

Registration of Land Rights- the Importance of the Surveyor and the Advantages to the Economy

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Key words: Israel land Administration, land registry, leasers, surveyor, Cadastre

SUMMARY

93% of the land in Israel is in the public domain.

The Israel Land Administration (ILA) is the government agency responsible for managing this land, which comprises 4,820,500 acres (19,508,000 dunams). "Ownership" of real estate in Israel usually means leasing rights from the ILA for 49 or 98 years.

In the first years after the establishment of the state, with the large waves of immigrants, the accelerated building took place usually without proper planning and registration procedures. This fact had created a situation in which the rights of the housing units, which were built, were not registered in the leasers' names

This situation had affected the economy of the state and the safety of the individual. Securities of the banks, limited mortgages, contradictory transactions etc' have brought restrictions in the mortgages market and a barrier was set in the construction field.

On 1991, the government of Israel has decided that the ILA shall be accountable for the registration by the leasers of the new construction which took place from 1990 and on.

On 1997, the government has received another decision in the framework of its discussions regarding structural changes and the efficiency of the public sector.

The government decisions come to accelerate the registering of the leases rights.

The cadastre system in Israel is based on Torrens registration principles, established by the British mandate on Palestine in 1920. In this system, rights to land are registered on the basis of maps made, after the completion of exact field measurements, by licensed surveyors.

The first stage is the creation of the Cadastre basis for the registration of rights, namely mutation plan, and the surveyor is accountable for this process

In the government, recommendations were Classification of surveyors, their proficiency, their training, and the accountability of the surveyor

Registering the rights in the Land Registry Bureau is great tool for the economy and A security for the leasers.

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1: BACKGROUND

93% of the territory of Israel is state owned lands. These lands are managed by the Israel Land Administration (ILA), the organ of the state, which is accountable for planning, developing, managing and marketing of the lands. ILA leases these lands through a lease contract for 49 years or 99 years, with an option for prolongation of that period. The land policy by which the ILA is managed, is set by the Israel Lands Council, which acts usually in accordance with the government decisions. ILA also manages its lands through housing companies, management companies and development companies. On 1991 the government of Israel has decided that the ILA shall be accountable for the registration by the leasers of the new construction which took place from 1990 and on. Yet, it should be noted that there were some hundreds thousands of leasers in the state whose rights were not registered till that date, and the state had to deal with this issue as well.

In the first years after the establishment of the state, with the large waves of immigrants, the accelerated building took place usually without proper planning and registration procedures. This fact had created a situation in which the rights of the housing units which were built, were not registered in the leasers' names. Yet, as time went by, the focus on the state was on the planning, developing and marketing of the lands for the development of the state, again, at the expense of the registration.

As was noted hereinabove, the issue of the registration with its great significance was brought up to the top priorities list on 1991. It should be mentioned that the cadastre system in Israel is based on Torrens registration principles, established by the British mandate on Palestine in 1920. In this system, rights to land are registered on the basis of maps made, after the completion of exact field measurements, by licensed surveyors. The state guarantees the boundaries and the area of the land parcels. According to the Land Law in Israel a land transaction requires registration and it is finished only after registration.

2. THE REGISTRATION STAGES

The registration in the cadastre records includes three main stages:

- a. Mutation plan preparations by surveyors and its registration in the Land Registry Bureau.
- b. Preparing the orders, the plans and the codex of the condominiums.
- c. Registration of the leasers in the Land Registry Bureau – examining the leasing agreements which were signed by the inhabitants, preparing the leasing bills and the mortgage bills which are required for the registration in the Land Registry Bureau.

The stages are related to one another and any impediment of one of them causes the impediment of the next stage.

3. THE STATUS OF THE LANDS REGISTRATION AS A CATALYST OF THE GOVERNMENT DECISIONS

As was stated hereinabove, on the eve of the government decision there were about 500,000 housing units in the state, which were not registered in the Land Registry Bureau. This number constitutes half of the housing units in the state.

This situation had affected the economy of the state and the safety of the individual. Securities of the banks, limited mortgages, contradictory transactions etc' have brought restrictions in the mortgages market and a barrier was set in the construction field.

Contractors, entrepreneurs and leasers were required to give guarantees because the rights and the land were not registered in the Land Registry Bureau, the frameworks of the transactions were not defined and legal conflicts were caused. Instead of a proper registration of the transactions in a designated place – the Land Registry Bureau, the registration took place at the ILA, which became a kind of a Land Registry Bureau. It should be noted in this regard that the ILA is not prepared to managing the registration since the law did not grant it the required protection for a proper and binding management. The management of the registration in the ILA, with its bureaucratic system, caused many difficulties and dissatisfaction in the economy, including in all the government offices related to the construction field, the contractors, the leasers etc'. Real estate transactions were delayed in the bureaucracy pipes, the value of the lands was estimated as being lower than its real worth, and the ILA invested great efforts in managing the leasers, instead of managing the land of Israel.

On 1997 the government has received another decision in the framework of its discussions regarding structural changes and the efficiency of the public sector. The government has decided on appointing an inter-office committee which shall examine and recommend ways of insuring the registration of the land rights in regard to the housing unit, on the date of its population and accelerating the registration of the housing units which were built in the past. The committee included representatives of the Israel Land Administration, the Survey of Israel, the Ministry of Construction and Housing, the Ministry of Interior, the Justice Department and the Ministry of Finance which its representative served as the chairman of the committee. A report of the committee was handed out to the government on 1988 and was adopted by it.

4. THE MAIN RECOMMENDATIONS

- a. Prolongation of the Registration of Public Housing Law – a law which helps to verify the plans for the purpose of registration (their suitability to urban plan) as well as for registration in the Land Registry Bureau.
- b. Assimilation of the surveying and registration process as part of the planning process.

- c. Setting the conditions for assuring the registration of the leasers rights by the construction companies and their delegates, in regard to past and future construction.
- d. Classification of surveyors, their proficiency, their training, the accountability of the surveyor.
- e. Alteration of the working system of national factors which deal with registration, and their focus on the review of the process and handling exceptional cases.
- f. Increasing the professional knowledge level of those who deal with land registration (surveyors, lawyers, etc') and detailed reference to the surveyor's work.
- g. Implementation of the recommendations and the budget costs which are involved in the implementation of the recommendations.

Some of the committees' recommendations required the alteration of the laws and regulations, an alteration that shall lead to an increase in registration.

The recommendations of the committee also forced the governmental bodies to work in co-operation and thus another recommendation was to continue the work of the inter-office committee, so that it can follow up and synchronize the governmental bodies as well as help them to implement the recommendations. Furthermore, the committee recommended to the government to restrict the charges collected from the leasers by the housing companies and the lawyers.

Pursuant the report of the committee, the Ministry of Finance decided to budget and to add personnel to the relevant governmental offices, in order to support and implement the recommendations.

5. THE SIGNIFICANCE OF THE SURVEYOR AND HIS POSITION IN THE PROCESS

As we have seen, the registration is composed of three stages. The first stage is the creation of the Cadastre basis for the registration of rights, namely mutation plan preparations, and the surveyor is accountable for this process.

Till the beginning of the 21st century, the mutation plan preparations process lasted about three and a half years, on the average, due to bureaucratic factors, undeveloped technology and unclear job description of the surveyor's job and his hiring by the governmental bodies.

The committee emphasized the significance of the professionalism of the surveyor, the timetable, the clear definition of what should be included in the maps for registration, as well as for classification of the surveyors.

It should be noted that the mutation plan preparations is a process which is composed of several stages, until its verification by the Survey of Israel as "fit for registration".

In the first stage – the surveying of the existing condition of the land and division of the land according to the valid urban plan.

In the second stage – the verification of the division by the Local Committee (the Local Committee is the statutory body which is qualified to decide whether the mutation plan fits the urban plan or not).

In the third stage – submitting the to the Survey of Israel for verification.

In the fourth stage – the registration of the mutation plan in the Land Registry Bureau.

It is needless to mention that each stage lasts a long time and in between the stages, modifications, delays and changes usually take place.

The surveyor is accountable for the three first stages, but also for the fourth stage which is handled usually by a lawyer or a registration expert. It was proved that using the services of a qualified surveyor at this stage, accelerates the registration and makes it more efficient.

6. IMPLEMENTATION OF THE RECOMMENDATIONS OF THE COMMITTEE

- a. The professionalism of the surveyors – courses in relevant laws (the courses were organized by the Israeli association of licensed surveyors').
- b. The updating of the surveying regulations so that the surveying shall include the required details for the purpose of registration and the submission mode.
- c. Acceleration of the inspection and verification of the mutation plan preparations by the surveyors – the Survey of Israel has granted authorities for a small number of surveyors to inspect and recommend to it the verification of mutation plan as fit for registration. This step is a revolution in the inspection realm and it shortens significantly the process of verification of the plan.
- d. The ILA and the Ministry of Construction and Housing have defined procedures and schedules for the surveyors' work and for the integration of the registration process in the planning process. The ILA has defined the tasks of the surveyor in the process from the planning till the registration.

These processes are meant to integrate the surveyor in the process, from the moment of planning and to make sure that throughout the planning process, the surveyor is accountable to the surveying and registration aspect of the urban plan. Thus for instance, already in the first stages the surveyor examines the ownerships, whether the land can be registered or not, etc' and in co-operation with the planner, shapes the best solution that shall enable to verify the plan and to register it. This working method shall bring the mutation plan preparations for registration in about six months from the moment of verification of the urban plan.
- e. The ILA has established a data base which includes all the sites in which mutation plan takes place or is about to take place, and with the help of Geographic Information Systems, has prepared a plan for five years which should minimize the amount of unregistered housing units.
- f. Instruction plan for the local committees was prepared so that they shall be able to professionalize in surveying and registration issues, in order to shorten the verification time of the plans in the committees.

- g. A software was programmed to enable every surveyor who begins a mutation plan project to enter the system and receive a code. The code can be used by him until the registration of the plan. This software enables the governmental bodies and the ILA to be aware of every mutation plan site, the plan status, as well as every relevant detail.
- h. The technological advances (GPS, permanence stations, laser scanners, distomat laser) have brought about a faster and more accurate field surveying.
- i. Updating and upgrading of the control net (a new Israeli net) have contributed to the surveying accuracy and the tangents between plans and mutual borders.

7. THE PREPARATIONS IN ILA

On 1991 pursuant the government decision in the matter, the ILA has established the Center for Urban Registration, a unit of the ILA which takes care of follow up, management and mutation plan preparations in the ILA. On 1996 the ILA had began to employ two external companies that had to support and accelerate the registration of the rights of the leasers. These companies take care of condominiums, initiate mutation plan preparations, gather information for the database of the Administration, and do everything to further the registration of rights. In addition, the ILA is prepared for controlling and following the housing companies and the contractor companies. Furthermore, the ILA had initiated the prolongation of the Public Housing Temporary Order and its transformation to a Law – such law shall facilitate the verification of the plans for registration (in accordance with the planning plan) as well as for registration in the Land Registry Bureau.

8. INTERACTIVE PLAN – THE FIVE YEARS PLAN

The database which was created by the ILA and which constituted the basis for the work of the inter-office committee, modeled all the built and populated territories which were not registered in the Land Registry Bureau. In a survey which took place toward 2004 and which preceded the Five Years Plan, it was revealed that the unregistered housing units on state lands were about 400,000 units.

The Registration has defined annual operative goals in order to put an end to the lagging until the end of 2008. These goals were coordinated with all the bodies of the committee and the plan was accepted and adopted by the committee and submitted to the inter-office committee. In the first stages most of the efforts were invested in mutation plan preparations and registration, since it became evident that a land with 150,000 units was not parceled and since it was obvious that it was not possible to continue registering the units on that land as condominiums and the rights at the name of the leasers.

These efforts were fruitful and today only about 60,000 units are left to be parceled. Yet, toward the middle of 2007 it became evident that a significant push is still needed for the stages of registration of condominiums and rights registration. It is worth noting that the issue of changing the cadastre by mutation plan is under the control of the state, while the other two

stages (registration of condominiums and rights registration) are under the control of the contractors.

Therefore, it was decided to prolong the period of rights registration until the middle of 2012.

9. REGISTRATION

9.1 The Post-Registration Stages

After registration of the mutation plan in the Land Registry Bureau, so that each parcel is carefully defined, the ownership is registered at this stage as the state ownership. This stage constitutes the first layer for the completion of the process.

9.2 The Second Stage

- a. Saturated building (includes at least 4 housing units) – preparing an order and a draft of the condominium which specifies the area of each apartment, as well as its attached areas, and registration of the building in the Land Registry Bureau. Enclosed to the order is a draft made by a surveyor.
- b. Low building – a direct registration of the rights in the Land Registry Bureau.

9.3 Actions Taken by the ILA in Order to Further the Registration of the Condominiums

It became obvious that after the mutation plan, which is the process which lasts the longest period of time, there is a delay in the preparation of the condominiums and in fact, in some of the cases, there is repudiation by those accountable for the registration. At this stage, the accountability for the preparation of the condominiums is of contractors and entrepreneurs who won the tenders of the ILA.

The ILA had filed law suits against contractors who were delayed in the registration of the condominiums, and won almost all of them.

The ILA had complained to the Contractors' Registrar, which excluded some of the contractors from the contractors' notebook.

The state seized guarantees given to it by the contractors. It also prevented contractors who detain registration from participating in tenders of the ILA, or demand that they should give a high bank guarantee for insuring the registration.

These actions started to affect the markets and many contractors began to accelerate the performance of their obligations to the ILA.

9.4 The Third Stage - Registration of the Leasers' Rights in the Land Registry Bureau

This stage is dependant upon the contractors as well as the leasers themselves. In regard to the contractors, after the registration of the condominium, a follow up of the contractors takes place and they bring about the rights registration. In regard to the leasers, the ILA puts great efforts, including publications, to convince the leasers to come and register in the Land Registry Bureau.

The ILA prevents these leasers from receiving services, until the registration of their rights. In addition to all that, it should be noted that when trying to diminish the friction between the state and the citizens, and in order to avoid unnecessary bureaucracy, in sites where mutation plan was registered on land which was not built on, the transactions and the tenders of the ILA are direct and oblige the winners to register their rights immediately at the Land Registry Bureau, as leasers or owners, in accordance with the transaction or the tender

10. CONCLUSION

During the last three years, pursuant the enhanced activity of surveying and registration of real estate, the total number of the not registered housing units was reduced and it stands nowadays of about 250,000 housing units. Moreover, the amount of mutation plan, which was registered, increases the chance for completing the rights registration plan on time. Nowadays the ILA acts to market the owned or leased grounds, while they have already been parceled and registered at the Land Registry Bureau.

One of the main goals of the ILA is to market the registered lands so that the ILA shall not deal with the management of those lands and they shall be managed by the entrepreneurs in accordance with the market forces. Moreover, the ILA had adopted lately a new policy of allocation of lands in direct ownership. Such actions diminish the friction between the ILA and the citizens and the citizens are able to act in accordance with the market forces without the need to use the ILA services. The burden and the friction decrease, real estate transactions in the market take place rapidly, the lands are traded in their full value and the market forces are those which affect the price.

The registration of the rights at the leasers' name turns their contractual rights (toward the state) to ownership rights toward the world, which obviously raises the value of the rights significantly and gives them a better protection than before. In addition, it should be noted that after the ILA departed from the lands which were marketed and registered in the Land Registry Bureau – lands which actually had fulfilled their potential – it can concentrate on the main goal, namely - land administration.

BIOGRAPHICAL NOTES

Advocate Moshe Gilai, born in 1944, graduated in 1969 as Advocate-in law from the Hebrew University of Jerusalem.

1965 working in private firm in land issue's.

Since 1972 vice senior legal advisor in the head office of Israel land administration

Since 1999 senior head department of registering ownership and exchange property
In Israel land administration.

Yoav Coller born in 1968, a licensed surveyor (since 1997) and a registered professional engineer

(Since 1996). Graduated from Geodetic Engineering division of Technion – Israel Institute of Technology. Worked in a private firm as a surveyor (1996-1998). Head of Mapping division in Israel Land Administration (1998-2005). Head of mapping and Registration division in Israel Land Administration (since 2005). Head of mapping registration and surveying department in Israel Land Administration (since 2007).

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