

Public Management versus Irregular Soil Parcelments: A Case Study of the “Colinas Do Magarça” Condominium in the City of Rio De Janeiro

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Abstract: *The article presents a study on municipal public management in situations of irregular land subdivision that had as object of investigation the Colinas do Magarça condominium in the city of Rio de Janeiro. It was assumed that there are numerous areas in the country with irregular land subdivisions, promoting environmental damage to these locations. The study aimed to identify weaknesses in the legislation on land occupation, with a view to pointing out elements that contribute to public management in the development of public socio - environmental policies. It is a documentary research, in secondary sources with data collected from official documents, in municipal bodies of the researched city. Data are presented with a qualitative analysis methodology. With the research carried out in 2020, it is confirmed that, despite the ratifications to the public authorities on the way in which the land subdivision took place in the place under study, the issue was not resolved, as well as civil liability and environmental impact on demand. The study indicates the need to implement effective legal means to reconcile collective and diffuse interests in the context of environmental conservation, with a view to complying with what is provided for in article 225 of the Federal Constitution.*

Keywords: Environmental Legislation. Environmental responsibility. Urban Land Occupation. Public Environmental Management

1. Introduction

The subdivision of land is today an important issue for municipal public management, and for civil society, sciences and professions linked to environmental issues, urbanism, architecture and law.

The subject is dealt with by the Federal Constitution of 1988, however, it was initially established in Law nº 6.766/79, which is basically dealt with in the subdivision of plots, located in certain areas of the urban municipal territory, in lots designated for the building.

For the proper implementation of a subdivision or even a dismemberment for urban purposes, the subdivision must submit to study the legal frameworks on subdivision, use and occupation of urban land (federal and municipal); analyze the studied legislation; know the urban reality of the city and the land occupation processes; raise statistical and official data on the matter at the municipal level. What the Federal Law 6766/79 prescribes, with the changes recommended by Law 9785/99 and also in relation to the relevant municipal legislation. This assumption is ratified only when the land is located in an urban area or urban expansion. As a starting point for this research, the guiding question was: what are the weaknesses in the legislation on

land occupation in the city of Rio de Janeiro that promote damage to the environment.

Within the scope of legislation and legalization of urban land use, in 2001 the City Statute¹ was created. This Statute provides for the subdivision of urban land and comprises urban, sanitary, civil and criminal norms aimed at disciplining land occupation and urban development and the protection of the collective public interest.

The aforementioned Statute made it possible to review old behaviors usually exercised by the population in relation to the occupation and use of urban land, both in the public and private spheres. In the area of the municipality, the public power is privileged and stands out as an important role, assuming the role of protagonist, being the main responsible for the elaboration, implementation and constant assessments of its urban policy, advocated by the Master Plan², seeking to secure, to everyone, the right to the city

¹The City Statute, name given to Law 10,257/2001, is responsible for regulating the “Urban Policies” chapter of the 1988 Brazilian Constitution. Its basic principles are: to ensure the social function of property and promote participatory planning

²The Master Plan is a legal instrument that proposes an urban development policy and guides the Municipality's planning

and the adequate distribution of benefits and also the burdens inherent to the urbanization process.

According to Fiorillo (2017), despite the important role played by green areas in the urban environment and the need for preservation, conservation and maintenance of these spaces, it is observed daily that in irregular occupations and/or subdivisions the environmental issue linked to the preservation of these spaces it is not considered even if there are legal statutes guaranteeing them.

According to Antunes (2018), historically, areas inadequate for housing installation, adequate infrastructure and without public support for people's permanence and housing are occupied by vulnerable population groups whose social and economic conditions do not allow them access to regular areas. This population is then at the mercy of irregular real estate companies and, illegally, they end up occupying spaces where the lack of public services essential to the population's dignified life; either by the total lack of regularization of the occupied urban territory; or due to the fragility of the public management in terms of regularization and/or adequate inspection of the issue.

When dealing with the illegal occupation of urban land from the perspective of environmental civil liability, we have as a criterion for liability for damage to the environment, the objective theory, because according to Gonçalves (2019), in addition to serving justice more broadly, it facilitates the attribution from liability, since it exempts the victim from proving the existence of guilt, and it is only necessary to prove the causal link between the polluter's activity and the calculated damage. For Antunes (2018, p.218) "the different hypotheses should be examined on a case - by - case basis, since a huge range of possibilities prevents, *ipso facto*, the abstract construction of an applicable general theory".

According to Barros (2008), the entry of strict liability for environmental damage is an important instrument in Brazilian law, being also assimilated by the Federal Constitution of 1988 in its article 37, §6º, when it was extended to the State for the practice of illegal acts practiced by public agents.

For Di Pietro (2012), it is possible to verify that objective civil liability is the one that is most improved with the responsibility of the polluter, giving an effective treatment to the repair of environmental damage, considering that by having joined the theory of risk integral makes impossible the allegations of exclusion of environmental civil liability, such as: unforeseeable circumstances, force majeure, third party fact and non - indemnity clause, but with the latter, right of recourse against the cause of the damage.

Thus, when the municipality is silent, not carrying out the undoing of the clandestine subdivision, which can generate the development and growth of the irregular allotted area, it must be held responsible for this, together with the

process. Its purpose is to order the city's development, ensure its full functioning and the well-being of its inhabitants, with a focus on the principles of sustainable development and the fulfillment of the city's social function and urban property.

characters who assumed to make the irregular subdivision of the land, in solidarity, according to the Civil Code of 2002, in its article 942 combined with article 14, §1º of Federal Law nº 6.938/1981.

Faced with the questions presented, this study; takes the city of Rio de Janeiro as the universe of investigation and the Condominium Colinas do Magarça as the *locus* of the research, with the general objective of identifying weaknesses in the legislation on land occupation in the city of Rio de Janeiro that promote damage to the environment.

2. Material and Method

This is a case study, having as its object the "Condominium Colinas do Magarça", based on a literature review and examination of current legislation on the issue of urban land use and occupation with a view to ensuring environmental preservation. The conceptual search allowed the construction of the theoretical and legal framework that supports the discussion and analysis of the case under study. Photographic records and aerial satellite images were also used to study and recognize the municipal area where the Colinas do Magarça Condominium is located. With these data, it was possible to demarcate the geographic and spatial location of the urban area under study, allowing for the recognition of the chosen region as a research universe, comparing them and analyzing the light of the theoretical basis on which the study is based.

The condominium studied installed in the city of Rio de Janeiro in 1995, has as a reference of urban space, the model of the automotive city, structured by private residential condominiums and shopping centers, which presents itself as hegemonic in large cities and urban centers in the present. In cities, the streets were being transformed so as not to primarily serve the population, as they were not properly suited to the circulation of pedestrians, but rather in a way that allowed vehicles to travel. Violence and fear added elements that promote its degradation to the urban space.

According to JAENISCH (2021), the monofunctional, privatized and automobile model is even expressed in the current social interest³ housing program, which has resulted in several houses in Rio de Janeiro. Closed condominium complexes of large units were built in isolated areas, far from neighborhood centers and the city center.

The Condominium Colinas do Magarça, which is also part of a closed complex, built in an isolated area, far from the city's urban centers, with an estimated population of 330 thousand inhabitants, the occupation of the area began in 1995 by the company C & M Empreendimentos Imobiliários Ltda and occupies an area of approximately 91, 290.00 m², its population is mostly composed of workers who travel by urban transport.

³The National Social Interest Housing System – SNHIS was established by Federal Law 11.124/2005, with the main objective of implementing policies and programs that promote access to decent housing for the low-income population, which makes up almost the entire deficit. housing in the country.

Figure 1 illustrates what the urban area was like before the construction of the Colinas do Magarça Condominium



Figure 1: Area before the construction of the Colinas do Magarça Condominium
Source: Google Maps, photo taken in 2005

It is clear that it was an area free of construction and with vegetation.

Figure 2 illustrates the vegetative reserve area within the Condominium Colinas do Magarça and its respective irregular lots.

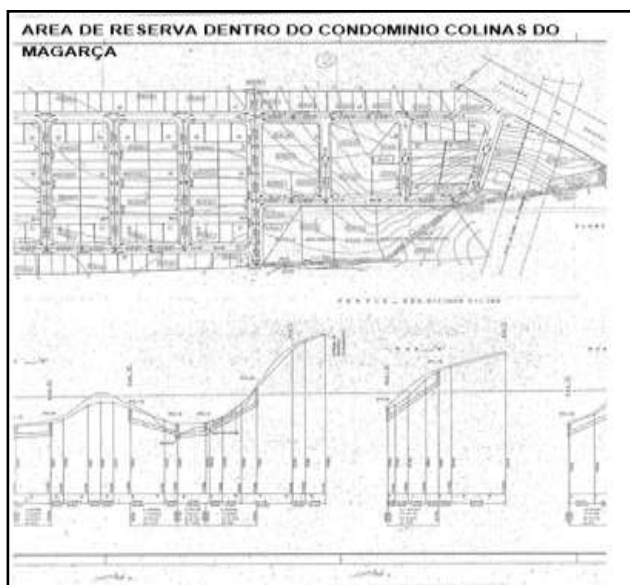


Figure 2: Colinas do Magarça Condominium
Source: Google Images, taken in 2010

The land area was divided into 170 (one hundred and seventy lots) irregular and does not have an environmental license. Causing environmental and urban damage, as well as the consummation of injuries to diffuse and collective interests.

According to JAENISCH (2021), a historical characteristic linked to the urbanization process in the Municipality of Rio de Janeiro was the assumption that the low - income urban population was channeled to the peripheral spaces of the cities, thus making the built environment a distinct space. expression of social inequalities, with constant pressure from the poorest towards the worst locations.

The process and court decisions in the case under study of the Condominium Colinas do Magarça highlight important issues regarding the proper subdivision of the land according to current legislation.

3. Result and Discussion

It is common in the city of Rio de Janeiro to have several illegal subdivisions, many of the areas occupied and managed by irregular companies, under which the government effectively does not promote efficient actions. The existence of irregular subdivisions, despite constituting a socio - environmental problem that promises environmental impacts and an increase with legal problems, does not receive due attention from the municipal management, making it clear that it is not a priority on the political schedule.

Subdivision number 1, 435 has structural problems that compromise the environment and affect people's lives. In view of the irregularity of the soil, as such a problem can lead to issues such as basic sanitation and the subdivision itself based on its illegal structure.

The case under study presents data that, both in the legal scope, with regard to the non - compliance with the legislation in force regarding the installations of subdivisions in the urban area of the city where the condominium under study is located; as with regard to non - compliance with principles of environmental protection and preservation of green spaces and areas, which express the reality of existing illegal subdivisions, especially in large urban centers.

They show the inefficiency of public management with regard to inspection for compliance with the law. As in the case under study, in which the State of Rio de Janeiro unfortunately the Municipality of Rio does not effectively exercise its environmental police power in the inspection of irregular subdivisions.

The irregular subdivision of the soil, in addition to violating the favorable quality of life advocated in Law 6, 938/1981

(Environmental Law) and causing problems in the soil, generates reflections on water, animal habitat and other environmental factors, social obstacles such as the absence of infrastructure; in addition to difficulties for public management, of which we highlight the absence of regulations, health and sanitation controls for residents can compromise the effectiveness of the Master Plan, and the actions of the Municipal Secretariat for the Environment⁴, Urban Planning⁵ and Urban Planning⁶.

The installation of irregular subdivisions can cause damage to life with the occurrence of landslides or, when in areas close to rivers or streams, put lives and real estate, material and immaterial goods at risk of flooding.

In Brazil, the Supreme Court of Justice ruled on Special Appeal 1060753/SP for the reversal of the burden of proof in the event of environmental damage. Proved the damage and it will be up to the defendant to prove that he has nothing to do with that damage.

The importance of this judgment is that it allows the use of the reversal of the burden of proof rule, a rule present in the Consumer Defense Code, in cases of environmental damage. This act of the judiciary proves to be coherent with the theory of civil liability, in its tendency to "be objective", because it protects the collectivity. It is socialization of environmental damage.

4. Conclusion

The research showed that, despite the legal provision under the 1988 Constitution of the Federative Republic of Brazil, Law 6.766/79 (Land subdivision law) and the 2002 Civil Code, which holds the Municipality responsible for failure to inspect the subdivision irregular soil, the legislation is constantly violated, revealing that the existence of a law does not guarantee its compliance or environmental protection in the municipalities.

We also realized that it is no longer necessary to create a law aimed at civil and environmental responsibility, since it already exists. However, we need that the jurisprudence, in compatibility with countless scholars who ratify the need to punish the Municipality for omission, in the case of the absence of inspection of irregular subdivisions, need to be increasingly applied, observing, of course, due legal process.

⁴Municipal Secretariat for the Environment – SMAC: is the agency responsible for planning, promoting, coordinating, inspecting, licensing, executing and enforcing the municipal environmental policy, together with other municipal agencies.

⁵Secretariat of Urbanism: is the body responsible for planning, organizing, directing and coordinating activities related to physical-territorial development and licensing of land subdivision and private works in the Municipality.

⁶ Secretariat for Urban Planning - SMPU: is the body responsible for developing strategies for promotion and urban requalification, aiming at the protection of the municipality's cultural heritage, plans, coordinates and develops activities related to physical-territorial development and the subdivision of land and works in private and public land, aiming at economic progress and quality of life.

Finally, the study allows us to conclude that the legislative basis on the civil and environmental liability of the municipality, due to the failure to inspect irregular subdivisions, will need to be applied more rigorously by the Judiciary, under penalty of delay in the judicial provision aggravating even more the environmental damage caused by the irregular subdivision of the land with the sieve of the municipality's omission.

And so to ensure social development, prioritizing the public interest, improving living conditions and reducing the social and environmental impacts that the Municipality is bearing due to non-compliance with legislation and the Judiciary's apathy in applying the penalties arising from the Municipality's objective responsibility.

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