

Administrative Pre-emption and Its Practical Implications in Algerian Legislation

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Abstract:

Pre-emption constitutes the second exceptional method, alongside expropriation for public utility, for acquiring real estate property. The State derives its right to exercise pre-emption from a set of legal provisions.

Administrative pre-emption is a legal mechanism through which the State's real estate assets are strengthened, given that such assets constitute one of the most important means of achieving social and economic development and reform.

The research problem addressed in this paper can be formulated through the following question:

How has the Algerian legislator regulated administrative pre-emption in terms of its legal effects, disputes arising there from, and the mechanisms for resolving such disputes?

The objective of this research paper is to shed light on all the aspects and issues raised by this subject, as well as to identify the relationship between the administration and individuals, the legal authority granted to the former vis-à-vis the latter, and the resulting legal effects and disputes.

In order to address the research problem raised in this paper, a methodological approach combining description, in order to present certain concepts, and analysis, in order to examine the various legal provisions relevant to the subject, has been adopted.

Keywords: Pre-emption; real estate ownership; action for annulment; action for compensation.

Introduction

It is well established that ownership is one of the most important sacred rights guaranteed by constitutional provisions. It constitutes a real right vested exclusively in its holder, granting him the right to use, exploit, and dispose of the property within the limits prescribed by law. Since ancient times, all religions and legal systems have sought to protect the right of ownership, particularly private ownership. Algeria, like other states, has enshrined the

principle of protection of ownership in its successive constitutions and their various amendments, the most recent being the constitutional amendment of 2020.

Within this framework, numerous laws have been enacted to protect ownership and grant its holder the right to enjoy all the powers attached thereto, through legal and judicial guarantees that enable the owner to challenge any unlawful interference with his property. However, despite the protection afforded to ownership, such protection is not absolute; rather, it is subject to several restrictions. Like other legal systems, the Algerian legislator has regulated the various grounds for acquiring ownership through numerous legal provisions. Ownership may be acquired, for instance, through the appropriation of property belonging to another person, possession, or accession, all of which are subject to the rules of civil law. Ownership may also be transferred from one person to another through inheritance upon death, by will, or through other legally recognized methods.

With the development of the functions of the State and its transition from a “guardianship state” to an interventionist state, together with the expansion of its responsibilities and its increasing involvement in daily life, the State came to be treated, in certain respects, like a natural person. The law therefore recognized its financial rights, based on the consideration that one of the principal foundations of the State’s stability is determined by the extent of its wealth and its control over its assets, particularly its real estate assets. These assets constitute a fundamental source of revenue that the State utilizes in the field of investment. Consequently, the idea of the State acquiring real estate assets emerged with the aim of strengthening its real estate portfolio, which it employs in various fields and for a specific purpose, namely the achievement of the public interest.

Accordingly, the means adopted by the State to acquire private real estate ownership have become numerous and diverse. It may resort to mechanisms governed by private law, such as sale or lease, or it may rely on the rules of public law. In doing so, the legislator departs from the general principle by establishing exceptional methods through which the State may acquire individuals’ private real estate property, by virtue of the prerogatives and privileges conferred upon public authorities.

The Algerian legislator, in the final paragraph of Article 26 of Law No. 90/30 dated December 1, 1990, concerning National Property, as amended and supplemented, provided for two exceptional methods, namely expropriation for public utility and the right of pre-emption exercised by the State. The latter differs in its principles from pre-emption under the Civil Code, as it is intended to preserve public property and achieve the public interest. The legislator has established specific procedures for each of these methods that must be followed before proceeding with their implementation. This is intended to provide individuals with legal safeguards against administrative arbitrariness by granting them fair compensation in return for the property acquired from them through the exceptional procedures established by law.

The importance of this study lies in the fact that administrative pre-emption constitutes a legal means through which the State's land and property assets can be strengthened, given that such assets represent one of the most important instruments of social and economic development and reform, provided that the State makes proper use of this mechanism, particularly because it concerns both the public and private interests. Through administrative pre-emption, a

constitutional rule is exceptionally affected, namely the right to private property, which is legally protected and constitutionally guaranteed. Accordingly, interference with this right constitutes an exception exercised by the administration in order to achieve the public interest. Furthermore, the importance of this mechanism is also reflected in its contribution to advancing economic development by providing land assets that can be used for major projects serving the public interest. It is therefore regarded as an exceptional mechanism granting the State priority in compulsory acquisition through unilateral action. At the same time, it constitutes a serious source of concern for individuals, who may unexpectedly find their real property rights subject to interference.

The research problem revolves around the following fundamental question:

How has the Algerian legislator regulated administrative pre-emption in terms of its legal effects, disputes arising there from, and the mechanisms for resolving such disputes?

The objective of this research paper is to shed light on all the aspects and issues raised by this subject, which constitutes an exception to the general rule and affects individual rights within the framework of legality. It also seeks to determine the relationship between the administration and individuals, the legal authority granted to the former at the expense of the latter, and the effects resulting from such authority, as well as the disputes that may arise there from.

In order to address the research problem raised in this paper, a methodological approach combining description and analysis was adopted:

Descriptive approach: This approach is appropriate for presenting certain concepts and definitions related to the subject matter.

Analytical approach: This approach is used to examine and analyze the various legal provisions relevant to the subject.

This research paper is divided into two main sections. The first examines the effects arising from administrative pre-emption, while the second addresses disputes relating to the State's exercise of its right of pre-emption.

Section One: Effects of Administrative Pre-emption

The establishment of the pre-emptor's right of pre-emption may occur either by consent or through judicial proceedings. The substitution of the pre-emptor for the purchaser in acquiring the property subject to pre-emption changes the nature of the legal relationship: instead of being a relationship between the seller and the purchaser, it becomes one between the seller and the pre-emptor, while the purchaser is excluded from the transaction. Consequently, this relationship produces a number of legal effects. Accordingly, this first section will address the effects with regard to the seller and the purchaser (First), the effects with regard to the State (Second), and finally the cases in which the State's right of administrative pre-emption is forfeited (Third).

First: Effects with Regard to the Seller and the Purchaser

This subsection examines the effects of pre-emption with regard to both the seller and the purchaser by analyzing the relationship between the seller and the pre-emptor, as well as the relationship between the pre-emptor and the purchaser.

1. Effects with Regard to the Seller (Relationship between the Seller and the Pre-emptor)

Article 804 of the Algerian Civil Code provides as follows:

“The pre-emptor shall, vis-à-vis the seller, take the place of the purchaser in all of his rights and obligations; however, he may not benefit from the period granted to the purchaser for payment of the price except with the consent of the seller, and the pre-emptor shall have no recourse against the seller if a third party recovers the property after the exercise of pre-emption.”

Accordingly, ownership of the real property is transferred to the State and local authorities once the right of pre-emption has been established, to the exclusion of the purchaser. The purchaser is thus removed from the transaction altogether, and the contract concluded between the purchaser and the seller is treated as though it had never existed, while the contractual relationship remains between the first party, namely the seller, and the second party, namely the pre-emptor. The rights of the purchaser are thereby transferred to the pre-emptor.ⁱ The pre-emptor also assumes the corresponding obligations, with the possibility of revising the price of the property either by mutual agreement or before the courts, dating from the conclusion of the sale contract.ⁱⁱ

The text also reveals the fundamental obligation incumbent upon the seller to guarantee the purchaser’s peaceful enjoyment of the property in the event of a third party asserting a claim against him, as well as to guarantee against disturbance and latent defects. Therefore, if any of these elements, which may establish the liability of the pre-emptor, is lacking, the latter may have recourse against the seller. However, if the third party recovers the property subject to pre-emption for any reason after the judgment establishing the pre-emptor’s entitlement to exercise the right of pre-emption has been rendered, the pre-emptor cannot have recourse against the seller, since the seller is no longer the owner of the property following the judgment granting pre-emption. It is self-evident that the pre-emptor cannot have recourse against a person who has not been the owner since the date of the judgment.ⁱⁱⁱ

2. Effects with Regard to the Purchaser (Relationship between the Pre-emptor and the Purchaser)

Article 805, paragraph 1, of the Algerian Civil Code provides that, if the purchaser constructs a building on the property subject to pre-emption or plants trees therein before the declaration of the intention to exercise the right of pre-emption, he shall be entitled to receive from the pre-emptor the amount he has spent, or the amount by which the value of the property has increased as a result of the construction or planting. Paragraph 2 further provides that, if the construction or planting takes place after the declaration of the intention to exercise the right of pre-emption, the pre-emptor may request their removal. If, however, the pre-emptor chooses to retain the construction or planting, he shall only be required to pay the value of the construction materials and the cost of labor.

Accordingly, it may be inferred from this provision that, where a relationship exists between the pre-emptor and the purchaser, it concerns both the price of the property subject to pre-emption and the works carried out by the purchaser on the property. If the purchaser has paid the purchase price to the seller, he shall be entitled to recover it from the pre-emptor, together with the expenses incurred in connection with the sale. If the purchaser constructed a building on the property or planted trees therein before the pre-emptor declared his intention to exercise the right of pre-emption, and a judgment was subsequently rendered granting the pre-

emption to the pre-emptor, the latter shall be required to pay the amount expended on the construction or planting, as well as the increase in the value of the property resulting therefrom. In such a case, the purchaser shall have the right to choose between the two amounts and shall be entitled to the higher amount.

However, if the construction or planting was carried out after the pre-emptor had declared his intention to exercise the right of pre-emption, the pre-emptor may request its removal at the purchaser's expense and the restoration of the property to its previous condition, in addition to compensation. At the same time, the pre-emptor shall pay the purchaser the costs incurred for construction materials, labor, and other expenses.^{iv}

Second: Effects with Regard to the State

One of the effects of pre-emption with regard to the State is that ownership of the property subject to pre-emption is transferred to the State and becomes part of the State's private domain when the State exercises its right of pre-emption, in accordance with the various cases established by the legislature under Law No. 90-30, particularly Article 26 thereof, as well as pursuant to Executive Decree No. 12-427 concerning the management of State property, dated 19 December 2012, published in the Official Gazette No. 69 on 20 December 2012. Article 99 thereof provides:

"The right of pre-emption shall be exercised for the benefit of the State pursuant to Article 118 of the Registration Code, Article 15 of Law No. 03-10 of 15 August 2010, establishing the conditions and procedures for the exploitation of agricultural land belonging to the State's private domain, and Articles 62 and 71 of the aforementioned Law No. 90-25, in accordance with the conditions and procedures prescribed by these provisions or by the implementing texts adopted pursuant thereto."

It should be noted in this regard that Algerian legislation has not specified the legal framework to be followed by the State when drawing up the deed evidencing ownership, namely whether it should take the form of an administrative deed or a notarized deed. This is because the aforementioned provision merely enumerates the cases in which the State may exercise its right of pre-emption. In practice, however, the sale deed between the State and the seller is generally executed before a notary, with the Minister of Finance representing the State in this regard, pursuant to Article 52 of the Algerian Civil Code.

Accordingly, the direct effect of the State's exercise of the right of pre-emption is the transfer of ownership of the property subject to pre-emption to the State, so that it may be recorded in the inventory register in accordance with the forms, conditions, and procedures governing the preparation and inventorying of State-owned movable and immovable property, as provided for under Executive Decree No. 91/455.^v

The general inventory of national property refers to the descriptive and evaluative registration of all private and public property belonging to the State, the wilaya, and the municipality, which is held by the various establishments, institutions, and organizational structures affiliated with them, or which is allocated to public institutions and bodies.^{vi}

Third: Cases in Which the State's Right of Administrative Pre-emption Is Forfeited

Pre-emption constitutes a restriction on the right of ownership, and since it limits the freedom to dispose of property, the legislator has imposed strict procedural requirements in order to narrow its scope. Accordingly, the Algerian Civil Code provides for cases in which this right

is forfeited under Article 807. Therefore, this section addresses the substantive grounds for the forfeiture of the State's right of pre-emption (First Subsection) and the procedural grounds for the forfeiture of the right of pre-emption (Second Subsection).

1. Substantive Grounds for the Forfeiture of the State's Right of Pre-emption

The State may waive its right to exercise pre-emption. Such waiver constitutes a legal act that may be either express or implied. The State's waiver of this right results in its forfeiture, as provided for under Article 801 of the Algerian Civil Code, contrary to the general rules, which normally permit waiver after the right has been established. This means that the concept of waiver has evolved to acquire a broader scope, in that the State may waive its right to exercise pre-emption even before such right has been established.

A. Waiver of Pre-emption Before the Right Is Established:

Such waiver must be express, leaving no room for doubt or interpretation. For example, the purchaser may obtain from the State an express waiver of its right of pre-emption before entering into a contract with the owner of the property subject to pre-emption. The waiver may be made either in writing or orally, in which case the burden of proof rests upon the purchaser.^{vii} The waiver may also be implied before the right is established, where it may be inferred from any act or conduct indicating that the State has waived its right of pre-emption.

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B. Waiver of Pre-emption After the Right Has Been Established:

Such waiver may likewise be express, whether made in writing or orally. It may also take the form of an implied waiver where the pre-emptor, namely the State, performs any act indicating its relinquishment of its right.^{ix}

2. Procedural Grounds for the Forfeiture of the State's Right of Administrative Pre-emption

The legislator has provided that failure to comply with the procedures governing pre-emption results in the forfeiture of the right. This is demonstrated by the following:

A. Failure to Declare the Intention to Exercise Pre-emption Within the Prescribed Period:

Article 799 of the Algerian Civil Code provides that:

"A person wishing to exercise the right of pre-emption must declare his intention to exercise it to both the seller and the purchaser within thirty days from the date of the formal notice served upon him by the seller or the purchaser; otherwise, his right shall be forfeited. In addition, the time required for distance shall be added to this period, where necessary."

Accordingly, the State's right of pre-emption is forfeited if the seller or purchaser serves it with formal notice and it fails to express its intention to exercise the right of pre-emption within the prescribed period of thirty (30) days.

B. Failure to Bring the Pre-emption Action Within the Prescribed Period:

Article 802 of the Algerian Civil Code provides that, where the pre-emption action is not brought within the legally prescribed period of thirty days, the pre-emptor's right of pre-emption is forfeited by operation of law. This period is a matter of public policy; once it has expired, the court may declare the forfeiture of the right on its own motion and at any stage of the proceedings, even if the holder of the right has waived reliance upon it. Consequently, the

State's right of pre-emption is forfeited if it fails to bring the action within the prescribed time limit.

C. Failure to Deposit the Price Within the Prescribed Period:

With reference to the Algerian legislator, it is apparent that the pre-emptor is required to deposit the relevant expenses with the notary within a maximum period of thirty days from the date of declaring the intention to exercise pre-emption, provided that such deposit is made before filing the pre-emption action. Accordingly, this procedural requirement must be complied with; otherwise, the State's right of pre-emption shall be forfeited.^x

D – Expiry of One Year from the Date of Registration of the Sale:

Article 807, paragraph 2, of the Algerian Civil Code provides that: "The right of pre-emption shall not be exercised in the following cases:

If one year has elapsed from the date of registration of the sale contract in the cases provided for by law."

Accordingly, the State's right to exercise pre-emption lapses upon the expiry of one year from the date of registration of the sale contract. The legislator established this rule in pursuit of the stability of transactions and the protection of both the seller and the purchaser, on the grounds that registration constitutes an act which presupposes the pre-emptor's knowledge of the sale, even in the absence of formal notice to him.

Section Two: Disputes Relating to the Exercise of the State's Right of Pre-emption

The right of access to justice is a constitutionally guaranteed right for all persons.^{xi} Judicial recourse is exercised through an action, which constitutes a form of legal protection through which a person has recourse to the courts in order to preserve a legitimate right. An action is therefore the legal means through which a dispute is adjudicated.

Likewise, administrative pre-emption exercised by the State may give rise to disputes requiring judicial intervention for their resolution. Such actions may be brought either by the State (First) or by the parties to the contract (Second).

First: Actions Brought by the State

In this regard, it is necessary to address the various types of actions brought by the State against the parties to the contract, determine the competent judicial authority to adjudicate them, and identify the conditions for bringing such actions.

1 – Types of Actions Brought by the State against the Parties to the Contract

When the State requests the exercise of pre-emption in order to achieve the public interest, the purchaser may accept such request, in which case the State takes his place in the sale contract. However, the opposite may occur where the purchaser refuses the State's request to transfer the property subject to pre-emption. In such a case, pursuant to the provisions of the Algerian Civil Code, particularly Article 802 thereof, the State, in its capacity as pre-emptor, has recourse to the courts by bringing an action for pre-emption.^{xii}

Such an action is intended to exercise the right of pre-emption,^{xiii} and is brought by the State against both the seller and the purchaser where its request to exercise pre-emption is not accepted. However, where both parties to the contract consent to the exercise of pre-emption, there is no need to bring such an action.

Accordingly, the parties to an action for pre-emption are the State, as the plaintiff, represented by its public authorities, namely:

The National Office of Agricultural Land (Office National des Terres Agricoles – ONTA), where pre-emption is exercised over agricultural land.

The Directorate of State Property of the Wilaya, where pre-emption is exercised over urban land.

The Wilaya Directorate of Taxes, where the exercise of pre-emption is related to tax matters.

As for the defendants, they are the seller and the purchaser under the sale contract constituting the subject matter of the pre-emption. If the action is brought against only one of them and not the other, the action shall be inadmissible.

2 – The Competent Judicial Authority to Hear the Action

When a dispute arises concerning administrative pre-emption, it is necessary to determine the competent judicial authority to adjudicate the dispute, with regard to both subject-matter jurisdiction and territorial jurisdiction.

A – Subject-Matter Jurisdiction:

Pursuant to the provisions of Law No. 08-09 relating to the Code of Civil and Administrative Procedure, the administrative courts constitute courts of general jurisdiction in administrative disputes. They have jurisdiction to adjudicate, at first instance, by judgments subject to appeal, all cases in which the State, the Wilaya, the municipality, or a public institution of an administrative nature is a party.^{xiv}

Accordingly, insofar as the administration is a party to the pre-emption action, jurisdiction to hear such an action falls within the competence of the Administrative Court, pursuant to the personal criterion.

B- Territorial Jurisdiction:

Upon referring to Article 804 of the Algerian Code of Civil and Administrative Procedure, it appears that this provision does not specify the territorial jurisdiction of the Administrative Court when an action for pre-emption is brought; that is, it does not determine the court having territorial jurisdiction. In this case, Article 803 of the Code of Civil and Administrative Procedure applies, as it refers us to Article 37 of the same Code, which confers territorial jurisdiction upon the judicial authority having jurisdiction over the defendant's domicile. In an action for pre-emption, the seller and the purchaser are defendants against the State or one of its local authorities, which acts as the plaintiff.

Furthermore, Article 802 of the Algerian Civil Code provides that an action for pre-emption must be brought by the pre-emptor, namely the State, against the seller and the purchaser before the court within whose territorial jurisdiction the property that is the subject matter of the dispute is located.

Accordingly, and pursuant to the principle that a specific provision prevails over a general one, the provisions of Article 37 shall apply, but only where the general rules of territorial jurisdiction applicable to real estate matters are concerned.

3- Conditions and Procedures for Bringing the Action

The conditions required for bringing the action, as well as the procedures for initiating it, will be addressed as follows:

A- Conditions for Bringing the Action:

Pursuant to the provisions of the Code of Civil and Administrative Procedure, and in accordance with Article 13 thereof, the conditions that must be satisfied by the plaintiff are: legal standing, interest, and legal capacity, as provided for in Article 65 of the same Code.

Legal standing means that the holder of the right that has been infringed is the person entitled to exercise the right of action. In the case of an action for pre-emption in which the State, or one of its local authorities, is a party, it must be represented by the Minister, the Wali (Governor), or the President of the Municipal People's Assembly, pursuant to Article 828 of the Code of Civil and Administrative Procedure. In the case of public institutions of an administrative nature, representation is ensured by their legal representative, subject to the provisions determining the conferment of legal standing for representation.^{xv}

As for legal interest, it refers to the benefit sought by the holder of a judicial claim at the time of resorting to the courts. It constitutes the motive and objective underlying the initiation of the action; therefore, there can be no action without a legal interest.^{xvi} Accordingly, the interest underlying an action for pre-emption brought by the State consists in achieving the public interest.

B- Procedures for Bringing the Action:

The action shall be brought before the Administrative Court by means of a written application, in a number of copies equal to the number of parties to the proceedings, signed by a lawyer or the legal representative, given that legal persons are exempt from mandatory representation by a lawyer pursuant to Article 827 of Law No. 08-09 relating to the Code of Civil and Administrative Procedure. The application must contain the information prescribed by Article 15 of the same Code and must be filed with the Registry of the Administrative Court. When bringing an action for pre-emption, the thirty-day period from the date of notification of the declaration of the intention to exercise the right of pre-emption must be observed. The judgment establishing the existence of the right of pre-emption shall constitute a title of ownership for the State.

Second: Actions Brought by the Parties to the Contract

This section will address the types of such actions, determine the competent judicial authority, and examine the conditions and procedures for bringing them.

1. Actions Brought by the Parties to the Contract Against the State

It goes without saying that the State's decision to exercise its right of pre-emption constitutes an administrative decision, which entitles the parties to the contract to seek its annulment or claim compensation for the resulting harm by resorting to the courts.

A. Action for the Annulment of the Decision to Exercise the Right of Pre-emption

This is an action brought by the concerned parties before the administrative courts seeking the annulment of an administrative decision issued in violation of the law. It is considered an action falling within objective judicial review, as it protects the general legal position by challenging unlawful decisions.

Accordingly, an action for annulment in the context of administrative pre-emption may be brought where a decision is issued by the Directorate of State Property, the Directorate of the National Office of Agricultural Land, or the Wilaya Directorate of Taxes. The parties to the contract may seek the annulment of such a decision on the grounds of illegality. The grounds for seeking annulment may relate to defects affecting the decision, such as the defect of lack

of jurisdiction, which consists in the inability to perform a specific legal act that the legislature has entrusted to another authority or individual ^{xvii}Therefore, for administrative decisions to be valid, they must be issued by the competent authority.

The defect of lack of form and procedural requirements arises where the administration fails to comply with mandatory procedural rules governing the issuance of administrative decisions. A decision in respect of which the legally prescribed procedures have not been followed may therefore be challenged. The defect of violation of the law occurs when the decision contravenes one of the applicable legal rules. As for the defect of abuse or misuse of power, it arises when the authority issuing the decision exercises the powers conferred upon it by law in order to achieve objectives other than those for which such powers were granted. ^{xviii} The defect of lack of cause refers to the issuance of an administrative decision without the material existence of the factual or legal circumstances that prompted the State to issue it, or where there is an error in the proper legal characterization of those circumstances.

Accordingly, either party to the contract may seek the annulment of the State's decision to exercise its right of pre-emption if that decision is tainted by any of the aforementioned defects.

B. Action for Compensation

The State's decision to exercise the right of pre-emption entitles the parties to the contract to claim compensation for the damage suffered as a result of being deprived of entering into the contract. It should be noted that an action for compensation may be brought together with an action for annulment, or it may be brought independently thereof.

2. Competent Judicial Authority

As previously indicated, when a dispute arises concerning administrative pre-emption, it is necessary to determine the competent judicial authority to adjudicate the dispute, with regard to both subject-matter and territorial jurisdiction.

A. Subject-Matter Jurisdiction

Article 801 of the Algerian Code of Civil and Administrative Procedure provides that the administrative courts shall also have jurisdiction to adjudicate actions for the annulment of administrative decisions, actions for interpretation, and actions for reviewing the legality of decisions issued by the wali and by the decentralized services of the State at the level of the wilaya, the municipality, and services of an administrative nature, as well as actions involving full jurisdiction and cases assigned to them pursuant to specific legal provisions.

Accordingly, actions for annulment fall within the jurisdiction of the administrative court, in addition to actions for compensation.

B. Territorial Jurisdiction

Territorial jurisdiction over both types of actions lies with the administrative court within whose territorial jurisdiction the defendant is domiciled, that is, the place of domicile of the administrative authority that issued the decision.

3- Conditions and Procedures for Bringing an Action

This section addresses the various conditions required for bringing an action, as well as the procedures for initiating it:

A- Conditions for Bringing an Action:

The claimant must satisfy the same conditions required for bringing other civil and administrative actions, namely legal standing, interest, and legal capacity. The requirement of legal standing in an action for annulment or compensation means that the action must be brought by the holder of the subjective legal position or personal right.

As for the requirement of interest in an action for compensation or annulment, the claimant must have a personal, acquired, established, and recognized right that enjoys prior legal and judicial protection.

B- Procedures for Bringing an Action:

Both an action for annulment and an action for compensation shall be brought by means of a written application, with copies corresponding to the number of parties to the proceedings. The application must contain information relating to the parties, a summary of the facts, and the grounds of challenge on which the action is based.^{xix} The application and reply memoranda must be signed by a lawyer when the action concerns a private person. Representation by a lawyer is optional for the State and public legal entities. Where the latter are not represented by a lawyer, the applications and reply memoranda must be signed by the legal representative of each entity.^{xx}

In the case of an action for annulment, a copy of the contested decision—namely, the decision to exercise the State's right of pre-emption—must be attached to the application. This requirement is waived if the claimant is able to establish that the administration has refused to provide the contested decision. In such a case, the judge shall order the administration to produce the decision at the first hearing, pursuant to Article 819 of Law No. 08-09 concerning the Code of Civil and Administrative Procedure.

The application shall be filed with the court registry upon payment of the prescribed court fee, registered, and served on the defendant. Pursuant to the provisions of Law No. 08-09, particularly Article 829 thereof, the time limit for bringing an action for annulment of the pre-emption decision and for compensation is four months, commencing from the date of personal notification of the decision.

Conclusion

Based on the foregoing, it may be concluded that administrative pre-emption exercised by the State constitutes the second exceptional means adopted by the State for acquiring private property. An examination of the term pre-emption reveals that it essentially refers to the concept of incorporation, namely, the compulsory incorporation of ownership of the property subject to pre-emption into the pre-emptor's property, against both the buyer and the seller.

Pre-emption constitutes a right exercised by the State when it considers that the public interest requires such action, whereby it substitutes itself for the purchaser. This right is of considerable importance despite the disputes it may give rise to, particularly in view of its role in preserving and regulating the real estate market. The State may exercise this right with regard to agricultural land, developed land and land suitable for development, as well as within the framework of land registration legislation, without overlooking pre-emption exercised in relation to transactions carried out by foreigners.

At the conclusion of this study, a number of findings and recommendations were reached.

First: Findings of the Study

The main findings are as follows:

Pre-emption is one of the exceptional legal mechanisms established by law as a means of acquiring real property.

The pre-emption system is of considerable importance, as it constitutes a means of bringing together the separate elements of ownership and eliminating co-ownership.

The Algerian legislator considers administrative pre-emption an exceptional legal mechanism resorted to by the State in its capacity as a holder of public powers, with the aim of achieving the public interest.

The Algerian legislator has not regulated the procedural aspects of administrative pre-emption in the same manner as it has done with expropriation for public utility.

Recourse is consistently made to the provisions of the Civil Code in exercising administrative pre-emption, as it constitutes the general legal framework in the absence of a general provision regulating this matter.

The State's right to exercise pre-emption may lapse for both procedural and substantive reasons.

The exercise of pre-emption by the State gives rise to several disputes, the most important of which are the action seeking the exercise of pre-emption, brought by the State against the two parties to the contract, and the action for annulment and compensation brought by the parties to the contract.

Second: Proposals and Recommendations of the Study

The study proposes the following recommendations:

It is necessary to establish a definition and specific legal provisions governing pre-emption exercised by the State outside the framework of the provisions of the Civil Code.

Legal provisions should be enacted to regulate the rules governing pre-emption granted in favor of the State.

The legal procedures governing administrative pre-emption should be clearly defined without resorting to the Civil Code, given that the State enjoys the prerogatives of public authority, which place it in a superior legal position to that of private individuals.

An alternative legal solution to administrative pre-emption should be sought within the framework of combating false declarations concerning real estate transactions.

Legal alternatives to administrative pre-emption should be established, with a gradual departure from the principle whereby the State is always entitled to exercise pre-emption, together with the resulting burden on the public treasury.

The authority responsible for exercising administrative pre-emption on behalf of the State should be unified.

ⁱ Sana Ben Chertoua, Acquisition of Real Property Ownership through Pre-emption, Master's Thesis, Faculty of Law, University of Constantine, 2009, p. 170.

ⁱⁱ Sana Ben Chertoua, *ibid.*, p. 172.

ⁱⁱⁱ Maryam Bouraya, The Right of Administrative Pre-emption under Land-Oriented Law No. 90-25, Master's Thesis, Faculty of Law, University of Algiers, p. 107.

- ^{iv} Ahmed Daghigh, *The Right of Pre-emption in Algerian Legislation*, Houma Publishing and Distribution, Algeria, 2011, p. 353
- ^v Executive Decree No. 91/455 of 23 November 1991 concerning the inventory of national property, *Official Gazette*, No. 60, published on 24 November 1991.
- ^{vi} See Article 2 of the same Decree.
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