



Research Paper

Acquisition of Immovable Property by Foreigners, Case Study: Islamic Republic of Iran

Fatemeh Eskandari¹

Abstract

According to Iranian law, a foreigner is a person who does not have Iranian citizenship, whether he or she has the citizenship of another country or has no citizenship at all. Aliens may be natural persons or legal entities. The general principle in Iran is that any foreigner can enjoy all civil rights and in cases where the law has made an exception for a specific purpose (Article 961 of the Civil Code). The implementation of this general principle is subject to the observance of paragraph 8 of Article 43 of the Constitution, which states: Foreign economic domination of the country's economy, as well as Article 53 of the Constitution, which stipulates any contract that causes foreign economic domination of natural and economic resources, etc. it is forbidden. Foreigners enjoy private rights as a precaution unless restricted by law. Foreigners are only allowed to acquire immovable property in Iran under treaties, but in the case of government citizens who do not have a contract with Iranians, they can be subject to certain conditions. To own non-agricultural properties in Iran. This article examines this issue to make non-Iranian investors more familiar.

Keywords: Immovable property, foreign, Acquisition.

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I. INTRODUCTION

The Iranian constitution emphasizes the prevention of foreign economic domination of the country's economy. Predicting restrictions and conditions on the acquisition of immovable property is one of the ways to prevent the domination of foreigners and their influence through the occupation of a country's lands. The central government in Iran, especially during the capitulation, despite the existence of treaties and laws, foreigners have acquired many real estate through international treaties in Iran (Fadavi, 2003, p. 15) due to the importance of farmland between This property was the first step of the legislature in enacting the law of June 6, 1931 on the obligation of foreign nationals to sell their arable lands to Iranians.

Immovable property in any country is directly related to the national sovereignty of that country. For this reason, since ancient times, the prohibition and restriction of ownership of this property for foreigners and the rule of law on the regime of ownership of the property has been accepted (Almasi, 1989, In principle, in any country, the property of foreigners is legally protected, such as the property of nationals. However, in the case of immovable property at present, countries usually impose restrictions and conditions on the acquisition of immovable property by foreigners to prevent the infiltration of foreigners into the country. The means can control this and allow a qualified alien to acquire immovable property only under certain conditions, otherwise there is a possibility of abuse by outsiders. The issue of foreign rights is not new. Throughout history, it has always been discussed and opinions have been expressed in some way, and the laws of countries, under the influence of ideas and theories, have considered a special legal status for foreigners. Political interests No country requires foreigners to be given the same rights as nationals or relatives. According to Article 160 of the Civil Code, foreign nationals can enjoy all the rights of Iranian nationals, except in certain cases. Therefore, the general principle in Iran is that any foreigner can enjoy all civil rights, except in cases where the law has made an exception for a specific purpose.

Article 160 of the Civil Code states:

"Except in the following cases, foreign nationals shall also enjoy civil rights:

¹ Department of Law, Allameh Tabatabai University, Tehran , Iran

- A. In the case of rights that the law explicitly restricts to Iranian nationals or explicitly deprives of foreign nationals.
- B. In the case of personal rights not accepted by the law of the State of the foreign national.
- C. "On special rights that have been created solely from the point of view of Iranian society."

II. LITERATURE REVIEW

Mr. Najad Ali Almasi in his book entitled "Conflict of Laws" published in 1989 states: Immovable property in any country is directly related to the national sovereignty of that country. For this reason, since ancient times, the prohibition and restriction of ownership of this property for Foreigners and the rule of law of the place of occurrence of property have been accepted by the regime of ownership and transfer of this property.

Ms. Arfa nia in her book entitled "Private International Law" published in 1991 states: Carefully in Article 10 of Law 1310 on farm property regarding the validity of any transfer of real estate of foreign nationals to Iranians, It can be inferred that the law absolutely did not consider foreign nationals entitled to own real estate.

Mr. Fadavi in his book entitled "Study of the acquisition of foreign nationals" published in 2003 states: Due to the weakness of the central government in Iran, especially during the capitulation, despite the existence of treaties and laws, foreigners many real estate Acquired through international treaties in Iran.

Private international law, batifole and lagarde (1984): Citizens of the Contracting States in each country shall enjoy the same rights as the law of that country, that is, common rights in their legal systems.

2.1 Definition of foreign

According to Iranian law, a foreigner is a person who is not a citizen of Iran; Whether he has the citizenship of another country or has no citizenship at all.

Foreign nationals are divided into two categories of natural and legal persons. The subject of this article is the study of the status of foreign natural persons (Nasiri, 2008, 88).

2.2 Immovable property

Immovable property in legal terms is money that can not be transferred from one place to another (Langroudi, 1391, 16) such as land and mines. If in practice, financial transfer is possible, but due to this change, destruction and destruction of the object or its location is achieved, it is also called immovable (Adl, 2006, 31)

According to the Iranian Civil Code, real estate is divided as follows (Articles 12 to 18 of the Civil Code).

- A- Intrinsic immovable property that includes exclusively land.
- B. Immovable property related to human action, such as pipes used in a building (Article 17 of the Civil Code).
- C- Property that is considered as immovable property (Articles 16-13 of the Civil Code).
- D- Property that is subject to immovable property (Article 18 of the Civil Code).

III. COMPARATIVE COMPARISON OF IRAN WITH SOME COUNTRIES

Article 8 of the Civil Code states that "Immovable property acquired or acquired by foreign nationals in Iran in accordance with the treaties shall be subject to the law of Iran in all respects, and Article 966 of the Civil Code clearly states this principle "Possession and other rights to movable and immovable property shall be subject to the law of the country in which those objects are situated."

Therefore, to justify and interpret this article, we refer to its historical background in French civil law. In the old law, as soon as a person leaves his homeland and enters a foreign country, he is deprived of many civil rights and even some natural rights, and this was probably due to the fact that in the old test, most countries, especially neighboring countries. They are in conflict with each other and possibly in a state of war. The citizens of the foreign country considered him as their enemy and looked at him with suspicion and suspicion.

Each country legislates according to its circumstances, requirements, interests and political policy in this field. Countries that accept immigrants inevitably have a wider range of rights granted to foreign nationals than countries that do not accept immigrants in terms of status and considerations. Because in order to attract and encourage people to emigrate, facilities must be provided. Countries can be divided into three categories in this regard.

- a. The first category of countries that unconditionally recognize the right to enjoy rights for foreigners, such as the United States and the United Kingdom.
- b. The second category are countries that have recognized these rights to foreigners on the condition of political reciprocity under a treaty.
- c. The third category are countries that legally grant these rights to those foreign nationals who, in practice or by law, their respective countries have recognized those rights as foreign. This system is easier because it does not require a diplomatic treaty and also balances the country that has accepted the system with other countries.

d - The fourth category are countries that generally consider foreign nationals to enjoy any rights, except rights that are deprived of foreign nationals by law or reserved for domestic nationals. Restrictions on the ownership of immovable property for foreign nationals in Austria under the Fourth of July 1924, in Romania under Article 7 of the Constitution of 1879, in Sweden under the law of 30 May 1916, in Turkey the law of 18 July 1867 and in Mexico under the law February 1, 1851 In Poland, under the law of March 24, 1920, foreigners are deprived of this right in Germany and some federal states, while in Japan foreigners can own real estate. The philosophy that governments, especially in the acquisition of immovable property, have required greater caution than for foreigners is that unconditional granting of this right may result in harm to the country and lead to the intervention of a foreign government in a country that violates this right. Foreign nationals have been given.

IV. ACQUISITION OF FOREIGN NATIONALS IN IRAN

One of the most important features of private law is the right of acquisition. The basis of the right of foreign nationals to own in Iran are the treaties between governments and the law governing such acquisitions and the law of Iran. (Articles 8 and 966 of the Civil Code):

4.1 Acquisition of foreign nationals residing permanently in Iran

Foreigners who have resided in Iran for a long time and are likely to engage in certain occupations may need to purchase a home or other real estate to do business. But according to Iranian law, foreigners face limitations in this regard. Preventing the influence of foreign nationals in the country and controlling the development of their economic activities in terms of buying real estate and the bitter experience of capitulation, has been the source of legislation in this regard that the law on foreign property Foreign nationals approved in June 1961, the regulation on the acquisition of foreign nationals approved in 1327, the approval on the acquisition of foreign nationals approved in October 1963 and the executive regulations of this decree are among the regulations related to this issue. Foreign nationals can also acquire property under treaties between governments. For example, according to the treaty concluded between Iran and Germany in 1307, German citizens can acquire real estate only for residence, occupation or industry, and in this regard, similar treaties between the Iranian government and Poland, Belgium and Sweden. , Egypt, Czechoslovakia and France.

As for the citizens of the government who do not have a treaty with the Iranians and intend to acquire non-cultivated property, provided that: 1- they have no criminal record and 2- their possession is not contrary to public order and the law and treaties of the Iranian government and 3 Have a permanent residence in Iran 4- They do not intend to invest in real estate and their intention is only to live or acquire, provided that the reciprocal treatment of their respective countries with Iranian citizens can acquire non-cultivated property in compliance with the above conditions. The law on the acquisition of foreign nationals does not allow foreigners to own indefinitely, stating that the purpose of ownership must be for residence, industry or place of business, and also because foreigners may acquire immovable property in Iran only for that purpose. The foreign applicant undertakes that if he / she wishes to transfer his / her permanent residence outside Iran, he / she must transfer the property requested for acquisition to one of the Iranian citizens or foreigners who have acquired the acquisition permit in accordance with the regulations within 6 months from the date of leaving Iran. Otherwise, the relevant registration office, with the permission of the General Registry Office, will sell the property through an auction and will pay the amount to the owner after deducting legal fees and charges (Nasiri, 2004, 282).

4.2. Acquisition of foreign nationals who have temporary residence in Iran

As mentioned, the limited possession of immovable property will be allowed only to foreigners residing in Iran. In 1963, in order to promote tourism, an alternative law was passed to allow the acquisition of immovable property (residential and commercial) to Persons who make regular trips to Iran for consecutive tours and pilgrimages for consecutive years may apply for residency with the approval of the Cabinet, provided that the price of the said transactions is transferred from the foreign exchange place transferred to the country by one of the authorized banks. To resign (Nasiri, 2004, 283).

V. CONDITIONS OF ACQUISITION OF FOREIGN NATIONALS IN IRAN (NATURAL PERSONS)

On August 16, 1949, a regulation was adopted regarding the acquisition of foreign nationals, according to the first article of which the acquisition of foreign nationals was possible only for residence, industry or business. The declaration that the applicant submits to the property registration office must explicitly state the meaning of ownership, and if he or his family members own another property in Iran, it must be explicitly stated in the declaration. According to Article 1 of the Aliens Acquisition Regulations adopted in 1949, foreign natural persons have the right to acquire foreign nationals in Iran to purchase property for their place of residence, industry or business. Also, according to the 1964 legal regulations, to those who do not have a permanent residence permit. And have regular seasonal trips to Iran in several consecutive years, for the purpose of tourism

and summer use, which is limited to the conditions specified in the bylaws and bylaws of the said law, the purchase of immovable property is allowed (Ibid., 62).

According to foreigners' depreciation regulations, a foreigner who wants to buy a property in Iran must obtain a permit from the Iranian government before entering into a transaction. The order of obtaining this permit is that he submits his request in this regard in a declaration containing the information provided in the by-laws, along with the necessary documents to the property registration office. (Article 1 of the By-Laws) This declaration shall be submitted to the Ministry of Foreign Affairs by the Registration Organization and its opinion on it. The Ministry of Foreign Affairs shall also express its opinion with the necessary investigations and, if necessary, inquire of the President. And after obtaining consent to his request, he is allowed to make a transaction (Article 4 of the regulations).

VI. SUMMARY AND CONCLUSION

Ever since borders emerged, what has been and is most important to governments has been the preservation of geographical boundaries. Acquisition of immovable property is one of the topics of discussion in the field of private international law. Countries have adopted different approaches in this regard. Although according to the standards, the right of ownership is a legitimate right and all persons, whether natural or legal, should have the right to property, this is not an absolute right. In Iranian law, expropriation of foreigners is provided as a guarantee for the implementation of citizenship acquisition laws.

This article examines the acquisition of immovable property by foreign nationals and non-Iranians who want to invest in Iran can do so with full knowledge and security under the existing laws.

REFERENCE

- [1]. Approved by the Cabinet in 2000 (Islamic Republic of Iran)
- [2]. Regulations on the acquisition of foreign real estate in Iran, 1949
- [3]. Executive regulations on the acquisition of foreign real estate in Iran, approved in October 1963
- [4]. Executive regulations on the acquisition of foreign real estate in Iran, approved in 1966
- [5]. Regulations on how to acquire real estate by foreign nationals residing in the Islamic Republic of Iran, approved in 1995
- [6]. Regulations of the Law on Notaries Articles 42 and 45 (Islamic Republic of Iran)
- [7]. Arfania, Behshid, 1991, Private International Law, Tehran Publications.
- [8]. Almasi, Jahangir, 2010, Private International Law, University of Tehran Press.
- [9]. Emami, Seyed Hassan, 1998, Civil Law, Volume One, Nineteenth Edition, Tehran, Islamic Bookstore Publications.
- [10]. Anniversary of the Droit International Institute, 47. (1965)
- [11]. Award in the Arbitration case between the Government of the United States of America and the Government of his Majesty the King of Egypt Concerning the, 1990, Claim of George J.Salem, Reports of International Arbitral Awards (R.I.A.A) Vol. II, United Nations, 1974, p. 1188. See also: Professor Ian Brownlie, The Principles of Public International Law, 4th, Ed., P. 400.