

A legal Analysis on Real Estate Valuation in Ethiopia via Land Policy: Government Properties in Concern

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Introduction:

Property valuation is a daunting business in Ethiopia while it is one of the most cherished and lucrative business in any nation with well-performing economy. It is a formidable challenge in Ethiopia owing to lack of properly developed land market, among others. Hence, proper valuation of, for instance, a given real estate's market worth (market value) could be quite perplexing. Since, there is no developed market for the land on which such properties are established or developed; the valuation would not be as complete and as convenient. The market problem arises owing to the land policy pursued for the last four decades since it was first proclaimed in 1975.¹

In Ethiopia, land and all natural resources are owned by the government and the people of Ethiopia.² What is counted as a '*private property interest in land*' is thus a land use right; be it , in terms of usufructory rights (use rights alone) ³ or lease rights⁴. As such, the market price of a given piece of land under urban municipality could be calculated from the prevailing lease price or can be deduced from the government valuation processes while compensating properties *expropriated by the order of a government*'.⁵ Yet again, all landholding under urban land tenure is not yet under lease system.

There are three different holdings: these are lease holding, permit holdings and informal land holdings. Thus, valuation of properties under the permit system, among others, is not an easy

¹ Under the Civil code of Ethiopia, article 1126 and following; land is a private property and land market was booming (even encouraging FDI by then) although short lived owing to the revolution that took place in 1974 which brought the downfall of the last emperor of Ethiopia. Yet again, proclamation 31/75 proclaimed public ownership of land and not only prohibited private ownership of land but also b transfer of land rights in any form except inheritance.

² Article 40 of the FDRE Constitution, the constitutional edicts sanction public ownership of land and prohibits also transfer though a bit relaxed in its subsidiary proclamations than its predecessor proc. 31/75.

³ Article 40 (3) FDRE constitution cumulative Article 8 of the rural Land administration and Use Proclamation, 456/2005

⁴ See in general land lease proclamation 721/2011 which amended the 2002 lease proclamation

⁵ See in general *Expropriation* of land holdings for Public Purpose 455/2005: Expropriation is a sovereign right of state based on justified ground: these are that the expropriation must be for public purpose and upon paying proper compensation:

venture. The reality on the ground is that a significant number of properties (both private and government owned) are still held under the permit system of the *derg* era; which makes valuation a challenging business. Again, the reality on the ground is most valuation are being taken on market value basis which the current lease system has brought around.

Framing the Issue for legal analysis:

The issue of valuing property under government possession (more so any private property under permit system) is quite as difficult since these properties are inherited from the *derg* regime which in turn, were either confiscated from the imperial regime or newly constructed by it. The current government inherited such properties worth billions of birr (for instance properties under Federal Housing Corporation (FHC)) and again many private property owners are not only in legal limbo but also insecure to transact with it.

The current challenge emanated with regard to the Federal Housing Corporation's demand and that it has commissioned a private consultant firm to value its properties under its possession. The FHC owns 18,900 real estates in Addis Ababa and *Diredawa* and has commissioned the consultant to value such property so the corporation would know the real market worth of the properties under its possession.⁶ But also, many private property owners wanted to have their property valued against the current prevailing market value so they would appreciate the market-worth of their property and transact with it.

The many property valuation experts/ consultants and government established committee for the same end routinely value real properties using market value of the real estates and has given considerable share in the valuation processes to the land rights on which such properties are based. Thus, what is the legal base for using market value which also includes land value?

The main rule for the assessment of compensation (and valuation) for the property expropriated is the market value (Denyer-Green, 1998; Kalbro, 2001). In the appraisal theory, market value can be established by using three methods of valuation. These are cost approach, sales comparison approach and income capitalization approach. The valutors, in Ethiopia as well, routinely use the cost approach valuation method. It is mostly used where the assets are

⁶ Establishment regulation Federal Housing Corporation (FHC) 398/2017: the establishment function of the FHC, among others are to sell, rent out, renovate etc. and value government owned houses and properties.

“special,” i.e. those that do not produce incomes and they have very little or no sales comparable, such as churches, public schools, historical buildings, mosques, water treatment plants, etc. Like other methods, cost approach is also used in compulsory purchase in determining values that could be used in compensation payment, both as the main method in determining the values and also as supporting method, depending on the circumstances of each case.⁷ The valuation system is quite suitable in Ethiopia for lack of properly developed land market and hence the difficulty of precisely reaching at the market worth of a given property.

Likewise, the real estate properties of the FHC and many other private properties are established largely in the era of ex-government on a land given or so acquired under permit system. The current urban land governance is under lease system. Yet again, the property appreciation is done using the current land value; which is more on the bases of the lease price of the land on which such properties are situated.

Thus, the core of the matter for this legal analysis is that; will there be a justification for the valuation done (and to be done in the future) based on the prevailing market value or could the valuator/committee justify their work under the prevailing legal system. In other words, will there be a room for lease price quote and value such a property which is held under government ownership/private and that the landholding per se is not under lease system.

Thus, herein under are the essence of the current land governance with respect to lease policy and urban land governance thereby the legal base for valuation work in Ethiopia.

Essence of land governance in Ethiopia:

The embodiment of the land governance in general and urban land governance in particular has been provided under the FDRE constitution. The constitution not only that it has provided for the overarching policy line but also defined what amounts to ‘*private property*’. The definition excludes land and that land cannot be owned privately and that it cannot be also transferred in any way unless provided by the law otherwise.

⁷ Belachew Yirsaw Alemu, (2013) "Expropriation, valuation and compensation practice in Ethiopia: The case of Bahir Dar city and surrounding", Property Management, Vol. 31 Issue: 2, pp.132-158,

Yet gain, the constitution provides for compensation of property interest in land; i.e. compensation is for development brought using land or buildings on the land alone. For these properties excluding the land per se, when expropriated by the state, commensurate/proper compensation is to be provided. Now the question is what amounts to commensurate amount and whether such amount also includes the worth of the land per se.

The answer to these query is quite tricky and subtle. The demystified approach to accomplish land valuation is that land belongs to the state and that the state is not to compensate anything for its own property yet private properties on the land could be compensated as per the definition of private property so given by the constitution.⁸ But, this is an over simplification of the matters and that the state compensates land use rights albeit insufficiently.

However, with regard to urban land; the lease system has brought the positive features of land market to urban land. Hence, urban land can be valued via the competitive lease price⁹ and that the lease price is determined having regard to the location of the land as such.

Hence, in the matter at hand, the valuator/committee often used lease system to value the land which is not a strange concept to Ethiopian land governance. However, the properties of the FHC (and many other private properties) are held under the ex- permit system which requires further clarification on the matter and it demands a bit of required procedural work to get to the lease system. The assignment is rather for the property owners who wish to transact with their property (or so demand to know the market worth of their property in general) than for the consultant. Hence, the consultant is well advised to advise the corporation to accomplish the following and put legal base for its establishment purpose.

Ways forward for the FHC

First as it stand now, urban land can only be held under lease system and all other forms of holdings are outlawed.¹⁰ For those holding which is given under the ex-system; the rule of conversion is what works.¹¹ The land holders are demanded as per the lease proclamation to convert the permit system to lease holding to their first convenience. Thus, complying with the

⁸ Article 40 of the FDRE Constitution,

⁹ See in general land lease proclamation 721/2011;

¹⁰ See in general land lease proclamation 721/2011 which amended the 2002 lease proclamation

¹¹ Ibid, the law provides for conversion rules, all holding need to be converted to lease system.

demand of the new law which puts their land holding under the lease system. Of course, what is dreaded here is what the government might quote as a lease price in the lease contract; yet again it is open for negotiation, especially for government owned properties.¹² After all lease is a contract and contract is up to the agreement of the contract parties.

Hence, given the intention of the FHC and its legal mandates that it meant business with these properties; it is well advised to convert the holding to lease system at its earlier convenience and negotiate for floor/ minimum lease price. Even if, it fails to do so the concerned organ will come in due time to implement the law in action.

Second, whenever transaction happens, especially upon transfer of the real estates by the sell or otherwise; conversion is automatic except in the cases of inheritance which the government/FHC should not be bothered except in matters of liquidation which is a remote concern to the case at hand.

Thus, the valuation being done using the lease value of the land on which these real estates situated is quite acceptable and in fact in line with the intention of the new lease proclamation and attached regulations.

¹² See, Establishment regulation FHC 398/2017.