REAL ESTATE

STJ WELCOMES ACTION OF USUCAPIÃO OF PRIVATE PROPERTY WITHOUT REAL ESTATE REGISTRATION

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AUTHORS

FATIMA TADEA ROMBOLA FONSECA
PARTNER / SÃO PAULO

MARINA ROSA CAVALLI
LAWYER / SÃO PAULO

IASMIM DE SOUZA NUNES
LAWYER / SÃO PAULO

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The Superior Court of Justice (STJ), in a recent decision and unanimously, recognized the suitability of claims of ownership (*usucapio*) related to private properties without real estate registration. This was the understanding of the ministers, when they judged a claim of ownership related to a property located in a land subdivision established for years in the Planaltina-DF, but not authorized or regularized by the local Public Administration.[1]

The issue brought for consideration by the Supreme Court originated in hundreds of cases of*usucapio* in progress before the Court of Justice of the Federal District involving private properties devoid of their own enrollment certificates, inserted in land subdivisions legally classified as clandestine, which were not authorized or regularized by the administration of the Federal District, although they have existed for decades. The decision also consolidates previous decisions of lower courts with the same understanding.

The usucapio is a constitutionally guaranteed institute. It allows the acquisition of real estate property by proving the possession exercised without opposition and for a certain time, in addition to other requirements required by law. Because it is an original form of acquisition of property, there is no transfer of liens or encumbrances on the real estate property for the plaintiff (the *usucapiente*). The registration of the usucapio on the enrollment certificate, therefore, is not done to constitute the acquisition, but rather to give publicity to it and allow the exercise of the right to dispose of the property, in addition to regularizing the registry itself.[2]

In the case, for the judge of origin, the usucapio is a form of acquisition of the property that may be declared regardless of the prior existence of registration or enrollment certificate.

On the other hand, the Public Prosecutor's Office of the Federal District and the government of the Federal District itself defend the thesis of impossibility of declaring property through usucapio of properties in this condition, under penalty of usurping the administration's urban planning and regularization function.

It seems reasonable to argue that, in the case of the subdivision located in the Federal District, the absence of real estate registration should not really derail the favorable decision in usucapio. This is because the objective of the legal standard – provided that the presence of all legal requirements is demonstrated – is exactly to regularize, in legal and register terms, a consolidated fact. The lawsuit promotes, finally, legal certainty in real estate transactions, for the benefit of the less favored population.

In the case analyzed, there is the perfect individualization of the property, served by infrastructure and equipment that enable the development of civil and social life, characterizing the property as belonging to an absolutely established nucleus, with difficult (or impossible) reversal.

It should be emphasized that the integration of consolidated informal nuclei and non-regular areas to the urban territorial planning, with the delivery of titles to their effective occupants seems to be the general objective of the country's land policies. This can be proven by the current legislation, which does not require prior registration as a presupposition of usucapio.

In this sense, the Decision of the Supreme Court represents, in addition to a legal solution for a recurrent claim, a huge advance. It confirms the feasibility of regularizing irregular and vulnerable areas (both socially and economically), which suffer from significant land problems, demonstrating that it is possible to apply fast solutions and guarantee the fundamental right to housing.

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[1] Special Feature 1,818,564 - DF

[2] Resp. 118360/11