Acquired Rights of Individuals and Their Effects on Endowment Leasing Contracts in Iran
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Abstract: During the past years, Iran’s legislator has set a series of rules and regulations for occupiers of properties which include possessors of business rights in commercial properties or farming right possessors in farms and also possessors of ownership in residential and commercial properties. In fact as a result of these rules, the aforementioned rights create obligations for owners of mentioned properties against right owners and as it was mentioned these obligations have legal backings and among these obligations it can be referred to obligation for renewal of leasing contract in the favor of tenants of right owners, owners of goodwill and owners of farming layouts. Therefore, in this research paper it has been tried to investigate acquired rights and their resultant obligations in Iran’s laws with the approach of endowed properties.

Keywords: Acquired Right, Renewal of Lease, Endowment, Farming Right, Aristocratic Right, Trade and Business Right.

1. Introduction
Although that leasing contracts are goodwill contracts, still for consideration for the good of the endowment, Iran’s legislator has set a series of specific rules which are highly important in terms of the manner of leasing an endowed property and if one or any of these related obligations are not considered for, there will be problems in terms of leasing of the endowed property. In general these terms are evident in article 11 of the executive regulation of organizational options of the organization of endowments issued in 1986 by the council of ministers. Therefore one of the most important special regulations in terms of leasing of endowed properties is that individuals are obliged to renew their leasing contracts and maintain their tenant-landlord relation in terms of endowed properties.

Individuals’ acquired right in terms of leasing endowed properties
By setting a series of rules and regulations in terms of special cases and by recognizing individuals’ acquired rights, Iran’s legislator obligates endowments for renewal of contracts such as set up or renewal of contracts with owners of trade and business rights, owners of aristocratic property rights and owners of farming rights which are brought both in 1976’s tenant and landlord relations law and in legal bill of renewal of contracts, leasing of properties and endowed properties issued in 1976 by the high council of Islamic Revolution and the law of cancelation of documents and sales of endowed properties and also later amendments of the same law.

Business and goodwill rights
There are no mentioning of business and goodwill rights in any dictionaries or reputable legal books and it’s of no surprise, because the emergence of this phenomenon was realized in 1940s. But as it seems from the looks of this phrase, it’s due to businessman’s activities and reputation. Some lawyers believe that the word goodwill and the right to trade and business are the same and have interpreted them as the right by which the tenant is chosen over others for leasing his or her business location. Also some lawyers differentiate between these two and believe that: goodwill is the money which is paid to the landlord by the first tenant and on the other hand, the right to trade and business is the right for businessman tenants and is exclusively titled to people who work through leasing a property. In a more complete definition we can say that; the right to trade and business is a financial right which is realized by ownership of benefits for the tenant of a business location and is also able to be transferred to other individuals.

Comparison between agricultural rights and rights to trade and business
Differences between agricultural rights and business and trade rights
These two rights are different in several ways which include:

1- Historically: agricultural right has a long history and it returns to the period of prevalence of agriculture and prevalence of leasing relations on farming lands. While the right to trade and business has a shorter history compared to agricultural rights because this phenomenon was emerged in 1940s in Iran.
2- In terms of legislation: the first law which tended to realize and recognize agriculture rights was the law of land corrections issued in 1960s by the council of ministers and as the time has passed, different other regulations have also recognized this right officially, but the first law which tended to recognize the rights to trade and business was the law of tenant-landlord relations issued a year before the law of land corrections.

3- In terms of the forming elements: the most important forming element of the agriculture right is the optimized utilization of farms and agricultural lands. In fact the human labor (the act of farmer) is one of the most important elements of farming and it is through the same element that other agricultural elements are utilized. On the other hand the most important forming element of the right to trade and business is the maintenance of customers of the businessman and the advantage which is earned by the tenant through his or her hard work. Also some individuals consider the main forming element of the right to business and trade as reputation, and absorption of customers.

**Similarities between agricultural rights and rights to trade and business**

There are several different similarities between agricultural rights and rights to trade and business. The following are the most important ones:

1-Type of establishment: both of mentioned rights are considered as common acquired rights. In this regard, similar to other rights, these rights are established by considering for customs and civil laws. Also the legislator has set regulations for the legitimate relation between the owner and the farmer, the tenant and the landlord which have led to formation of an establishment namely as the agricultural right and the right to trade and business in Iran’s law.

2-Type of right: since both of the aforementioned rights are able to be assessed in terms of value, transferred and paid; they are considered as financial rights. And also since the subject of the agricultural right and the right to trade and business are immovable, the regulations regarding them are also immovable and irreplaceable.

3-Qualification of courts: with respect to the fact that the aforementioned rights are considered as consequential irreplaceable properties, with reference to article 12 of civil law, any type of complaint regarding asking for mentioned rights is exclusively right for a court in which the basis of mentioned rights are located.

**Obligation for setting up or renewing leasing contract**

According to the principle of free will, human is always free in terms of acting or refusing to act except for legal obligations by which wills are limited. According to article 494 of the civil law, the contract of leasing is void immediately after the leasing period is expired and if after expiration of this date, the property was in occupation of the tenant without the permission of the landlord, the tenant is obliged to pay the landlord for the extra length of occupation whether the tenant has gained any benefits during the extra period or not.

In addition, if the time period is not exactly mentioned in contract documents, the leasing will be valid for up to one year and if the property is occupied by the tenant for longer periods, the landlord can claim a rent fee for the extra period.

Therefore, in terms of intransigence, firstly the tenant should vacate the property and secondly he or she is obliged to pay a fee. As it was said, immediately after expiration of leasing period, the legitimate status of the tenant is changed. It means that his ownership rights to the leased property change into legal rights and the consequence of this transformation is that the tenant should vacate the property otherwise he or she is considered as usurper. Any type of suggestion in contrast with this content is contrary to the subject of Islamic trust laws.

Still in some occasions and under some extraordinary situations the endowed property needs to renew its business relation and as it was mentioned previously this need or necessity is only for the endowed property itself and not for the tenant and therefore, in some occasions the necessity of renewal of contracts for the endowed property is anticipated in related laws and regulations. One of the situations under which the leasing contract must be renewed is the aristocratic ownership right and the other one is acquired rights such as agriculture right and the right to trade and business. Complementary descriptions are as follows.

**Obligation of the endowed property for renewal of leasing contract with the owner of the right to trade and business and goodwill**

In some situations, back up laws of the relation between tenant and land lord void the equation and in terms of existence of right to trade and business for the tenant, the landlord is obliged to renew his or her contract with the tenant and in this regard, it is considered as a type of imposed contract.

According to article 1 of the law of relation of tenant and landlord issued in 1986, any locations that is leased out for a business or for residential purposes, if the occupation of the occupier is considered as leasing or considered as the consideration for the benefit or the good of the property, whether being documented or not, it is included in the regulations of this law.

Now it must be said that in present system, if the tenant had the right to trade and business in terms of the leased property, according to the law of relations between tenant and landlord issued in 1986, the renewal of the contract is necessary and obligatory and except for special circumstances titled in the aforementioned law, the
landlord is not authorized to void the contract or request for vacating the property. These issues are brought in articles 14 and 15 of the aforementioned law. According to mentioned content, the landlord can only ask for vacating his or her property by considering for preset regulations of laws in terms of endowments and therefore, in such properties there are no tender possibilities therefore by asking an adjusted rent fee from the expert official the wastage of the benefits of the endowed property could be prevented. The steps of these actions are also mentioned in latter law.

According to article 1 of the law of voiding the documents of sales of endowed lands issued in 1983, after voiding the ownership document, in cases in which the endowed property is able to be leased out and the occupier also requests for leasing, the leasing contract will be set according to considerations for the benefits of the property and as we know, the right to trade and business is one of the acquired rights which should be considered by the sides of the contracts at the time of setting. Also in third paragraph of the regulation of voiding documents of sales of endowed properties, it is brought up that the acquired right of the occupier includes any type of right that is considered for the tenant such as aristocratic ownership rights, rights to trade and business, agricultural rights, well digging, cutting trees and etc.

The other point is that we have mentioned that according to third article of regulation of manner and order of collection of postulates issued in 1986, the entire goodwill of the endowed property is collectible in the favor of the property and also according to fourth article of the same regulation, whenever the tenant intends to transfer the ownership of the property to a third party, he or she should pay 10% of the total goodwill of the location to the benefactors of the endowed property at the time of setting the contract. Also if in contrast with the terms of documents, the tenant tries to establish a business in the land which he or she has leased for residential purposes, should pay 50% of the total goodwill of the location to the benefactor. Such payments are transferred to the bank account of the legal representative of the endowed property and will be spent for realization of the intentions of the endower.

**Obligation of the endowed property for renewal of contract with the possessor of aristocratic ownership right**

According to second article of the regulation of voiding documents issued in 1983 in terms of entire agricultural lands which are transferred to third parties in order to consider for the regulation of transformation authorization, the documents of leasing are set with consideration for their acquired rights. Also the payments which were done previously by the government for the mentioned properties are considered as government’s gifts and immediately after that the land was leased to an occupier the related fees are deducted or added up. In addition, the article three of the regulation of voiding documents in defining the acquired right of the occupier considers it as any type of right that are legitimately considered for the occupier such as aristocratic ownership, rights to trade and business, agricultural rights, well digging, cutting trees and etc. and in this regard, without receiving any payment or postulate, the leasing contract will be set.

**Prohibition of aristocratic construction in agricultural lands**

According to regulations, specifically the regulation that signifies that unauthorized aristocratic constructions in endowed properties does not imply that the constructor has any type of aristocratic ownership right, the constructor has raged against him or herself and has wasted his or her capital. In this regard the trustee of the endowed property will come up with the complaint of deconstruction of constructed structure towards realization of the rights of the endowed property. According to article 8 of the regulation of voiding documents of sales of endowed lands and properties, since the issuance of this regulation, any type of aristocratic constructions in agricultural lands without legal authorizations are forbidden and in terms of violations, the constructed aristocratic belongs to the endowment. In other words if the aristocratic construction is inside the lands, according to related articles the structure belongs to the property and if the construction has taken place outside the mentioned lands, the constructor should deconstruct the structure.

**Exceptional cases of recognizing the ownership right for unauthorized aristocratic constructions**

In some exceptional cases, the legislator authorizes the aristocratic ownership right for the unauthorized constructions in endowed lands. First, in some cases and as it is recognized by the organization, granting the tenant with aristocratic ownership right is authorized and this issue is the resultant of options of the management of the organization listed in recent part of article 12 of regulation of law of options of the organization of endowment and charities. In this article it is mentioned that in some exceptional cases, the ownership of aristocratic construction by the tenant is authorized with agreement of the organization and this holds for endowed gardens and for special endowments too and therefore, the possibility of aristocratic construction is termed at consideration for the previously mentioned article in terms of endowed lands. Essentially the manager of the organization as the representative of the leader will consider for the interests of the endowed property and in terms of granting the aristocratic ownership right, the constructor of the construction is recognized as the owner.

Second, before the Islamic revolution of Iran, some endowed properties, agricultural lands and constructions were sold without legal authorization and the buyers of such lands or properties had started constructing...
structures with the belief that they owned the land. But after the Islamic revolution of Iran, according to the regulation of voiding the documents of sales of endowed lands and properties, in addition to the fact that the legislator of Iran has considered the issued ownership documents as void, he also returned the sold properties to the endowment organization and set regulations for aristocratic rights of occupiers and in these regulations he has considered individuals’ aristocratic ownership in endowed properties as valid.

II. Conclusion and Discussion

Through the study of individuals’ acquired rights in terms of endowed properties such as agricultural rights or the right to trade business and goodwill rights in commercial properties and also possessors of aristocratic rights, the following conclusions are made:

1- Sometimes it is seen that there are differences between lawyers in terms of recognition of the right to trade and business and certainly these differences have led to contrary sentences by courts of law, though by today that this research has taken place, these differences are mineralized.

2- In practice, the agricultural right is sometimes mistaken for the root right and etc. or even we sometimes witness that the owners or possessors of this right face various problems which are the resultants of lack of adequate expertise of related experts and this itself leads to increased number of complaints with the subject of agricultural rights. Therefore, removal of obstacles and mentioned issues require trainings in this context. Most certainly, in long term the act of training leads to reduction of bureaucratic expenses and saves time.

3- Individuals’ acquired rights which are recognized by high authorities validly, have created disperse obligations and necessities as a result of different and special regulations, therefore for optimized consideration for individuals’ rights, researchers and writers are recommended to elaborate on the issue of exceptions to the rules of leasing and to write legal books in this context.

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