



Journal of Environmental Studies

Vol. 46, No. 1, Spring 2020

Journal Homepage: www.Jes.ut.ac.ir

Print ISSN: 1025-8620 Online ISSN 2345-6922

Environmental Study of “Village” and its Effects to Judging about the Rural Land Use Change (Case Study: Ranching in Environment of a Village in Unification Judgment No 760 of Supreme Court)

Document Type
Research Paper

Received
June 11, 2019

Accepted
June 1, 2019

Hassan Mohseni

Department of Private and Islamic Law, Faculty of Law and Political Sciences,
University of Tehran, Tehran, Iran

DOI: [10.22059/JES.2020.303141.1008019](https://doi.org/10.22059/JES.2020.303141.1008019)

Expanded Abstract

Introduction

Village is the principal subdivision of territory. In Law of Territory, it is accepted that a small society in villages contributes to create a city and cities to big city and so for to province and capital and country. This meaning is not vide from its philosophical dimension. What is the reality of village that necessitate to have such a deep role in our territorial subdivision?

It is rarely discussed in law and rarely is a challenge in its dimension. The reality is that the works are done in village is completely different from what is doing in a city and or in bigger cities. The question is that if the notion of work and the example of land use in villages should be compatible by that reality of village? First, approach in confronting to village and farms and gardens could be that approach which is currently accepted in private law and property law. The man who is the owner of a land or garden has the ownership on it so he can do anything he will on his land or his garden. There is not any restriction. This approach can create a kind of concurrence between village and city to being a city in future by predicable defeat of village in that unfair competition.

Another approach is that there should be some administrative definition of land using in village and so, controlling that using legally. Also, this approach can kill the reality of village. In the other word, by changing the people's views in every village, the village will simply be changed to other smaller or larger community.

So, it is clear that our questions in this research are that what is the village? What is its reality? What is its importance to keep the village for ever to being always village and how can prevent the works that are inconsistent to the reality and philosophy of village?

After the issuance of two conflicting judgments from the Fifth Branch of the Qazvin Province Court of Appeals and the First Branch of that province, that first of which was issued as follows:

“According to Paragraph 4 of Article 1 of the Law Amending the Law on Preservation of Agricultural Lands and Gardens (1979 October 23) and that according to this Paragraph, the change of agricultural lands to animal husbandry is in fact considered to optimize agricultural products and is not subject to change of prohibited land use. Therefore, considering that the action by the accused is not considered a crime according to the legal license, while accepting the retrial and rejecting of the above-mentioned judgments issued by the First Branch of the Court of Appeal of Qazvin Province and the General Court of Esferurin City in this regard, according to paragraph A of the article 177 of the Code of Criminal Procedure and bans the prosecution of the accused.”

The judgment is final and the second sentence reads as follows:

“Considering the legislator's stipulation in Article 1 of the Amendment Law on the Protection of Land Use and Agricultural Lands Law approved in 2006 and the following note of that Article, any change of land use without obtaining permission from the competent legal authorities is subject to the general prohibition which is mentioned in the law, so by accepting the Appeal Request and the rejecting of the judgment of first instance court in accordance with paragraph B of Article 450 of the Code of Criminal Procedure approved in 2013, the case will be returned to the first instance court for merits.”

The judgment is final. The Supreme Court notified about the conflict of judgments of the branches of the courts of appeal of Qazvin province, so that the General Assembly of that court can propose a Unification Judgment so on.

The General Assembly of the Supreme Court, after consulting, voted as follows:

“According to the interference from Note 4, added to the Article 1 of the Law on Preservation of Agricultural Lands and Gardens, establishment of Ranching in village and other examples mentioned in that with the Permission of Agricultural Organizations and by respecting the regulations and standards, is not change of land use of farms and gardens, and is a sort of optimizing the agricultural production and it is not change of Land Use and finally it is out of the scope of Article 3 of the amendment to the said law Accordingly, the decision of the Fifth Branch of the Court of Appeals of Qazvin Province, insofar as it is consistent with this opinion, is recognized by a majority of The General Assembly of the Supreme Court, as correct and legal judgment. According to Article 471 of the Code of Criminal Procedure, this judgment is binding on the branches of the Supreme Court and the courts and other authorities, both judicial and otherwise”.

According to author's opinion this Unification Judgment is not merely a judgment; it is a judgment which rooted to the philosophical fundamentals of the notion of Village. We will discuss about it.

Materials & Methods

According to Article 471 of Code of Criminal Procedure:

“Whenever different Judgments are issued by different branches of the Supreme Court or the courts on different cases, including legal, criminal and non-contentious matters, with different inferences from the laws, the President of the Supreme Court or the Attorney General shall be informed in any way. They are obliged to request the opinion of the General Assembly of the Supreme Court in order to create unification of law. Any judge of the branches of the Supreme Court or the courts or prosecutors or attorneys may also request the opinion of the General Assembly which would be issued as binding judgment on the matter by stating the reason through the President of the Supreme Court or the Attorney General. The General Assembly of the Supreme Court shall be chaired by the President of the Supreme Court or his Deputy and in the presence of the Attorney General or his representative and at least three-quarters of the Presidents, Advisors and Deputy Members of all branches. A majority judgment in similar cases is binding for the branches of the Supreme Court and the courts and other authorities, both judicial and otherwise; But it is ineffective against the final judgments....”

So, in Iranian legal system, this judgment is very important and can develop our legal system by choosing a very practical interpretation of enacted law that have interfered differently by courts. Our Supreme Court as Iranian Higher Court of Justice by its Unification Judgment which is obligatory to all judicial courts and administrative authorities and bodies of our country, can guide our judicial system. The Union Board of Branches of Our Supreme Court have rend some judgments about “Land Use of

Farms and Gardens” (such as Judgments No 707, 724 & 730). This unification power is a hugely accepted as a way for unification of law.

In addition of those judgments, one of philosophical judgments of our supreme court is the judgment No 760 that is issued in 11/07/2017. Our supreme court in this judgment have said:

“Establishment of Ranching in village by respecting the regulations and standards is not change of land use of farms and gardens.”

This judgment apparently is about Land Use but in my opinion this judgment regards deeply to the philosophy of village; the philosophy that is rooted in other sciences. So, our material in this paper is the judgment No 760 of Iranian Supreme Court and our method is based on critics and survey on this judgment by application of the results of other sciences to that judgment; We bring this judgment before an Environmental Scientist or City or Village Programing Scientists. Our perspective is having mutual comprehension between Lawyers and Environmental Scientists.

Discussion of Results

In this research, we have discussed about our Supreme Court Unification Judgment and its Introductory Official Report as such as Our General Prosecutor’s Opinion. We endeavored here to clarify the roots and foundation of that great judgment for protecting the notion of village.

In author’s thought, the mentioned judgement of our Supreme Court could be seen as first step for confronting by village in philosophical studies and can guide our future jurisprudence before lower tribunals and courts which are continuously battling every day by that unfair changing of the Use of Land as a Modern Pest of Farms and Gardens. We discussed here that the land use is predominately a matter of philosophy and we should change our views for the remedy of unfair changing. We cannot close our eyes to economic and social included cultural aspects of changing the land use. It is not only a matter of law of property or the law of territorial division, but also it is a matter of economic and social and cultural notion. So, a lawyer and a professor of law cannot realize the reality of land use and changing of that land to other beneficial using unless he observes that roots and foundations before other scientists.

It seems that the remedy and the approach and the essence of discussion should be based on the reality of village and not on the subdivision in Law of Territory of Law of Property. It should be real and natural and not be an artificial conception. This reality is found its foundation inherently in nature; the foundation that can prevent any forced and inconsistent invention of human kind in village. The law shall defend this reality; it ought to open its eyes for seeing, prevent any offensive attack to the village and protect its philosophical notion.

The judgment No 760 will be the beginning but the base stone of every development in a country that has suffered greatly from the change in the use of agricultural land and gardens, and there will always be the growth of urbanization and then the creep of urbanization towards the village.

By this study as an example of judicial feedback on their ideas, environmental scientists can be seen the result of their efforts and could be optimistic about the growth of philosophical reflections in the field of environment generally and in the notion of village. In other similar cases, they can think about basic ideas so that jurists, lawyers, and judges can understand the reality of the judicial phenomena from these environmental perspectives, and thus would take a more effective step toward protecting land use and the concept of village.

The Supreme Court has taken a step that is different from other judgments. The Supreme Court has turned its attention to alignment and has taken the middle approach which is philosophical one.

Conclusions

The definition of “land use” aimed for long or short term program of its utilization. Alongside of this definition that needs some civil or penal rules to sanctioning, the philosophy and the nature of some phenomena can also defining a kind of land use which should be called Natural Land Using. Village is one of these phenomena. What can define the land using in village, is the natural coexistence with the nature of village. This is the perspective to seeing the village which is known in environmental studies and city or village programing sciences but is not current in legal problem and law. The focus of law in

this matter is merely on sanctions. Not with standing that mentioned focus, we should observe the judicial discourse clearly so when our Supreme Court holding Unification Judgment No 760, that says establishing a ranching in village according the regulations and standards, in author's opinion is not change of land use, that judgment should not be regarded as a judicial approach. It is a philosophical perspective which is principally and methodologically an instructive and guiding judgment.

The reality of village is not the only thing that the legislature has considered it as a main or basis measure for the division of the country. It is not artificial. It's environmental and real. This fact is based on coexistence with nature, which prevents it from invading and destruction or denaturation. The law must defend this fact; He shall open his eyes to see it; Avoid attacking it and uphold it.

The fact is that in our country less attention is paid to the philosophy of the village. The village has become a case of return to nature by those who do not want the nature to coexisting phenomena; In order to have it, they want to make up and recuperation for the shortcomings and disadvantages of living in the city, and because they come to the village, they change the culture and civilization there, creating a kind of competition for the villagers in the face of the coverage, dialect, behavior and character of the town's people and the result is definite changing of rural lands to others. The tragedy of village's death and the acquisition and ownership of these lands and the change of its identity is the result of non-respecting to that philosophical basic.

There are many villages that have become uninhabited and there are many agricultural lands and gardens that have been changed with the change of use. These changes are not in favor of the truth of the village, nor are they in favor of the truth of the city.

In the unanimous Judgment No. 760, the Supreme Court apparently decided to resolve the dispute between the courts and considered the accurate judgment and tried to unify the procedure and the decisions of lower courts; but, in the opinion of the author, due to the legal approvals and legislative records, he considered: "Establishment of Ranching in village by respecting the regulations and standards is not change of land use of farms and gardens." This philosophical attitude of the Supreme Court is very valuable and can be a guide for solving other judicial challenges in the field of Environmental Law.

Keywords: Coexistence, Harmonized change, Village