Property dispute case someone is the actual owner of an immovable property or right to the other objective (easement, usufruct) knows (Matin Office, 1999, p. 228).
- Classification of claims to property and possession of a sub-category of claims is immovable. In fact, the movables Although theoretically, the distinction between ownership and possession of Missouri, in fact, according to Article 158 Q.d.m. We can say that claims solely in connection with the seizure of immovable property which is separate property claims; in other words, not apply to claims capture of movable property and the right to

claim exclusive ownership dispute proceedings will be (Shamsol, 2002, p 351).

- The evidence seized in the case of movable property is entirely due to the immovable property and, in the absence of such a role is the ownership document (Vahedi, 2000, p. 111).

2.1 Elements of expropriation case

Elements are involved in the creation of the expropriation case, domination and forcible action which is being further studied.

A) Stila, Stila word meaning literally the same way that people have, predominate, achieve something, overcome, conquer, dominate (Dehkhoda, 1959). According to the legal meaning of the term is also, apparently, is not far from the literal meaning. Domination is one of the constituent elements of expropriation case. The main component of the constituent elements of capture, mode of communication between human and material property whereby a person without any hindrance, their will to implement it in time, like someone holding a small object between his fingers. And can decide at any time to ask about it (Tiranian, 2002, p. 30).

B) Unjust: the forcible seizure, confiscation, provided that the realization is necessary. In civil law the concept of "forcible" has been done, but Article prevent a dress code with constraint phrase "without consent" to express the concept of "Dvana" mentioned in Article 2 of the Act deals with, movable or immovable property of the difference between the two is a matter of one or two, no effect on this.

Article A law passed in 1930 that specifically prevent duress consisting of movable and immovable property, proceedings relating to both types of property, the term "consent" to be used. This concept means that the forcible literal interpretation of oppression and aggression, matches (Johari, 2009, p. 78). It is necessary to realize that the proprietor of the property of non-forcible, then capture the knowledge he has no merit. If the ignorance of non-occupied property, the forcible element does not apply, for example, if someone does not have money to buy the property is stolen, seized him in the sales, is not usurped. However unjustly seized and subject to confiscation decree referred to it under Article 308 Q.m.ast, as in the case of 310 BC And it is

an order of confiscation and those that define the element of forcible confiscation instead of an "unjust" to leave, all reference to Article 308 of the Civil Code to know the actual seizure (same).

The responsibility of the usurper, "the rape of the other," it is done intentionally or unintentionally violated. For example, if you purchased property to buy, so that it becomes dominant, the violator of the law and are responsible, though no fault cannot be attributed to him. However, you may use the word "forcible" It used to dominate and force the other to be intentional in this case, in order to usurp the dominance illegal ignorant. It is the property owner's permission; he achieved the status Amini and then drives the illicit possession or owner or recklessness hurt and confused, rejection or refusal when it denies their existence to the property (Katoozian, 2000, p. 79). Thus, according to the definition in Article 308 of the Civil Code and 158 legislators Civil Procedure Code provides for confiscation and duress (d. 308 BC) It is clear that the "unjust" is also one of the elements that compose the expropriation case.

2-2 constituent elements of expropriation

Expropriation petition submitted to the court that the person can demonstrate appropriate ways in the framework of Article 140 of the Civil Code, the owner has to be added within 308 to 327 of the Civil Code section confiscation prove that he usurped my personal property is not right. Therefore, assuming the evidence above is the judge ordered the expropriation. The Pillars of the expropriation case is:

1. According to Article 140 of the Civil Code calls for proof of ownership
2. Read conquest of the seizure of 308 to 327, according to civil law

4. The expropriation of Islamic Jurisprudence

Expropriation case basis in law, rule, respect, domination and rule of law should guarantee that the legitimacy of their property; the proprietor shall have the legitimacy of ownership of the property. If not, religiously should return the property to the owner.

4.1 Yad guarantee Rule

One of the well-known legal rules, the rule Yad is Lyalyd or liability which dominates anyone

else without the permission of the property, the property is guaranteed, although it is not a waste of money. Providing literally means accept, agree and are bound come (Dehkhoda, 1959) and it has also been interpreted bail and Ahtva' (Georgia, 1987, p. 59) Yad is also a sign of the domination of man over Ashyast property and apart from the literal meaning is only meant domination, domination, conquest and like it. In terms of jurisprudence and law, in particular the situation of the use of terms such as Yad, Yad removal and dispossession, we realize that the purpose of Yad, domination and dominion that one of the object, property rights in and to the competent authority of any tenure, he can make it yours or object (Salajegheh, 2001, p. 230). Most scholars in the discussion of the rules of evidence, known only to the prophetic tradition: to have content, but other documents in Word, some jurists are as follows:

A) rationally building: Documentary liability rule Yad rationally before building anything, because people are living longer and their actions, the other occupants of the property owner is responsible for the known consequences; this means that in addition to his assignment at the same time, there are bound to reject the call, if the property owner to refer claim to possess, it does not condemn. Not only is it wise not rejected holy religious practices, but by virtue of the provisions, it is confirmed (Makarem Shirazi, 1991, vol. 2, p. 225).

B) Muslims Sire: Sire continuous and practices of Muslims in all ages, implies the rule of law has been adopted. Therefore, the conventional method of connecting the historical sections of the infallible PBUH satisfaction and signed by the leaders to meet God, and we take it for granted as a legal rule.

C) Hadiths

1) First Hadith: The most famous jurists and lawyer's hadith as evidence that adherence to this rule have the famous hadith of the Prophet (PBUH) said: (Mohaddeth light, 1408, vol. 17, p. 88).

2) Second Hadith: Hadith of the Prophet (pbuh) says: and denying and Muslims revere property assignment rule, but it also takes a position of respect, because when it is respected financial if the waste and abuse, compensation for damages incurred, is necessary. It may be said that this

hadith is a proof of principle rather than the rule should be respected. Although the rule is respected as one of the reasons of liability, but to some extent this tradition can also provide the Qad, liability should be considered (Makarem Shirazi, 1991, vol. 2, p. 234).

4-2 domination Rule

Another legal basis for the expropriation case is dominated by people on their property. The rule of law is famous among jurists. The principle of legal texts listed anywhere in the story. The provisions of this rule by combining the expression of positive and negative predicates; in this description, the owner of the seized property types dominates her. And no person or institution can limit his reign over the property. Dominance rule documents include:

A) The Quran Verses as a document of this rule have been proposed. Some regular expressions and expressions to the positive direction are negative.

Surah Baqarah verse 279: if (a) you do not know God and His Messenger If you repent you will fight with you, your investment of your principal (without interest), you're not oppressive and unjust, will not you. "Verse 7 of Sura Hadid: ye believe in Allah and His Messenger and the successor and representative of what you have (your) put it, give you, (because) those of you who believe and spend, they have a great reward."

Verse 2 of Sura Nesa, and property of orphans (when they reached maturity) to give property and bad self with good properties (they) do not change your property and possessions with them (or conversion by mixing a) eat; because it is a great sin. "

B) Reason: The stated rational rule can be said to dominate the property owner Fyaljmlh-Khvysh- though true justice, it sees reason and religious faith, but it recognizes and the legal effect is proportional to the load such that mastery unjustified deprivation of the owner of what he relates, true sense of injustice and oppression, bad and the lawyer is forbidden. The expression of the law Mlazmh there is generally no difference in reliability (Alidoust, 2002, pp. 20-19).

C) Rationally monument: Mastery rule brought before the judge, the rule was rational, the previous time the current building was rational and sane people. Humans are a lien on the property for his own proven and considered a resounding if others without reason and justification, see annoying capture in his tenure at capturing people or objects found;

As you rise to defend their lives to fight for the preservation of objects of capture were also attempted (Mohaghegh Damad, 2012, vol. 2, p. 121).

D) Consensus: the dominance rule documents, consensus is. There is growing consensus in the case law cited and no doubt, but it is said in criticism of the Book and Sunnah in Islamic Jurisprudence consensus on row, extracting independent source for religious rulings are not; but just as the discoverer of votes infallibles known valid because the issue is discussed and other reasons, there is a consensus, the consensus discoverer of credit ratings is not infallible (Mohaghegh Damad, 2012, vol. 2, pp. 118-117).

E) Narratives: a long tradition on this rule implies:

1. The most famous is the story of the Prophet (Chamber, 1403, vol. 2, p. 272).

2. Smah narrated from Imam Sadiq (AS). Smah quoted from Imam Sadiq (as) asked: "Is the person a child can leave their property to their relatives? He replied: It is mine. As long as it is alive do whatever can do with it "(Hurr Ameli, 1414, vol 13, p 381).

3. Another version of Smah of Abi Basir asked Imam Sadiq (as) as the previous version with the addition of the following: owner of the property until he is alive, he will do whatever it can do to your property; if you want to donate and if you wanted to go to charity, and if you wanted it to be the death of him "(ibid.).

4. Ammar ibn Musa narrated from Imam Sadiq (AS): the life of the mine as long as he is available, wishes to seize the property of any person "(ibid).

4.3 Respect Rule

Respect and the term literally mean prohibiting the exclusion principle and therefore without the permission of the owner of the property and interests that are not given out because he does not seize property without the consent of the person. The literal meaning of the term, it is appropriate the seizure of property and interests in property, such as depriving him of it, the owner of the seized without permission is prohibited (Altaskhiri, 1425, vol. 2, p. 19). This rule only if the parties agree on a deal, but even if corruption is believed to restore the rights of eligible transaction, payment, as it deems necessary. He is not allowed to abuse it, as if the action would be taken from him, respected and must be paid wages (Mostafavi, 1429, p. 24).

5. The law on expropriation in Iran

Literally means to usurp power and oppression come to nothing (Dekhoda, 1959). The sources of legal and civil rights, and several different definitions of the

seizure of the action that goes on in every one of them pointed out. The various definitions of confiscation law provided that some of them are as follows:

- Research solution, defined by the laws of confiscation said the confiscation of the property of another and independently of the unjust.

Accordingly, as long as the occupant of proof should not be on other property, the owner must meet to achieve seizure is not enough to knead.

So if someone else from getting banned Ferrari animal and animal waste, a hindrance, not a guarantee. But you sit on the stand and sell his or her riding animal, the guarantor (the researcher solution, 1409, vol. 2, p. 238).

- The definition of the second martyr book and then add the definition of usurpation definition the legal concept that has taken place and meaning of independence, dictatorship is the property of another without the participation of the other. So this is not the case that two people usurped financial, so that each individual is incapable of seizing property, not include, who is the owner or occupant of illegal domination with another occupant commit it (the second martyr, 1416, vol. 2, p. 237).

- Some jurists also convert word to dominate independence have offered a similar definition (Najafi, 1983, p. 37). In Iranian law, Article 308 of the Civil Code, confiscation is defined. The article states: "It is right to be unjust usurpation dominates, proof must also order the confiscation of property without a permit is not." In this article, the confiscation of its own means and it is expressed in a general sense. Usurp the proper sense of the term the domination of the right to be unjust and in general, including the one that captured the first, with the permission of the owner, but he continued to occupy the property without the consent of the owner or denied Amini who

commit abuses or hold property or someone is going to spoil the sale, possession financing in place (Abroshan, 2008, p. 3).

5-1- usurp aspects

There are three elements that are essential for the realization of confiscation:

1. Domination: the mastering find on someone else and possess it without permission from the owner and gravity and without legal authorization.

2. Unjust: the usurper has violated the rights of another, whether it is intentional assault, or unintentional (eg, purchased the property buy), so that tends to dominate, according to the occupant is responsible. However, fault cannot be attributed to him.

3. Right: the legislature has used the right word, because it is possible that the seizure, the same property (such as land ownership, house, car) or profit. The legislature did not pay attention only to the objective of financial law, but the mention of the word right is absolute, objective and consequential financial rights and the rights of the common man in the mind in all these cases, the current being usurped, as the current cannot guarantee iodine (Abroshan, 2008, p. 4).

6 results

Obviously, every sentence that comes in jurisprudence and law has been the basis of a resource such as a text or narrative come wisdom. This is one of the expropriation case law and jurisprudence on its own. Concerning the expropriation of movable or immovable property legally pugilist who owns a property foreclosure is illegal to possess equipotent and the court wants to seize the unauthorized occupants of his property ended and seized him and delivered him out there. In this research, case based on the dispossession and Iran was studied in Islamic Jurisprudence and Law the following results were obtained:

- The dispossession of law, respect for the rule, the rule must guarantee that dominate and rule on the legitimacy of their property; the proprietor must have legitimate ownership of the property. If not, religiously must return the property to the owner.
- The Law on confiscation, expropriation or seizure of illicit action (undue) respect to an individual (the actual owner does support the same benefits and rights).
- The documentation concerning the expropriation and confiscation of materials related to the topic of the Civil Code (Articles 308 to 327), respectively.

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