

PROTECTION OF INDIVIDUAL PROPERTY IN DUBAI REAL ESTATE EXPROPRIATION LAW OF 2022 IN LIGHT OF NARROWING THE CONCEPT OF PUBLIC BENEFIT

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Article history:

Submission date: 11 Oct 2023
Received in revised form: 2 January 2024
Acceptance date: 11 June 2024
Available online: 31 August 2024

Keywords:

Protection, individual property, expropriation, public benefit, Dubai

Funding:

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Competing interest:

The author(s) have declared that no competing interests exist.

Cite as:

Agaileh, Z. (2024). Protection of individual property in the Emirate of Dubai real estate expropriation law no. (2) of 2022 in light of narrowing the concept of public benefit. *Malaysian Journal of Syariah and Law*, 12(2), 388-404.
<https://doi.org/10.33102/mjssl.vol12no2.553>



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ABSTRACT

In light of the rapid urban and cultural renaissance in Dubai and the need to expropriate real estate owned by individuals, this paper discusses the protection of individual property in the Emirate of Dubai Real Estate Expropriation Law of 2022. It has sought to examine and investigate the process of expropriation of individual property under the Emirate of Dubai Expropriation Law No. (2) of 2022 and to show that the Dubai legislature has narrowed the concept of public benefit and defined the conditions and mechanism of expropriation, the body responsible for issuing expropriation decisions, and what procedures should be followed. This study is of great importance as it shows that property rights are protected under the UAE Federal Constitution of 1971 and the Emirate of Dubai Real Estate Expropriation Law of 2022. It contributes to illuminating the way for the expropriation committee to take the necessary measures that help determine the fair compensation that should be paid to the owner of the expropriated property. It has concluded that expropriation is one of the most dangerous interferences with property rights and this interference is restricted to exercise in the public benefit and exchange for fair compensation. Our findings, however, emphasise the need to set controls and standards for the concept of public benefit and introduce a right to appeal the expropriation committee's decision before the court. In this research, we adopt a mix of descriptive, analytical, and inductive approaches to thoroughly evaluate and link the legislative texts and judicial rulings.

Introduction

Property rights are among the basic and sacred rights required by human instinct. It constitutes a main pillar of legal systems, and its protection is stipulated in international declarations and charters and in most national constitutions (Rushdi, 1986). Despite the sanctity of the property right, the state may have to encroach upon it under pressing needs for urban planning, development projects, and infrastructure services; in such cases, the state may resort to using compulsory means to obtain real estate according to the constitutional principle of expropriation for public benefit (Al-Lahibi & Ahmed, 2019).

The United Arab Emirates (UAE) legislature enshrined this principle in Article 21 of the UAE Federal Constitution of 1971 (hereafter "*the 1971 Constitution*"), stipulating that no one shall be deprived of his property except in circumstances dictated by public benefit following provisions of the law and in consideration of fair compensation as specified in the law. The Emirate of Dubai Real Estate Expropriation Law No. (2) of 2022 (hereafter "*the 2022 Expropriation Law*") clarifies the conditions for and procedures of expropriation and the mechanism for compensating owners of expropriated property.

Expropriation for public benefit can be seen as the forcible deprivation of the owner's property right by the government, albeit with compensation paid for this loss (Al-Ahmad, 2013; Al-Tamawy, 2016; Khalil, 2012). This infringement of private interest is justified by the fact that the state is established and exists to benefit the public; prioritising the protection of the public interest is the basis for state activities (Bashir, 2007).

The expropriation procedure is an exceptional process manifesting inequality between the administration and individuals. Compulsory in nature, it is not contingent on satisfying the property owner: the procedure aims to achieve the public benefit while also ensuring the owner receives fair and equitable compensation (Rahmani, 1994). The administration resorts to expropriation when real estate must be acquired to establish public-interest projects and community services. These needs are intrinsic to Dubai's Economic Vision 2030, which aims to transform the emirate's economy into a knowledge-based economy with more diverse economic activity and a high level of infrastructure which will be unique in the world.

This study aims to show that the Dubai legislature, through the Expropriation Law of 2022, has protected individual property by specifying the standards and controls for expropriation for the public benefit, and by establishing a special expropriation committee responsible for issuing expropriation decisions and determining the amount of compensation to be paid to the owner of the expropriated property and by requiring this committee to follow specific procedures, which reflects the legislature's desire to narrow the concept of public benefit, the availability of which is a condition for the acquisition of individually owned real estate. However, the legislature still needs to provide a specific definition of the concept of public benefit and make an amendment that ensures better protection for individual property.

The research aims to achieve three main objectives: First, to demonstrate that property rights are protected under the UAE Federal Constitution of 1971 and the Emirate of Dubai Real Estate Expropriation Law of 2022. Second, to explore the guarantees for property rights provided in Islamic law (Shari'ah), common law, international declarations and covenants, as well as the legislation of the Emirate of Dubai. Third, to examine and analyze the process of expropriating individual property under the Emirate of Dubai Expropriation Law of 2022. This study addresses several research gaps: First, it identifies the lack of a clear definition of "public benefit" and distinguishes it from "public interest" as used in some UAE legislation. Second, it highlights that the Expropriation Committee makes decisions without input from subcommittees, shedding light on the need for broader consultation. Third, the study raises concerns about the fairness of the expropriation compensation process, where the committee's decision is final, advocating for an option to appeal through the judiciary. Lastly, it points out that eviction orders issued by the Expropriation Committee, an administrative body, may not always be enforced, suggesting the establishment of an administrative public prosecution within municipalities to ensure judicial oversight and proper enforcement of eviction decisions.

Methodology

Methodology refers to the research techniques used, and procedures employed to achieve the research objectives. It explains how the research is conducted and the data is analysed (Shaikhly, 2019). Having described the research as a formal, systematic, intensive process used in the investigation of a problem, Turney and Robb (1971) point out that research provides answers to important and fundamental questions through sound and acceptable methods. They argue that research is directed toward seeking answers to worthwhile, fairly fundamental questions through the application of sound and acceptable methods.

Since qualitative methods permit the evaluator to study selected issues in depth and detail (Patton, 2015), the research strategy adopted is qualitative. Qualitative research has been historically used in many fields of investigation in the social sciences. Miles and Huberman (1994) indicate that in the past decade, more research in basic disciplines and applied fields has shifted to a more qualitative paradigm. These fields also include linguistics, Psychology, media, cultural studies, religious studies, and law (Fairclough, 1992; Shaikhly, 2019).

As has been pointed out by Patton (2015), qualitative methods can be used both to discover what is happening and then to verify what has been discovered. They are ways of finding what people do, know, think, and feel. Besides, qualitative methods provide the intricate details of phenomena, which cannot be derived through quantitative methods (Strauss & Corbin, 2008).

In light of that mentioned above, the research strategy adopted is qualitative with a descriptive and content analysis method. Mark and Mark (1998) argue that description is the first step in the carrying out of social studies. Descriptive research, however, is not confined to data gathering, but it goes beyond this to involve analysis and interpretation of the issues under investigation. To deeply study the legislative texts and judicial judgments, the inductive approach is employed too. The study employed the Shari'ah and the common-law perspective as well.

This research is based on primary and secondary data which has been gathered from many different Arabic and English sources. These include legislation, court judgments, journal articles, Shari'ah research, books, newspapers, dictionaries, electronic resources, etc. This, of course, is in addition to the researcher's analysis and opinions. The remainder of this study is organised as respectively discuss property rights guarantees, the expropriation of individual property under the 2022 Expropriation Law, and judicial applications of and control over the expropriation process.

Property Right Guarantees

This section discusses the property rights guarantees in international declarations and covenants and the legislation of the Emirate of Dubai. It also touches on the Islamic as well as the common-law perspective.

International Declarations and Covenants

The Universal Declaration of Human Rights

This declaration was adopted by a resolution of the United Nations General Assembly on 10 December 1948. Article 17 stipulates that:

- 1-everyone has the right to own property alone or in association with others,
- 2-no one may be arbitrarily deprived of his property.

The French Universal Declaration of the Rights of Man

This declaration was approved by the French Parliament on 26 August 1789. Article 2 states that "every political association aims to preserve the natural and inalienable rights of man" including "liberty" and "property". Article 17 builds on this by stipulating that:

Since the property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified.

Considering property rights as sacred and inviolable is one of the fundamental pillars for ensuring the protection of individual property. However, Article 17 also allows for the property right to be violated where necessitated by public interest as recognised by legislative texts, subject to the owner being compensated fairly in advance.

The International Covenant on Economic, Social, and Cultural Rights

This covenant was adopted by General Assembly Resolution 2200 of 16 December 1966 and came into force on 3 January 1976. Article 1.2 states that:

All peoples, in pursuit of their own goals, may freely dispose of their wealth and natural resources without prejudice to any obligations emanating from the requirements of international economic cooperation based on the principle of mutual benefit and international law, and it is not permissible in any way to deprive any people of their means of subsistence.

This article provides for the protection of collective or people's property and does not refer to private or individual property. This omission may have been intended to avoid embarrassing socialist countries, whose legal and economic ideology did not recognise the right of private property.

The Universal Islamic Declaration of Human Rights

This declaration was adopted by the Islamic Centre in Paris on 19 September 1981. Article 15 states that no property may be expropriated except for the public benefit and in return for payment of just and adequate compensation. This article concerns the social aspect of the right of property, stipulating that private property may be expropriated for the public benefit, providing the property owner receives fair and adequate compensation.

The Arab Charter for Human Rights

This charter was issued based on the Decision of the Council of the League of Arab States at Ministerial Level No.6405 on 4 March 2004. Article 31 states that:

The right to private property is guaranteed to every person, and it is prohibited in all cases to confiscate all or part of the private property arbitrarily or illegally.

In summary, all these legal instruments acknowledge the protection of the right of the property but recognise that this right is not absolute: it has a social function that allows expropriation by the state for public benefit, subject to specific controls and restrictions.

Property Rights Guarantees in the Legislation of the Emirate of Dubai

The Emirate of Dubai applies local legislation in addition to the federal legislation applicable throughout the UAE, including the 1971 Constitution and the Federal Civil Transactions Law No. (5) of 1985 (hereafter "*the 1985 Civil Transactions Law*"), as amended.

The constitution is the supreme legislation in any country. This ultimately helps to consolidate the concept of legitimacy and the subordination of both rulers and the ruled to the law (Al-Khatib, 2016). If the constitution stipulates a right, then this right must be protected in the application and enforcement of all other laws (Salama, 1994). Therefore, violation of this right in any provision of an ordinary law issued by the legislative authority, or of a decree-law or regulation issued by the executive authority, is contrary to the constitution (Madanat, 1996; Salama, 1994).

The supremacy of constitutional rules is one of the most important guarantees of human rights in general and, particularly, the rights of the owner. Without such supremacy, there would be no mechanism to ensure the state is subject to the law and must respect and protect rights. It is thus essential that all other legal texts are consistent with constitutional provisions in letter and spirit (Badawi, 1994).

The constancy and stability of constitutional rules are also a vital guarantee. These rules cannot be amended or repealed as easily as ordinary legislation, meaning that the Constitution enjoys some immunity from the politics of the legislative authority (Al-Ghaly, 1984; Salama, 1994).

Based on the foregoing, provisions protecting citizens' rights, such as the right to property, represent a fixed pillar of every country's constitution (Ackerman, 1977). Accordingly, within the framework of protecting individual property and aiming to promote investment and achieve confidence in the real estate sector, the 1971 Constitution guarantees and recognises the right to property in line with international declarations and charters. Article 21 provides that:

Private property shall be protected. Restrictions relating thereto shall be laid down by law. No one shall be deprived of his property except in circumstances dictated by public benefit following the provisions of the law and in consideration of just compensation.

Subsequent ordinary legislation has been in line with the 1971 Constitution. For instance, Article 1135 of the 1985 Civil Transactions Law (as amended) states that:

No one's property shall be expropriated without a legitimate reason, 2- expropriation shall be for the public benefit in consideration of a fair compensation and accordance with the provisions of the law.

This wording echoes Article 21 of the 1971 Constitution. Likewise, Article 6 of the 2022 Expropriation Law states that:

Expropriation of real estate may be made only for the public benefit, in return for fair compensation, and following the rules, standards, provisions, and procedures stipulated in this law and the decisions issued pursuant thereto.

This means that property rights are sacred in UAE legislation and may not be violated or expropriated except to achieve the public benefit, affirming the primacy of public over private interests. This is one application of the property right's social function, which aims to enable the state to form a real estate stock for carrying out economic and social projects that promote investment and development. Expropriation of private real estate, however, changes the ownership status of expropriated real estate: having previously been privately owned and subject to the provisions of private law, it becomes a public property of the state and subject to public law (Al-Mudarres & Abdullah, 2017).

The Islamic and Common-Law Perspectives

The Islamic Perspective

Islam has approved and protected individual private property and this is evident from the rules by which it was regulated, such as those related to inheritance, those related to transactions such as sales, and those related to preventing any assault on it, such as theft and usurpation (Ibrahim, 2018).

The basis of ownership in Islamic law is based on the fact that ownership belongs to Almighty Allah and that man is Allah's successor on earth, which means that the essence of ownership means that it is ownership of succession; that is for one generation and then passed on to another generation (Abdul Rahman, 2003). The Almighty said:

Translation: To Allah belongs the dominion of the heavens and the earth and all that is in them and He has full power over everything.

(Surah Al-Maidah, 5:120)

He further said:

Translation: Believe in Allah and His Messenger and spend out of that in which He has made you successors.

(Surah Yunus, 57:7)

To enhance the protection of private property, Islam has forbidden all forms of assault on it. The Almighty said:

Translation: O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent.

(Surah An-Nisa, 4:29)

The Almighty also imposed the punishment of amputation of the hand on those who transgress the property of others by stealing. He said:

Translation: And (as for) the man who steals and the woman who steals, cut off their hands as a punishment for what they have earned, an exemplary punishment from Allah; and Allah is Mighty, Wise.

(Surah Al-Maidah, 5:38)

Islam has permitted defending property even if this leads to killing the aggressor and dying to defend it. Thus, Prophet Muhammad (PBUH) has said:

Translation: Whoever is killed while defending his property is a martyr.

(Al-Bukhari, 870, Hadith 2480 & 1179)

It was also narrated that Prophet Muhammad (PBUH) said in his farewell pilgrimage address:

Translation: Your blood and your property and your honour are forbidden for you to violate, like the sacredness of this day of yours, in this month of yours, in this city of yours.

(Muslim, 875, Hadith 1679 & 1305)

Islam also forbids attacking or damaging the property of others. Thus, Prophet Muhammad (PBUH) said:

Translation: There should be neither harm nor reciprocating harm.

(Ibn Majah, 887, Hadith 2341 & 784)

This *hadith* constitutes an Islamic principle related to laws, ethics, and dealing with others; that is not to harm anyone in any way, and it is mandatory to eliminate harm, and harm cannot be eliminated by harm. This means that harming by words, actions, or abstention, is forbidden. This is evident from the negation mentioned at the beginning of the Hadith, which means prohibition (Jadeed & Hamad, 2023).

Moreover, Islam has made *mal* (property) one of the five necessities upon which life and the five purposes of *Shari'ah* are based. These necessities are: preserving religion, life, lineage, *mal*, and mind. This is because *mal* occupies a great position as the foundation and adornment of life and the aid to building up the earth and achieving the caliphate therein (Basiouni, 1984; Abdullah, 1987).

As for real estate especially land, Islam has forbidden assaulting, dispossessing, or seizing it by force and considered this a great injustice and a great sin. In this regard, the Prophet (PBUH) said:

Translation: Whoever unjustly usurps even one handspan of land, his neck will be encircled with it down the seven earths.

(Al-Bukhari, 870, Hadith 3198 & 1491)

Thus, it is prohibited for anyone to take the property of another except with his consent, particularly the unjust seizure of land. The noble Hadith clearly shows that whoever unjustly seizes a piece of land of any size would be severely punished on the Day of Judgment; his neck would be long and thick enough to be encircled with the seized land down the seven earth in retribution for what he did to the owner of that land. This means that the state must guarantee the protection of private property and not allow any governmental body to expropriate it except for the public benefit and in return for fair compensation (Benqdour, 2018).

This was applied practically during the era of the Prophet (PBUH). When he migrated from Mecca to Medina, the camel lay down in the place called Merbad, which had been chosen to build the Quba Mosque. This place was owned by two orphan boys, Sahl and Suhail, sons of Amr Bani Al-Najjar, but the Prophet (PBUH) did not confiscate ownership of this land or take it under the pretext of public benefit alone. He also rejected the offer made by the guardian of the two orphaned boys, Asaad bin Zurarah, who offered to take it to the Prophet and that he would pay for it. The Prophet (PBUH) paid for it ten Dinars from the money donated by Abu Bakr Al-Siddiq (may Allah be pleased with him), and this amount was more than the value of the land according to the market price at that time. This is considered a practical application of the idea of fair compensation (Jaradat, 2022; Obaidi, 2022).

This was also applied by the Caliph Omar bin Al-Khattab (may Allah be pleased with him) when he expanded *Al-Haram* Mosque in Medina when it became too crowded for people and paid fair compensation to the owners of the neighbouring lands that had been expropriated (Zahdour, 2016).

The Common-Law Perspective

England is the birthplace of the common-law system, which is found today in almost all English-speaking countries, such as the United States of America, Australia, Canada, New Zealand, Pakistan, India, Sri Lanka, Hong Kong, Nigeria and South Africa (Kahn-Freund, 1974; René & Brierley, 1990).

Unlike the position in civil law countries, the major part of the common law is the product of judges, i.e. it is a judge-made law (Brown & Pawlowski, 1995). In other words, judicial precedents constitute a separate source of law and have an independent authority of their own in common law countries, whilst they are considered as evidence of what the law is in civil law countries. In this sense, the idea of judicial precedents means that “like cases should be treated alike and dissimilar cases should be treated differently” (Al-Far, 2019).

In deciding a case, a judge is required to follow any decision that has been made by a higher court in a case with similar facts. The rules concerning which courts are bound by which are known as the rules of judicial precedents, or *stare decisis* (Elliott & Quinn, 1996).

As for the property right, it is defined as any right, which exists concerning a thing, whether tangible or intangible (Stevens & Pearce, 1998). In *Belfast Corporation v. O.D Cars* (1960) Viscount Simonds J stated: “Anyone using the English language in its ordinary signification would.. agree that ‘property’ is a word of very wide import, including tangible and intangible property” (at 517).

A property right is either legal or equitable (Gray, 2001). It is legal if it is created with proper formalities, which usually means the use of a deed, which according to section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 must be in a written document, signed by both parties and witnessed by some person other than the parties to it. In special circumstances, however, certain property rights may be legal without the execution of a deed, such as where there is a lease for three years, or less, or an easement by prescription. A property right is equitable if it is created in any other fashion that the law regards as enforceable. Examples are rights arising from an oral contract or promise, e.g. proprietary estoppel and constructive trust (Thompson, 1995).

Protecting both types of property rights, however, is a matter that must be taken into account, as the public authority may not expropriate a real estate except for a public purpose and in return for fair compensation (*Sisters of Charity of Rockingham v. The King* (1922)).

The Acquisition of Land Act 1981 regulates expropriation under the term “*compulsory purchase*”. In determining the amount of compensation that should be paid to the property owner, the value of any facilities built by the owner on the land after the expropriation decision was issued is disregarded. Thus, section 4(2) of the Acquisition of Land Act 1981 provides that:

The Upper Tribunal shall not take into account any interest in land, or any enhancement of the value of any interest in land, because of any building erected, work done or improvement or alteration made, whether on the land purchased or on any other land with which the claimant is, or was at the time of the erection, doing or making of the building, works, improvement or alteration, directly or indirectly concerned, if the Upper Tribunal

is satisfied that the creation of the interest, the erection of the building, the doing of the work, the making of the improvement or the alteration, as the case may be, was not reasonably necessary and was undertaken to obtain compensation or increased compensation.

However, if part of the land is expropriated and this reduces the use of the other remaining part, then compensation is due here for the decrease in the use of that part. In *Edwards v. Minister of Transport* (1964), Rahman LJ expressed this as follows:

“If some of my land be taken from me and things done on that land affect other land of mine which is either contiguous or so near as to be counted as contiguous, I may claim compensation for the user or acts done on the land which has been taken.”

(p. 135)

In *Marshall v. Director-General, Department of Transport* (2001), the court decided that:

In the determination of the amount of compensation payable in respect of land compulsorily acquired under this Act, regard shall be had to:

- (a)- the value of the land at the date of acquisition;
- (b)- the damage (if any) caused by the severance of the land from another land in which the claimant had an interest at the date of acquisition; and
- (c)- the enhancement or depreciation of the interest of the claimant, at the date of acquisition, in other land adjoining or severed from the acquired land by reason of the carrying out of or the proposal carry out the public purpose for which the land was acquired.

Expropriation of individual property under the 2022 Expropriation Law

Dubai’s legislation respects individual property as long as it was acquired legitimately, and various laws have been enacted to regulate all aspects related to property rights. The 1971 Constitution and the 1985 Civil Transactions Law guarantee the individual freedom to dispose of one’s property and allow only the public interest to override the right of private property, subject to fair compensation.

Expropriation is an act wherein the governmental body can seize or deprive an individual or entity of its property for the benefit of the public at large (Arabic Language Academy, 2020). The expropriation mechanism is regulated by the 2022 Expropriation Law. In this regard, the UAE Federal Supreme Court has ruled that:

The constitution is the supreme basic law that establishes the rules and principles, decides public rights and freedoms, and arranges basic guarantees for their protection. Every public authority must abide by the rules, limits, and restrictions of the constitution, including that private property is safeguarded and may not be expropriated except in cases required by the public interest by the provisions of the law and in exchange for fair compensation.

The general principle in all these laws is that the public interest and needs of society must be taken into account (Madanat, 1996; Labsir, 2018). Thus, where the right of property conflicts with the public interest, the latter prevails; in other words, ownership should not impede public interest. Hence, the property right has both individual and social aspects, and the second is more worthy of protection. This legal restriction is among the most prominent of those enacted for the public interest (Al-Sanhouri, 2004).

The justification for expropriation is that the state needs to be able to buy land or real estate, just like individuals, but may face difficulties reaching an agreement with current owners. Therefore, the Dubai legislature authorised the compulsory expropriation of real estate to avoid disruption to the functioning of public utilities and obstruction to citizens conducting their affairs (Hassan, 2020).

Since the power of expropriation prejudices the sanctity of private property, expropriation procedures are exceptional measures that should not be interpreted extensively. Also, expropriation is governed by controls: most importantly, it applies only to real estate (not movables), is dependent on achieving public benefit, and must be in favour of a public legal person (Kanaan, 1993; Muhammad, 1993). Therefore, Dubai's legislation offers some protection to the right of private property, which cannot be prejudiced without legal guarantees.

Objective Guarantees

Expropriation of private property is considered one of the most dangerous state interferences with the right of ownership. Therefore, the administration cannot unilaterally expropriate property unless explicitly allowed by legislation (Muhammad, 1993). This means that the expropriation process must be strictly implemented within the limits of the law, meeting two conditions: public benefit and fair compensation.

Public Benefit

Although the 2022 Expropriation Law does not specifically define public benefit, leaving wide discretion for the administration, Article 2 specifies that expropriation may be permitted for “*any project belonging to the expropriator aimed at achieving the public benefit*”. However, Article 8 sets the terms of reference for the expropriation committee formed according to this law, which include:

Studying the compatibility of the project with the general policy of urban planning for the area in which the requested expropriation is located and the general urban plan of the Emirate, and proposing appropriate planning alternatives to the expropriator to implement the project without resorting to expropriation, such as allocating alternative lands for the establishment of the project.

This means that the basis for the expropriation process is its connection to the public benefit of the proposed project. Specifically, expropriation is restricted to cases in which it is not possible to find another suitable property. This limitation is praiseworthy in manifesting considerable protection for individual ownership.

In this regard, public benefit is defined as the benefit of society as a whole, meaning the sum of the interests of all individuals constituting the society, which transcend private benefits (Al-Mawafi, 1992). Jurisprudence on expropriation has shown that the public benefit is met by actions aiming to: (1) protect society and preserve its entity, whether from an internal or external danger (e.g. by preventing a flood or earthquake); (2) achieve economic or social progress (e.g. by establishing public parks or an economic/commercial project); (3) ensure the continued functioning of existing public utilities (e.g. by expanding a hospital); and (4) preserve the environment and protect public health (e.g. by constructing a sanitation or air purification facility) (Siham, 2013; Shatnawi, 2019; Seddik, 1988; Al-Ahmad, 2013).

The 2022 Expropriation Law did not stipulate what works fall within the scope of public benefit, leaving this matter to the discretion of the expropriation committee, which is ultimately subject to judicial oversight. Notably, the judiciary in some countries has blurred the distinction between public and private benefits under the pretext that the latter may promote the public interest. For instance, in a judgment issued on 20 July 1971, the French Council of State ruled that everything that achieves the public benefit at the same time achieves the private benefit and modifying the path of the road that passes between the factories affiliated with the company is necessary for the development of public roads, and one of the requirements for the development of the industrial community, and thus it contributes to the support of the local economy, and the realisation of the special interest of Peugeot in its growth and industrial development leads to the economic benefit of the regions. Accordingly, the private benefit is not absolute, but at the same time, it is a general benefit for the entire region (Homont, 1995).

For guidance on what public benefit and public interest entail, reference is made to Article 27.4 of the UAE Federal Endowment (Waqf) Law No. (5) of 2018, which stipulates that “an endowed property may not be expropriated except for the public interest and in exchange for fair compensation”. This begs the question of whether “public interest” in the 1971 Constitution, 1985 Civil Transactions Law, and 2022 Expropriation Law differs from “public interest” in the 2018 Endowment Law.

Here, it can be said that the public interest is a flexible concept and, therefore, has a broader scope. For instance, the public interest may be achieved by the state expropriating a private property to transfer to a major private company in exchange for a huge sum of money: the current property owner may receive compensation exceeding the value of his property, and the public treasury may also benefit. However, this scenario may not be of public benefit, meaning beneficial to all society, rather than only a few natural or legal individuals. In addition, public benefit is linked to the concept of society, whereas public interest is linked to the concept of the state or administration. On this point, the French jurist Venezia (1972, p. 12) contended that public benefit is “the sum of the private benefits”.

Of further relevance is Article 1 of the Executive Regulations of the Law of the Expropriation for Public Benefit in the Emirate of Abu Dhabi No. (11) of 2013, which defines public benefit as “works that aim to serve society and achieve the public interest, directly or indirectly”. This article makes public benefit a way of achieving the public interest.

Accordingly, it is believed that not defining the concept of public benefit may leave too much scope for the administration to expropriate property in favour of any project it deems appropriate. In addition, the administration may rely on alleged public benefit to expropriate private property for selling to the private sector, contrary to applicable legislation. We therefore argue that the concept of public benefit should be defined, or at least that the legislature should set standards or controls for its accurate definition. More specifically, the public benefit could be defined as any actions that aim to serve the community as a whole or that respond to needs related to the public interest and justify sacrificing the interest of the individual. This suggested definition incorporates economic, social, health, and other benefits.

Fair Compensation

Since expropriation for public benefit is considered a serious infringement of the right of private property, legal logic dictates the need to compensate the owner of expropriated property for his loss. Both the UAE federal legislature and Dubai local legislature directly stipulate that the compensation sum must be fair. Moreover, Articles 9.2 and 10 of the 2022 Expropriation Law give the owner of expropriated property the right to object to the amount of compensation: an objection must be submitted to the expropriator no later than ten working days after the expiry date of the deadline by which he must appear before the owner to submit a copy of the documents proving his right to the expropriated property, and this period is thirty days starting from the date of his notification of that. The expropriator (government agency) must then send the objection to the expropriation committee formed according to Article 7 of the 2022 Expropriation Law. The committee makes the final decision on whether the property can be expropriated and, if so, how much compensation should be paid (Article 7.11). This means the expropriation committee has sole discretion regarding the “*fair*” amount of compensation, which may be unfair from the owner’s perspective and arbitrarily favour the government agency requesting expropriation. The committee’s decision is final and there is no right of appeal to the court. We believe that this deprives the property owner of his right to litigation and his right to claim appropriate compensation.

Nevertheless, the Dubai legislature stipulated in Article 11 of the 2022 Expropriation Law the bases on which the compensation amount should be determined, and they generally favour the property owner, which should ensure he is fully, or even overly, compensated. To enhance the protection of the property owner, Article 17. A requires the expropriator to deposit the due compensation amount in a special account within the period specified by the committee, to be disbursed to the owner or beneficiaries without delay.

Notably, the legislative provisions require that compensation be determined according to the market value of the property on the day the expropriation decision is issued, and account for all constructions plus the inherent commercial reputation (Allen, 1993; Haninah et al., 2015; Al-Lahibi & Ahmed, 2019). This reflects the fact that compensation must exceed the mere price of the property; given the coercive nature of expropriation, the property owner should receive damages for the losses he incurs (Chai et al., 2019).

Formal Guarantees

Expropriation of property for the public benefit constitutes an assault on private property but is authorised to the extent it conforms with prescribed procedures, controls, and limits. The 2022 Expropriation Law regulates expropriation procedures, which are related to public order and may not be violated under penalty of nullity. This is stipulated by Article 9:

As soon as the expropriation decision is issued by the expropriation committee, the expropriator undertakes the following: 1- notify the Land Department of the expropriation decision to place a record on the register of the property to be expropriated 2- notify the owner of the expropriated property of the expropriation decision and the type and amount of compensation by a registered mail notification with acknowledgment of receipt or through an advertisement in two daily local newspapers with wide circulation, one in Arabic and the other in English.

Article 12 of the 2022 Expropriation Law gives the owner of expropriated property the right to appeal against the validity of the procedures for executing the expropriation decision before the competent court. This appeal must be initiated within 60 days following the date of issuance of the committee's expropriation decision. Where an appeal is filed, the compensation amount is deposited in an escrow account and not disbursed to the owner or beneficiaries until the court rules on the appeal. Article 18 provides that if the expropriated property is seized for any reason, the expropriator must coordinate with the Land Department to deduct from the compensation an amount equivalent to the value of the seizure when the court issues its decision.

This means that when initiating the expropriation procedures, the administration must ensure the availability of sufficient guarantees and adhere throughout its various stages to the legislative framework.

According to Article 14 of the 2022 Expropriation Law, the owner must vacate the expropriated property within the period set by the committee, which will not exceed one year from the date of issuance of the expropriation decision, although the owner may request the expropriation committee to extend this period for up to one additional year should the need arise. If the owner refuses to vacate the expropriated property after the set period expires, he will be forcibly ejected.

Some difficulties may arise concerning the vacation of the expropriated property because the decision is administrative (under Article 14. C) rather than judicial, and consequently cannot be enforced by the police. Therefore, if the owner refuses to vacate the expropriated property, the relevant department has to initiate an administrative public prosecution, thereby obtaining a judicial decision that can be used to compel the vacation of the expropriated property.

Judicial Applications of and Control Over the Process of Expropriating Individual Property

Given the principle that an individual cannot be forcibly deprived of his rights, the state's judicial authority adjudicates disputes to ensure justice and protect rights (Al-Antaky, 1996). The 1971 Constitution guarantees the right to resort to the judiciary and equips the judiciary with powers to guarantee the upholding of justice and protection of rights, including the right to property, which is key to security, tranquillity, wealth development, and increased production.

One guarantee is that the state is the source of justice: the authorities handling judicial matters are public authorities, and both judges and execution officers are state-appointed. Accordingly, it is not permissible for any group or party to establish its own judiciary within the state (Awwad, 2018).

Judges act with complete independence, insulated from the dominance or influence of the legislative and executive authorities. Under Article 94 of the 1971 Constitution, "*judges are independent and have no authority over them in performing their duties other than the law*".

The judiciary upholds the principles of equality between people and respect for every individual's right to seek justice through the court. Article 41 of the 1971 Constitution states that "*every person has the right to complain to the competent authorities, including the judicial authorities, against the violation of the rights and freedoms stipulated in this constitution*". In addition, Article 1 of the UAE Federal Judicial Authority Law No. (32) of 2022 stipulates that "*judges are independent and have no authority over them in their judgment other than the provisions of the constitution and the applicable laws*". Article 32 of the same law also provides that "*litigation is a protected and guaranteed right for all, and everyone has the right to be treated equally in judicial procedures, and that litigants are equal before the judiciary without discrimination*". Likewise, Article 5 of the Emirate of Dubai Judicial Authority Law No. (13) of 2016, as amended by Law No. (24) of 2022, provides that "*judges are independent in the performance of their*

duties, and there is no authority over them in the exercise of their duties other than the law, and the independence of the judiciary may not be infringed”.

In addition, litigants are not required to pay high litigation fees because members of the judiciary receive salaries from the state treasury, which represents another guarantee. The fees paid by litigants are symbolic and only intended to prove their seriousness in pursuing the matter before the court, while also helping to supplement the state’s treasury revenues.

Court sessions being open to the public is another guarantee, creating popular oversight of the judiciary and motivating judges to ensure accuracy and exert maximum effort toward reaching a fair ruling on the dispute. Article 101 of the UAE Federal Judicial Authority Law No. (32) of 2022 provides that:

“Court sessions are public unless the law stipulates or the court decides on its own or at the request of the public prosecution or one of the litigants to be confidential in consideration of public order or public morals”.

It is clear from the above that the judiciary constitutes an essential guarantee for the protection of individual private property against the encroachment of any natural or legal person, such as a government agency. This protection is evident in the judiciary’s control over administrative actions, which must always adhere to provisions of the law and not infringe on the rights of individuals, particularly their property rights.

In short, the judiciary in the UAE and Dubai plays a pivotal role in maintaining stability, security, and order in society by ensuring respect for legislation that protects freedoms and rights, including property rights. The judiciary protects private property rights by hearing lawsuits filed by owners alleging deviations from the law in expropriation decisions, including as to the amount of compensation, as well as lawsuits aimed at stopping any material abuse (Kanaan, 1993, pp. 209-210). The judiciary rules on three main issues in these cases: whether the expropriation would achieve public benefit, the compensation amount, and adherence to prescribed procedures.

Judicial Control over Whether the Public Benefit Criterion is Met

Public benefit is the basis on which the expropriation process is built, and since it is a flexible concept without legal definition, the administration may interpret it too widely. The judiciary must therefore provide effective control over the public benefit concept to strike a balance that properly protects private property. Accordingly, the Dubai Court of Cassation recently ruled that expropriation of the individual property by the Dubai Municipality was done in the public interest, to expropriate the land for the waterfront, which includes the land within its plans. In another ruling, the same court decided that “since expropriation of the individual property took place to widen the road decided by the Dubai Government in the Al-Wasl region, the condition of public interest is fulfilled here. In a third ruling, it decided that expropriation of individual properties shall take place in cases required by the public benefit in accordance with the provisions of the law.

It is clear from these rulings that the Dubai Court of Cassation has confused the related concepts of public interest and public benefit, considering them to have the same meaning - as discussed earlier, their meanings somewhat differ.

Judicial Control over the Compensation Amount

The basic rule in the real estate expropriation process is that compensation must be fair. The 2022 Expropriation Law sets out the necessary controls, procedures, and mechanisms for the assessment of compensation by the expropriation committee. It further provides a clear mechanism for the property owner to object to the compensation amount decided by the committee, thereby protecting against arbitrary administrative decisions by giving a supervisory role to the committee itself. Here, we argue that the judiciary is the appropriate body that should consider objections relating to compensation. Judges are independent and neutral and for cases referred to them, they decide whether the compensation amount is fair as stipulated in the 1971 Constitution, the 1985 Civil Transactions Law, and the 2022 Expropriation Law.

The 2022 Expropriation Law does not define any specific foundations or standards to be adopted as a basis for calculating the amount of fair compensation. Under Article 8/6 of the 2022 Law, this is left to the sole discretion of the expropriation committee whose members include experts in the real estate sector. The 2022 Expropriation Law makes the committee's decision to respond to the objection to the amount of compensation final and not subject to appeal before any administrative or judicial body. Perhaps the aim of this is to speed up the acquisition process so that it does not take a long time.

To some extent, this can be justified because the situation regarding real estate ownership in the United Arab Emirates in general, and in the Emirate of Dubai, in particular, is different from any other country or emirate in the world, as the government is the owner of all the lands and is the one who grants them to citizens and others, whether for housing, trade, or investment (Ghazi, 2016). Therefore, most of the expropriated lands are owned by the state and thus few disputes may arise over the amount of compensation. Moreover, the advanced urban planning mechanism in the Emirate of Dubai puts the need to own real estate for public benefit to a minimum (Mawajdeh, 2016).

It is noteworthy that before the enactment of the 2022 Expropriation Law, the decision to determine the amount of compensation was subject to appeal before the judiciary. Thus, reference was made to some judicial rulings that were issued before the issuance of the current law. Accordingly, it is more appropriate for the situation to return to what it was previously so that the decision to determine the amount of compensation is subject to appeal before the judiciary.

The Dubai judiciary did not establish any specific formula for calculating the amount of compensation considering this to be one of the tasks of the concerned administrative authority. However, the judiciary provided an overview of some considerations that should be taken into account when determining the amount of compensation. Thus, the Dubai Preliminary Court held that:

In estimating fair compensation, consideration is given not only to the value of the property that was expropriated but also to the owner's loss of profits and the damages he sustained. The estimation of compensation for the expropriated property must be based on its market value at the time the expropriation decision is issued, without taking into account the increase that may be achieved due to the actions of public benefit or subsequent urban planning.

(p. 24-25)

In short, it can be said the amount of fair compensation varies from one case to another and depends on what the expropriation committee deems fair. However, by reviewing the opinions of some jurists, we found that they proposed several criteria or considerations that should be taken into account in determining the amount of fair compensation. These criteria or considerations include the location, area, topography, and nature of the land and its various dimensions, market value, purpose of use, trees, structures and buildings erected on it, goodwill, and the amount of loss incurred by the landowner as a result of the loss of his property (Siwar, 2018; Maxoni, 2015; Haider, 2020).

In one decision, the Dubai Court of Cassation held that:

It is not permissible to expropriate a private property except for the public benefit, and in return for fair compensation following the provisions of the law, fair compensation means the compensation that covers all the damages resulting from the expropriation and must not exceed that and leads to the enrichment of the owner. To achieve this goal, compensation must be estimated according to the market value of the property at the time the expropriation decision is issued.

In another decision, the same court ruled that:

the elements of fair compensation include the market value of the land, the market value of land improvements, the profits lost by the owner of the expropriated land, and the loss he suffered as a result of its expropriation.

Judicial Control Over Adherence to Procedures

As the expropriator, the administrative agency should follow the procedures prescribed by applicable legislation, adherence with which is subject to judicial control. Thus, when private property is expropriated contrary to the legal procedures, the expropriator violates the right of private property and acts outside the limits of legitimacy and the functions of a public authority (Kashbour, 1989).

In one ruling, the Dubai Court of Cassation held that the process of expropriation of property must be carried out following the procedures drawn up by law, otherwise it is null and the decision is subject to repeal. More recently, the same court held that:

The constitution is the supreme basic law that lays down the rules and principles that define the public authorities in the state, delineates the functions of those authorities, sets limits for their activity, decides public rights and freedoms, and arranges basic guarantees for their protection, and every public authority must adhere to the rules, limits, and restrictions laid down by the constitution.

Discussion

First, Islamic law (*Shari'ah*), international declarations, charters, and covenants, along with national legislation, recognise the need to protect the right of property and stipulate that this right may not be violated except by following the rule of law.

Second, expropriation is one of the most dangerous interferences with the right of property and a privilege conferred on the government in exercising its duties towards individuals and society. This privilege is not absolute; it is constitutionally restricted to exercise in the public benefit and exchange for fair compensation. An expropriation not aiming to achieve the public benefit constitutes a deviation from the prescribed objectives and, thus, an unlawful exercise of power. Hence, the Dubai legislature specified in the 2022 Expropriation Law the conditions for expropriation, the authority responsible for issuing expropriation decisions, and the procedures that must be adhered to.

Third, in the Expropriation Law of 2022, the Dubai legislature has adopted the concept of public benefit and refrained from adopting the concept of public interest, which is broader in scope than the concept of public benefit. It has also imposed strict controls, standards, and procedures to be adhered to by the governmental body wishing to expropriate and to be observed by the expropriation committee. Thus, it has narrowed the concept of public benefit which may be used as a pretext for the acquisition of individually owned real estate. This consequently protects the owners and encourages investment in the real estate sector, especially by foreign companies, which would contribute to stimulating the economy in general, creating additional job opportunities, and increasing the Emirate's revenues and cash reserves of foreign currencies.

Fourth, the Dubai legislature does not set a specific definition for the concept of public benefit, and such a definition does not exist even in the UAE federal legislation. Both federal and local legislatures do not stipulate any applications for this concept, which leaves ample room for the administration to have its say on this matter. Consequently, this may lead to prejudice to individual property rights which are protected by *Shari'ah* rules, international declarations and covenants, the UAE Federal Constitution of 1971, and Dubai local legislation.

Fifth, the process of expropriation is subject to controls: most importantly, it only applies to real estate, depends on achieving the public benefit, and must be in favour of a public legal person.

The concept of public benefit stipulated in the 1971 Constitution and the 2022 Expropriation Law is of great importance, being the foundational justification for the expropriation of individual property. Public benefit is a flexible idea defined by neither legislative texts nor judicial verdicts. It remains central to the essence and purpose of administrative actions. Therefore, the controls and standards of public benefit should be determined by the Dubai legislature to prevent different interpretations by the judiciary.

Accordingly, we propose adding the following article to the 2022 Expropriation Law:

(a) For the purposes of applying the provisions of this law, the following works are considered to be of public benefit: constructing, expanding, or modifying roads, bridges, tunnels, and squares; constructing water and sanitation projects, energy projects, transportation, communications, and urban planning facilities; improving public facilities; and all activities considered of public benefit in any other law.

(b) By a decision of the Council of Ministers, other works of public benefit shall be added to the works mentioned in paragraph (a) of this Article.

Conclusion

This article will establish controls and standards for the concept of public benefit and prevent it from being widely interpreted by the administration. This would achieve better protection for individual private property, and promote investment in the real estate sector, which is one of the priorities of the Dubai government. To determine whether the public benefit requirement is satisfied in a given case, we suggest that the expropriation committee should base its decision on a report by a technical sub-committee, whose task is to verify the seriousness and feasibility of the project for which expropriation is required and the extent to which the project needs the property to be expropriated. We propose amending Article 7.11 of the 2022 Expropriation Law, which currently states that the expropriation committee's decision on the compensation amount is final. We believe this is unfair to the property owner, who may consider the award insufficient to cover all the losses incurred. It also deprives the property owner of his basic right to litigation, as guaranteed by the 1971 Constitution. Accordingly, we suggest amending Article 7.11 to make the expropriation committee's decision subject to appeal before the Dubai Real Estate Court. We also propose establishing an administrative public prosecution in the municipalities to follow up on the issuance of a judicial ruling by the competent court to forcibly evict the owner of the expropriated property if he refrains from doing so voluntarily.

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