

## LAND TENURE LEGISLATION FOR DESERT DEVELOPMENT IN THE A.R.E.

Dr. ABDUL SAHIB ALWAN

### 1.—*Historical Background :*

The increased activities of the A.R.E. Government in reclaiming and developing uncultivated lands in the Nile Valley and desert lands outside the Valley, necessitated amendment of the existing legislation or enactment of new ones to deal with the tenure and settlement problems of new lands.

Prior to 1958, there was actually no legislation dealing explicitly with land tenure and land use in desert areas. However, during the last century, some Decrees (Supreme orders) concerning desert lands were issued during the reign of the Khedewys who were then ruling over the Country. Some of these Decrees provided for granting Bedouins (Arabs of the Desert) the right to exploit desert lands through cultivation and grazing. Amongst various supreme orders concerning land property, the two most important ones, were the Supreme Order of 21st May 1867 and that of 9th September 1884. According to these two Supreme Orders, the ownership of State fallow lands was subject to prior permission and approval of the Government through a prescribed procedure.

Even the Egyptian Civil Law did not deal explicitly with ownership rights in desert areas. Under the old Egyptian Civil Law, the interpretation in Jurisprudence and court judgements had been directed to consider desert lands situated outside the *Zimam* (cultivated districts of the Delta and the Nile Valley) as *Matrouka* (abandoned) lands, ownership rights on which could be acquired through cultivation, plantation or construction of a building. This interpretation was based on Article 57 of the Ahl (National) Egyptian Civil Law, which provided that as regards the uncultivated land lawfully owned by the Miri (Government), nobody shall lay his hand thereupon (hold) except by Government permission..... But any person who had cultivated any of the said lands, or planted or put up a building

threupon, becomes the owner of that land in absolute property; but he shall forfeit his right if he does not use the land for a period of five years during the fifteen years following the date on which he has laid his hand upon (held) that land.

Such had been the case until the year 1940 when the Military Order No. 62 of 1940 was issued to deal with land possession and ownership in Frontier Districts.

However, when the Martial Law, under which such Order was issued was abrogated, the same provision was enforced by Order in Council (Décret-Loi) No. 111 of 1945. Under this Decree, however, foreigners were prohibited from possessing, except by inheritance, lands in the Frontier Districts, or from acquiring any real estates rights thereon. It also stipulated that Egyptians must obtain in advance a permission from the Government with regard to the lands they possess by any means other than inheritance, and to the real estate rights they have. It also stipulated that «any property transfer and any establishment of any real estate rights contrary to the provision of the Military Order shall be null and void», and that the status quo remain unchanged for proprietors.

In 1948, the new Egyptian Civil Law was issued. Article 874 of the said Law provides that «Uncultivated lands with no owners shall be the property of the State, and no person can possess these lands or lay his hand thereon (hold) except by permission from the State according to the regulations in force, but if an Egyptian citizen cultivates these lands, plants trees or builds thereon, he shall immediately possess the cultivated, planted or built part even without permission from the State; but he shall lose the property if he does not use the land five consecutive years during the fifteen years following the date of possession.»

## 2—Recent Legislation :

To accelerate the development of desert areas and the settlement of Bedouins thereon, the need for a special legislation was felt. This was done in 1958 when a special Law governing possession and ownership of desert lands was issued (Law No. 124 of 1958). In its Explanatory Note, reference was made to the «argument which has been raised regarding Article 874 of

the Civil Law of 1948 which provides for land ownership by free acquisition.....». Heated debates followed specially as to whether this article abolished the Order in Council (Décret — Loi) No. 111 of 1945 or not. There were two contradictory views, one saying that article 874 of the New Civil Law of 1948 has in fact abolished the Décret-Loi of 1945 for the main reason that this article followed the issuance of the said Décret-Loi whereas the other view holds to the contrary that the said Décret-Loi concerns the desert land property while the new Civil Law deals with land property in general and, therefore, the Décret-Loi remains in force as a special legislation.

The Explanatory Note of the 1958 Law adopted the view contained in the Décret-Loi of 1945, and accordingly it has disregarded the rights supported by Article 874 of the Civil Law of 1948. Thus the 1958 law denied the real estate properties rights established in desert lands even if these rights were established prior to the enforcement date of Law No. 124 of 1958.

### 2.1 Property rights under Law 124 of 1958

The recognition of property rights previous to the enforcement date of the 1958 Law was, according to Article 5, restricted to the cases where the property rights were supported by registered deeds and/or final judgements established prior to the enforcement date of the Law, or by certificates issued by the Government and had not yet been registered.....

The application of the said law has unveiled certain deficiency and created feelings of insecurity and anxiety in the minds of the inhabitants of desert areas regarding non-recognition of their land properties which had been supported by Article 874 of the New National Civil Law, which had been in force since 1888. The 1958 Law and Article 57 of the old Civil Law provided for the alienation and lease of desert lands to any tribesmen who had occupied a piece of land by orchard or building before August 1957 against payment of one-tenth of the value of land at delivery and the rest to be paid in instalments over a period of 30 years. Occupants of desert lands adjacent to cities applied for purchase of lands in accordance with the provisions of this Law. But the bedouins, who are the traditional occupants of these desert lands, were reluctant to apply as they resented the idea of applying for the purchase of land which they believed

to have possessed and utilized for many generations. However, upon the initiative and the efforts of the E.G.D.D.O. and through its technical and material assistance to the bedouins for cultivating their lands and establishing fruit tree and olive orchards, some bedouins were induced to apply for the alienation of pieces of lands which they had developed, or were developing them into orchards. They thus were able to obtain some assistance from E.G.D.D.O. in the form of windmills to be installed on their wells and to get seedlings of olives and other trees to be planted in their orchards. This is besides the technical assistance extended to them and the establishment of cooperative societies for the distribution of W.F.P.<sup>(2)</sup> aids in food and fodder to serve their living and production requisites. In spite of all these inducements, few bedouin families applied for the alienation of their lands or purchase of land in accordance with the provisions of the 1958 Law. At present, however, it is difficult to assess the progress of registration of titles made under the 1958 Law; the number of cases registered till to date and the area affected is indicated in the following table.

Table 1 Showing the number of bedouin families in the Western Desert to whom land was alienated in accordance with the provisions of the 1958 Law.

Type of Tenure	Number of Beneficiaries	Area in feddans
Land sold and alienated to customary holders (1960-1961)	549	2251
Lands sold and alienated to lessees	324	2433
Alienated reclaimed lands with windmills	558	4715
Total	1431	9399

(1) The Egyptian General Desert Development Organization.

(2) World Food Programme of the United Nations.

In fact, many difficulties and obstacles have been encountered in the application of the 1958 Law mainly because the provisions of the said law were not based on thorough understanding of the socio-economic conditions affecting the life of the inhabitants of desert areas. It has already been mentioned that the application of this Law in some desert areas has caused many worries and much anxiety to the tribesmen in these regions. There were some provisions in the Law which proved to be difficult to apply without major revision and amendments. The Government, therefore, had come to the conclusion that Law No. 124 of 1958 should be amended to ensure due support to the legitimate rights of tribesmen and to ensure the recognition of their property rights which had been established before the enforcement date of this Law<sup>(3)</sup>.

### 2.2 Law No. 100 of 1964

Accordingly, a new Law (law No. 100 of 1964) was promulgated to regulate the land tenure arrangements in all State-owned lands including desert lands.

*Land categories and definitions*: Law No. 100 of 1964 deals with three categories of lands belonging to the State. These are: (i) agricultural lands, (ii) fallow lands and (iii) desert lands. Article 2 of this Law contains the legal definitions of these land categories. It defines "Agricultural Lands" as including the lands inside the *Zimara* (districts of cultivated lands) as well as the adjoining lands extending out-

(3) One more consideration that necessitated the amendment of Law No. 124 of 1958 was the fact that during the promulgation of the said Law, the Egyptian General Desert Development Organization (EGDDO) was affiliated to the Ministry of War, and the Minister of War had been in charge of enforcing the said Law and supervising its application. However, by virtue of two Presidential Decrees No. 1699 of 1961 creating the Supreme Council of the General Organizations, and No. 8317 of 1962 regarding the Egyptian General Desert Development Organization, the latter Organization (EGDDO) has become affiliated to the Ministry of Agrarian Reform and Land Reclamation, and in consequence of this change the competence of carrying into force the 1958 Law and supervising its application had to be transferred from the Minister of War to the Minister of Agrarian Reform and Land Reclamation, leaving the exceptional powers provided for in this Law to the Minister of War in connection with the strategic and military considerations on the one hand and for the sake of public safety and State security on the other hand.

side the *Zimam* to a distance of 2 kilometers; because these lands are considered the natural extension of the lands inside the *Zimam* and are in fact being cultivated.

Concerning «Fallow Lands», their definition specifies that they include uncultivated lands within the agricultural lands in the *Zimam* as well as adjoining uncultivated lands outside the *Zimam*; and all these lands are by their situation and nature considered as zones for immediate horizontal expansion and development.

As to the "Desert Lands", these have been legally defined as including all cultivated and uncultivated lands located within the zones considered as being outside the *Zimam* (after the distance of 2 kilometers outside the *Zimam*).

The phrase "Lands inside the *Zimam*" as stated in this article, means lands which have been surveyed in detail and recorded in the *Register* of the Survey Department as well as in the *Mukallafa* registers (records of land property) at the Land Taxation Department, and which are in this case subject to real estate tax on lands.

As regards to the phrase "Lands outside the *Zimam*", this include desert lands and all other lands which have not been surveyed in detail and have not been recorded either in the register of the Survey Department or in the *Mukallafa* registers at the Land Taxation Department, and which are not, as such, subject to real estate tax on lands.

As mentioned above, the Law No. 100 of 1934 deals with all types of state owned land including desert and fallow lands which are dealt with in Part III of the said Law (Articles 22 to 42). This part contains three principal sections. Section I deals with the disposal and alienation of desert and fallow lands for reclamation and development purposes. Section II deals with the granting of desert lands on lease basis. Section III deals with distribution of reclaimed desert lands. These three sections will be discussed subsequently.

#### 2.21 Disposal of desert and fallow lands for reclamation purposes

Article 22 of the first section empowers the Minister of Agrarian Reform and Land Reclamation (i) to fix, by an *ad hoc* decree, the districts in which fallow and desert lands may be sold

for development purposes, after ascertaining that these lands may benefit by irrigation from artesian water or any other water source; and (ii) to dispose of fallow and uncultivated desert lands by mutual agreement sales to would-be buyers for development purposes within the limit of twenty feddans of fallow lands and fifty feddans of desert land for each buyer.

Article 23 stipulates that the buyer must be of the Arab Republic of Egypt nationality, adult, of good reputation, and has not been sentenced to any penalty or imprisonment in a dishonouring offence. The same Article stipulates that the buyer shall undertake to develop the land sold to him and to cultivate it within seven years in case of fallow lands and ten years in case of desert lands beginning from the date of land delivery. This Article provides that the Executive Regulations shall lay down the rules for the sale by mutual agreement, the assessment of price, the conditions of payment, the period, the interest and other such conditions.

Article 24 specifies that if the buyer fails to meet his obligations in developing the land sold to him, neglects its cultivation, does not carry out development within the prescribed time limit and consequently disregards the agreement by which he is bound, the resolatory condition which is contained in the sale contract shall then be enforced, rendering the contract of sale nul and void since the original date of the contract; and the buyer shall consequently return the land and pay the proper rent from the date of delivery to the date of return, following the enforcement date of the resolatory condition; and that any immovable assets built up by the buyer on the land shall be transmitted to the Government free of charge as compensation to the State for the failure of the buyer to meet his obligations and thus causing harm to the public interest.

Article 25 stipulates that buyers shall only be allowed to dispose of the land sold to them if full payment of the price has been made; and that such disposal shall be to small cultivators who fulfil certain conditions so as to avoid concentration of large areas of developed land in a few hands and to give chance to a bigger number of small cultivators to own the land.

*Article 26* : to safeguard the public interest and to encourage the development of fallow and desert land, article 26 empowers the Minister of Agrarian Reform and Reclamation to authorize the selling of fallow and desert lands to companies (public and or private corporate bodies) in areas larger than the 20 and 50 feddans limits set for individual buyers, provided these corporate bodies carry out the development and the cultivation of the lands they buy within 10 years from the date of land delivery to them; otherwise the provision of Article 24 regarding the dissolution of the sale contract, the returning of the sold land, the payment of rent and the transmission of immovable assets on the land to Government free of charge, shall be applied.

### 2.22 *Granting desert lands on lease*

*Article 27* : provides that desert lands shall be given on lease to small cultivators within the limit of ten feddans for each. It is to be noted here that lease is a preliminary stage prior to distribution and disposal of land, and that in this case the exploitation of such land shall be granted to citizens of good conduct, who deserve more care and whose occupation is cultivation of land as their principal source of living; and in addition they, together with their families, do not own more than two feddans of agricultural lands (the minimum prescribed by the Law of the Agrarian Reform for small agricultural holdings) or ten feddans of fallow and desert lands per citizen and family.

Article 27 provides also that lease priority shall be given to those who have fulfilled the aforesaid conditions and to those who hold the leased land and cultivate it in fact. If the cultivator is not among those who are entitled to lease, social considerations shall be taken into account, such as the larger size of the family, the income level etc., giving preference to the inhabitants of the nearest zones to the leased land.

The above mentioned small cultivators shall, according to this article, be exempted from payment of any deposit in cash or in kind, as in the case of agricultural lands lease.

Since the rules of real estates taxes on agricultural lands inside the *Zimam* have not yet been applied to desert lands outside the *Zimam*, it is not possible to estimate the rental value of these lands on the basis of real estate tax rates. Article 28 of

the Law has, therefore, referred the matter to the Executive Regulations with a view to laying down the rules which will be followed in assessing the rental value of desert lands.

### *2.23 Distribution and disposal of developed desert lands*

Desert lands which have been reclaimed, developed and cultivated by the State shall be distributed to small cultivators and graduates of Agricultural Institutes, so that each shall have a small holding of not less than 4.5 feddans and not more than 7.5 feddans depending on the fertility of the land and the social conditions of the beneficiary (Article 30).

The same article stipulates that those to whom reclaimed land shall be distributed must have the prescribed qualifications, viz, they must be of the A.R.E. nationality, major, of good reputation, that they have not been sentenced to any penalty and or imprisonment in a dishonouring offence; that their occupation is land cultivation, shepherding and/or hunting as their principal source of living; and that the property of each, together with his wife and his minor children's property are altogether less than two feddans of agricultural land or ten feddans of fallow and desert lands.

*Article 31* : specifies the order of priority in distributing reclaimed and developed desert lands as follows : First priority for those who have previously occupied and utilized the reclaimed area. It is obvious that the development and reclamation works cause harm to the inhabitants of the developed area and deprive them from their principal source of living whether in animal grazing or in seasonal cultivation which they customarily carry out. Therefore, these citizens deserve the first priority in land distribution in compensation for the unintentional harm they have undergone as a result of the desert land development projects which are drawn up in the general interest of the community.

Second Priority is to distribute equally the remaining surplus (after the distribution to those living in the reclaimed zones) as follows : (a) to the inhabitants of the overpopulated zones in the various governorates of the Republic, and (b) to the inhabitants of the desert zone in which the developed land under dis-

tribution is situated, including the inhabitants of the other not so thickly populated zones of the Republic.

The order of priority for distributing the first half of the remaining developed desert land which is reserved to the inhabitants of overpopulated zones is as follows: (i) to Agricultural Institutes graduates as well as to the *Terrabil* labourers (child workers transported from one place to another to work in the fields) who have continuously worked in developing, constructing and cultivating the land under distribution; (ii) to demobilized armed forces soldiers; and (iii) to the inhabitants of the overpopulated zones who accept to emigrate to the reclaimed area.

As to the distribution of the second half which is reserved to the inhabitants of the reclaimed zone, the order of priority is as follows: (i) Agricultural Institutes graduates and agricultural labourers who have continuously worked in developing and cultivating the land in appreciation of their efforts in developing these lands, (ii) to demobilized armed forces soldiers, and (iii) to the inhabitants of the zone in which the developed land of the overpopulated zones who accept to emigrate to the reclaimed area.

#### 224 Organization of Co-operative Societies

Articles 67 to 68 have dealt with the organization of agricultural co-operative societies which the Ministry of Agriculture, Reclamation and Land Reclamation is keen to propagate among the small owners and lessees of agricultural and desert lands. Article 67 provides that the lessees of agricultural and of desert land under this law, and the persons to whom the ownership of these lands will devolve shall be *ipso jure* members of the co-operative society which the Ministry will create or establish.

Article 68 gives details of the services which these co-operatives will render in achieving the objectives of their establishment. These services include providing the farmer with production requisites and credit, organizing his crop rotation and land utilization, marketing his produce of major crops and providing him with other necessary agricultural, social and economic services.

### 2.25 *Transitory Provisions*

*Article 75* : of this law contained transitory provisions purporting the recognition of property rights previous to the enforcement date of Law No. 124 of 1958. This article recognizes the tribesman's ownership right to that part of his holding which he had planted with trees or actually cultivated it since at least one year preceding the date of enforcement of the 1958 law; provided that total area possessed will not exceed the ceiling limit set for land ownership. Right of ownership to parcels of land depending on rainfall and only seasonally cultivated are not recognized according to this article. Article 76 stipulates that ownership rights will not be granted if the holder fails to notify the Governorate or the M.G.D.D.O. of all particulars regarding his holdings and this should be done within one year from the enforcement date of the 1964 Law<sup>(4)</sup>.

*Article 80* : specifies that occupants of desert lands by putting up buildings or growing trees, who are not considered as proprietors by virtue of this law may request to buy such land or take them on lease for a period of not more than nine years. However, if they had not submitted this purchase request within one year of the enforcement of the Law, (this was amended to make it within a delay up to end December 1969) or if they had in fact submitted but it was dismissed, the Egyptian General Desert Organization would have the right to demolish the construction and pull up the plants or keep the buildings and the plants considering them as being the property of the State.

### 3 — *Summary and Conclusions*

Although the old and new Egyptian Civil Law relating to landed property did not deal explicitly with ownership rights in desert areas, yet these two laws contained important provisions under which any Egyptian citizen could acquire property rights on desert lands through cultivation or plantation of trees or by putting up a building even without prior permission from the Government. However, this right was subject to forfeiture

(4) This was amended and the delay was extended until the end of December 1969.

If the land was not used for a period of five years during the period of fifteen years following the date of the acquisition of the proprietary rights.

These legal provisions relating to acquisition of ownership rights in desert lands encouraged tribesmen to reclaim and develop these lands and expand cultivated areas and facilitated their settlement in line with the National Development Policy.

The Law No. 124 of 1958 governing possession and ownership of desert lands was especially enacted with the objective of speeding up the development of such lands by requiring tribesmen to acquire and establish their tenural rights in a legal prescribed manner. However, this Law did not take into account the customary and legitimate ownership rights of tribesmen acquired and established prior to this Act, and for this reason it gave rise to suspicions and worries amongst tribesmen and discouraged them to register their tenure rights under this Law.

An effort was made to rectify the situation by replacing Law 124 of 1958 with the new Law No. 100 of 1964. Although the new law has overcome many of the defects of the 1958 law yet it still has few shortcomings which may impede and discourage the legal establishment of rights and the rectification of the agrarian pattern in the desert areas. We believe that the new law (No. 100 of 1964) should be modified and amended as follows :

- 1— Provision should be made to recognize the tribesmen customary rights over lands which they have customarily possessed and utilized for at least five years prior to the promulgation of 1964 law.
- 2— Tribal Land possessed customarily should be alienated to them free of charge or at a nominal fee.
- 3— Field Adjudication Committees should be established as part of 1964 Law to determine the correct position of land and water rights.
- 4— The 1964 law should contain provisions to determine water rights and to conserve control and regulate the use of underground water resources in the region.

5 — Similarly, the law should contain provisions to conserve and regulate the use of grazing areas in the region by setting up a Grazing Authority for the establishment of grazing districts and for the enforcement of the legal provisions relating to grazing in force.

6 — The present legal provision relating to pre-determined ceiling of 4.5 to 7.5 feddans on the size of holdings to be distributed in the reclaimed desert areas (article 30 of 1964 Law) should be amended so as to provide flexibility in determining the size of holding in a settlement area so as to allow for the establishment of viable holdings on the basis of income expectancy and making full use of the farmer's resources.

7 — Reclaimed tribal lands depending on rainfall and run-off should be distributed only to qualified settlers selected from the present tribal occupiers of the area and other homogeneous groups and no portion should be assigned to outsiders as stipulated in Article 30 of 1964 Law.

8 — The tenural relationships between the State and settler-tribesmen should be clearly defined stating the basis, method, and mode of payment, etc..... Full ownership rights should be granted to tribal settlers subject to certain conditions, whereby, the state will exercise control over the proper use of land and water resources.