

CHAPTER 123

The regularization landmarket and the implementation gives occupation Social gives city

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ABSTRACT

The present work aims to analyze land tenure regularization and its effects on realization of the social function of the city, through the foundations established by the City Statute. Seeks to demonstrate the multidimensional interest in the implementation of land regularization, from the perspective of protecting the interests of the collectivity and the paradigm of Democratic state. To do so, the following research problem was started: Is land regularization an instrument for realizing the social function of the city? As research methodology, the inductive method was used and, in the data processing phase, the Cartesian method. In the different phases of the research, the techniques of the referent, gives category, concept operational and gives search bibliographic.

Keywords: Regularization Land Holding, Occupation Social Gives City, Right The City Sustainable, Straight To Home, City Statute.

1 INTRODUCTION

O right The home, While right Social, it is focused at the foundation constitutional principle of the dignity of the human person, constituting an intrinsic bond to the individual as a member of society, in order to provide dignified conditions capable of carrying out the enjoyment in Your rights.

From this perspective, the right to a sustainable city stands out, which from the new constitutional order of 1988, became an asset worthy of special legal protection. O constituent recognized the importance of granting specific legal treatment and suitable for habitat protection in which the majority of the Brazilian population lives, as condition for The quality in worthy life.

However, the migration from the countryside to the urban environment reflected in a growth vertiginous population of cities, generating serious impacts on their structure due to the absence of support and receptivity to this great population demand. This lack of adequacy urban It is O result of scenery current, compound for the inequality Social, absence in infrastructure basic, materializing in subnormal clusters.⁵

⁵ According to IBGE (2010) It is a set consisting of at least 51 housing units (shacks, houses, etc.) lacking, most of them essential public services, occupying or having occupied, until recently, land owned by others (public or private) and being arranged, in general, in a disorderly and/or dense.

In wake up with O Census Demographic of IBGE accomplished in 2010, were 15,868 census sectors were identified nationally in subnormal clusters. THE From these data, the search for relief escape for the subjects of this critical reality, which aims not only the simple titration, but also the application From rights correlated what if establish per intermediate gives relationship in interdependence in between The occupation property social and The occupation social of City.

In that context, The search sought to analyze The problematic established in between The relation of subnormal agglomerates and the deficiency in the implementation of basic rights inherent to the social function gives City.

From this approach, the following general objective is to analyze the regularization land ownership and its effects on the realization of the social function of the city, through the paradigms established by the City Statute. The scope, therefore, is to demonstrate the aspect multidimensional form of title regularization in the protection of collective interests, through gives urban structural relationship of the individual and the safety yours dwelling place.

Such premises they are established fur Statute gives City, what bestowed The competence gives structure and organization From counties for plans directors own, governing each which with your particularities, for O The end in promote you goals constitutional and materialize a state of Right governed by dignity gives human person.

In order to carry out this study, in the investigation phase, the method inductive, which, in the words of Pasold (2018, p. 95) means “research and identify the parts of a phenomenon and collect them in order to have a general perception or conclusion”. At data processing phase the Cartesian method ⁶, and the report of the results expressed in the gift Chapter is composed in base logic inductive.

In the various phases gives search, were triggered at techniques of referent ⁷, gives category ⁸, of concept operational ⁹, gives search bibliographic ¹⁰, with O scope insubstantiate one general conclusion about the theme studied.

2 O STATUTE GIVES CITY AND THE INSTRUMENTALITY OF PLANNING URBAN PLANNING

The social migratory movement from rural to urban areas was one of the main causes for inefficiency of greeting gives occupation Social gives City. THE absence in receptivity so much in scope structural, how much economic destined The population migratory

⁶ On the four rules of the Cartesian Method (evidence, divide, order and evaluate) see Leite (2001, pp. 22-26).

⁷ “[...] **the prior explanation of the reason(s), the objective(s) and the desired product, delimiting the scope thematic and approach to intellectual activity, especially for research .**” (PASOLD, 2018, P. 62).

⁸ “[...] **a strategic word or expression to the elaboration and/or expression of an idea .**” (PASOLD, 2018, p.31).

⁹ “[...] **a definition for a word or expression, with the desire that such definition be accepted by theeffects of ideas that we expose [...]**”. (PASOLD, 2018, P. 43).

¹⁰ “Technique in investigation in books, repertoires jurisprudential and collections cool.” (PASOLD, 2018, P.217).

there is measurements in invasion and buildings informal in housing, solidifying you clusters subnormal.

According to IBGE data (2010), subnormal clusters are defined fur Following concept:

“Illegal occupation of land, that is, construction or on land owned by others (public or private) at the present time or in a recent period (obtaining the title ownership of the land for ten years or less); and b) Possess at least one of the following characteristics: • urbanization outside the current standards - reflected by roads in circulation narrow and in alignment irregular, lots in sizes and shapes unequal and constructions not regularized by public bodies; or • precariousness of services public essential, such which energy electric, collect in trash and networks inWater and sewage.

Marked by clusters, cities reflect a regime of social discrepancy, depriving basic rights, with strong repercussions on the dignity of the human person. Such facts demonstrate the setback of urban development in which society lives, in especially in theme home.

In the words in mukai (2007, P. 69) The absence in planning urban planning accentuated the housing problem because the “[...] absence of Urban Policy, which gave margin to a disorderly growth of large cities in Brazil and, therefore, exacerbated old problems of Brazilian cities, problems that go back to the colonial.

With this critical scenario consolidated, the City Statute seeks an escape from assistance, bringing planning and organizational policies, with the aim of reversing thischaos that was established, attributing mainly to the Municipalities the responsibility of the development and structure of the urban environment.

So being, O Statute gives City he was edited for regulate you articles 182 and183 of the Constitution of the Federative Republic of Brazil of 1988. Its objective is to establish rules of public order and social interest to regulate the use of urban property for the benefit of of well collective, gives safety and of welfare From citizens, well as of balance environmental.

You assumption consolidated at the Statute gives City establish, therefore, in line with the fundamentals guided by the branch of the Federal Constitution of 1988, which transcends the prediction of fundamental principles and objectives and aims at the implementation ofmeasurements effective with Software socially fit The to meet you yearnings of societies contemporary (CARDOSO, 2021, P. 63).

According to Canuto (2008, p. 109), the City Statute has the scope in get:

[...] the fullness of public policies aimed at the citizen and, in this objective, to integrate transport, housing, planning urban, quite environment, health, education, sanitation basic, assets historical and architectural, all worked with management democratic.

These public policies will be carried out through plans directors what represent, under The aegis constitutional, The autonomy urban transferred for each County for The creation and development of measurements materialized themselves in this plan.

halls (*et in* , 2014, e.g. 84) indicates what:

[...] The policy specific in development urban play to Government Municipal, what he must promote O your implement excelling fur exactly attendance at needs and requirements of collective well-being. The “social function” to be converted as a rule positive by the master plan came in charge of establishing the standards of growth, ordering the reorganization of cities in attention to the peculiarities and needs locations.

In that sense, set in discussion The municipalization gives responsibility in execution of the urban order, because, with the advent of the City Statute, the master plan is the main instrument achiever gives occupation Social gives City, staying The office From Counties its development, as highlights Nunes (2013):

Bringing new empowerment of Brazilian municipalities, which will henceforth be the executors and implementers of policies urban, The Letter Magna in 1988 observed the principles of the social function of property, the dignity of the person human development, the social function of cities, among others, as structuring elements urban policy in the country, leaving the Union responsible for setting the guidelines general guidelines, which will serve as parameters for the municipalities. To these, however, competes the biggest challenge of all: the practical application and achievement of objectives settled down and sought after for at cities.

The charge evaluative what O plan director check to the Counties demonstrates The importance of the prior diagnosis of social aspirations, which are not only of a immediate, but also of a future order, aiming for the future and growth of the environment urban. Therefore, the elaboration of these plans “[...] must necessarily count with The participation gives population and in associations representative From several segmentseconomic and social, not only during the drafting and voting process, but, above all, at Implementation and decision management there defined” (SANTIN, 2013, p. 200).

It is on this bridge of connection between the growth of the city and the well-being of the citizens that if evidence The goal of Statute gives City and your guidelines, at which ensure that one relationship of interdependence of the aforementioned rights, seeking to implement a policy democratic planning, from the communication relationship between what it is necessary for the execution of right gives collectivity and the guidelines of planning urban municipal.

3 THE REGULARIZATION LANDOWNER AND THE RELATIONSHIP MULTIDIMENSIONAL IN THEIR REFLEXES

One of the main tools to guarantee the protection of the right to housing, which by virtue of constitutional amendment n° 26/2000, it introduced the right, in the role of social protection. land tenure regularization, provided for in the City Statute, with the aim of guaranteeing gives protection of holder of immobile, as well as the effects and rights from that degree.

Through the City Statute, the competence of urban planning of cities, was conferred on the municipal power, which was delegated by the Federal Constitution (1988), with prediction in article 182. Here is the content of the article 182:

Art. 182. The policy in development urban, performed for Power Public municipal government, according to general guidelines established by law, aims to order the full development of the city's social functions and guarantee the well-being of its population.

At provisions contained at the mentioned article “[...] guarantee to citizen no not only the right to a balanced environment, but also the means for its maintenance, housing, conditions suitable in job, recreation, circulation human and O full development in all its functions” (MATIAS, 2006, p. 32) .

For the realization of these guarantees, the City Statute brought several guidelines, being a From main instruments The regularization land, The which Visa to guarantee The titration in real estate peacefully busy who don't enjoy of rights real of housing.

Consequently, land tenure regularization aims to make the transition from possession for the real right of property, realizing the right to housing, in order to remove the protection of informality and guarantee the occupants a new destination based on the construction of guarantees urban planning.

Law 13.465/2017 brought the context about the concept of regularization land:

Art. 9th stay instituted at the territory national standards general and procedures applicable The regularization landowner urban (Reurb), The which covers measurements legal, urban, environmental and social issues aimed at the incorporation of the nuclei urban informal to land use planning urban and The degree of their occupants.

One should think about the land regularization instrument from an multidimensional, as its effects transcend the essentially legal context, impacting on the social, economic and environmental policies of the regularized environment. He meets, therefore, the novel of metropolitan problems, acting as a conductor of transposition of their regular occupation space for urban territorial planning (LEITE, 2020, p. 210- 211).

There is, therefore, The articulation in several contexts urban planning under O aspect constitutional, in manner what O scope normative It is what The repercussion Social be notably amplified for in addition gives concession of title in property, aiming transmuting the marginalized aspect of informality, in order to insert O guy in the novel in rights that belong to them (OLIVEIRA; NUÑEZ, 2014, p.85).

Thus, its implementation does not only concern tabular regularization, that is, of property rights, but includes a set of measures to be implemented indifferent perspectives, seeking to achieve the function of property to the individual, for the purpose of materialize The occupation Social gives City. looking for O focus individual, without neglect The repercussion collective action inherent to social relations.

About addition, honey (2011, p.15) teaches what:

Grant only a title or registration to these residents, without guaranteeing a level adequate housing, basic infrastructure such as water, sewage, electricity and even free spaces for leisure and social activities, is to violate the constant basic principle of the first article of the constitutional text as the foundation of the Republic which is the dignity of human person.

It is through these premises that regularization transcends titration and goes to the meeting of the social function of the city that establishes a relational character between society and the power public, demonstrating the nature diffuse and interdisciplinary gives regularization landowner.

In this diffuse character, the individual interest of the owner of the Earth, with remarkable contribution at the foundation democratic ruled at dignity gives person human rights, which are the use, enjoyment, of the dwelling where the possession has already been established, as well as establishes the path of the social function of the city that reaches the well-being of the community, and, therefore, densify the ball in performance of the public power.

That Link in interests goes back to ideal in City sustainable, waved per Canute (2008 p. 111):

O right at cities sustainable if frame at category From rights diffuse and your Realization complies O objective intended with O development urban: to take at fairer, more humane and democratic Brazilian cities, with conditions worthy of life, for the exercise of civil and political, economic, social, cultural and environmental and, in that sense to guarantee O right The Earth urban, The home, to sanitation, The infrastructure urban, to transport and to the services public, to work and to leisure.

Thus, this diffuse relationship depends on a dualistic effort, that is, on society and power public, you which must to establish one relationship in cooperation in interests, in way to build the bridge between the effects of land regularization and the realization of the right constitutional The City.

At the same time, "land regularization is a legitimate aspiration of the residents who were compelled The to occupy or purchase land in this situation. That When if treat, obviously, in residents without option [...]". (NALINI, 2011, p. 164)

Of that mode, it is noticed what you effects gives regularization surpass The your nomenclature, removing from the public power, especially from the cities, the inertia of the application of public policies in the regularized region, entrusting effective urban reintegration measures for the good be the middle one collective.

4 YOU EFFECTS GIVES LAND REGULARIZATION AT REALIZATION OF OCCUPATION SOCIAL GIVES CITY

O model in urbanization current he comes demonstrating The need in larger Warning government in housing policies, making land tenure regularization an instrument indispensable for O greeting gives occupation Social gives City, per quite of model constitutional in sustainability.

In that sense, Oliveira (2009, p.26) you see what:

[...] for O reach gives sustainability gives City, It is essential O respect and, mainly, The effectiveness of principle fundamental gives dignity gives person human rights, to be realized through the right to urban land, housing, sanitation environmental, The infrastructure urban, to transport, to the services public, to job and to leisure.

The perspective of dignity under the aspect of sustainability of cities, consists of the basic rights that the public power must provide to the citizen. Sarlet (2012 p. 73) teaches that the dignity gives human person represents:

[...] the intrinsic and distinctive quality recognized in every human being who makes it deserving of the same respect and consideration on the part of the State and the community, implying, in this sense, a complex of fundamental rights and duties that ensure the person so much against all and any act in imprint degrading and inhuman, as will guarantee the minimum existential conditions for a healthy life, in addition to providing and promoting their active and co-responsible participation in the destinies of one's own existence and life in communion with other beings humans, through O due respect to the too much beings that integrate the network gives life.

The presupposition of dignity cannot be measured, or stagnated, on the contrary, O public power must every day seek public policies that come to idealize the model of inclusive society and guarantor of fundamental rights as a source of its responsibility in guardianship of social interests.

Kant (2007, P. 64) contributes with The theme, stating what The dignity It is "O what if makes a condition for something that is an end in itself, it simply has no value relative or price, more a value internal, and that means dignity".

In the present study, the axiological load of dignity is first observed by the housing bias, given the security it provides to the land owner, especially because of the bond what guard with the social environment.

IT IS The leave of this focus what The regularization landowner if substance as regulatory instrument of a series of intertwined rights, having as basic foundation the promotion of physical, social and psychological security for the citizen. The focus of its implementation contemplates the improvement of the quality of life that goes beyond public policies and covers the entire the structure of the city's social function, from the conception of projects to the effective performance of the power public and of the individual.

Of that mode, O scope of policies in regularization land, It is promote The sustainability space. According to Mendes (2009):

Spatial sustainability encompasses the organization of space and meets criteria overlapping territorial occupation and intertwined in an enduring natural network for try to recover, with it is complex and diversified plot, The quality in life, The biodiversity and The scale human in each fragment, in each neighborhood of system.

The sustainability bias under the title regularization approach is preached by through a broad concept, freeing itself from the chains of the narrow sense and transcending for the realization in the social environment, linked to the social function of the city, both for the individual at the property aspect, how much for the City, at the general context housing;

[...] no enough think The question gives regularization just from Score in View From individual rights of residents of informal settlements, that is, security individual ownership: it is necessary

to think about how these programs, combining strategies urban planning and democratic management processes-can also guarantee socio-spatial interaction. (FENANDES, *apud* MUKAI 2007, P. 29)

In the meantime, it is interpreted that the effective center of the individual's social relations, presents itself strictly in cities, from a social context, which is based on the responsibility of power public in dispose to the citizens in means basics in life Social, for how much "O right The City transcends The freedom individual in to have access to the resourcesurban" (BODNAR, ALBINO, 2020, p. 114).

To the realization gives occupation Social gives City, therefore, it is necessary to analyze primarily the social function of property, because it is through this relationship of interdependence biphasic what if from the The realization of urban constitutional guarantees.

In analyzing the social function of property, the individual character stands out, seeking in this, The safety physical, territorial, externalized The leave in one integration Social in public and legal knowledge of the dwelling belonging exclusively to that owner (ALVARENGA, 2011, p.7).

The social function of property requires some basic urban modification points, then The simple titration no complies with The your occupation primordial, It is required what if dispense underlying changes to this apparent phatic model.

Second Alvarenga (2011, p.7):

[...] the social function of urban property takes place through the correct use of the urban space, under the terms of the Municipal Master Plan. She should be concerned about rationality gives occupation of ground, organizing and rearranging at cities, indicating the places equipped with infrastructure and urban equipment that can be occupied, as well as the places that do not support densification, as in the risk areas and watershed protection. It is the search for the best organization of the urban space, significantly contributing to the population's quality of life and for the socialization gives property.

It is from this relationship of interdependence of affirmative actions that the social function of the city, concretized from subsequent acts carried out internally in the citizen's housing, to the external environment through the obligation of improvement in the quality of public services essential to life in society.

In the words in Matthias (2006, p.32) The occupation Social gives City:

[...] guarantee not to the citizen only right to a balanced environment, but also means for your maintenance, housing, conditions suitable in work, recreation, human circulation and the full development of all its functions. Such responsibility It is relegated to County, what shall enable Oattendance to needs basics of your population.

It is concluded, then, that the city only fulfills its social function when it ensures a guarantor approach between the social function of property and the city, aimed at the realization of the dignity of the human person, starting from the instrumentalization of land tenure regularization of this relational focus of reciprocity between the interest of the collectivity and the municipal power for the safeguard in basic urban rights.

5 CONSIDERATIONS FINALS

THE reality chaotic gives urbanization Brazilian demonstrates you reflexes gives lack in planning structural, The which has violated rights foundational From beings humans in society, restricting an important nuclear scope of protection with regard to the social right to home.

IT IS in this interim what comes up The importance in policies public in housing, in Special The regularization land, by having as responsibility effect O right in property, no only as a simple act in concession in titration in home, because its scope goes beyond the formal and objective regularity to fulfill and carry out the dimensions in rights correlated with the social function of the City.

Thus, the implementation of public policies for land tenure regularization aims to make effective the right to the city from the perspective of the dignity of the human person, especially in the search for protection of the individual and the realization of their rights before society, especially why search instrumentalize O right The home and you rights fundamental related, democratizing the access to the right to City.

Therefore, The realization gives occupation Social gives City It consists at relationship gives effective materialization of the social function of property, channeled from the perspective of the right of owner of the land, who, after obtaining the title to the property, acquires formal protection. It is protection, therefore, meets individual desires and their correlation with the social environment, allocating the individual to the formal urban planning and granting him security from a reading constitutional of worthy life.

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