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URBAN LAND GRABBING AND THE MUNICIPALIZATION OF PROTECTION RULES FOR APPS

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INTRODUCTION/ CONTEXTUALIZATION

Faced with the most diverse forms of global demonstrations on the subject of "environmental protection", we see Brazil taking large steps in the opposite direction, with the approval of Law 14,285 to turn off the lights in 2021, which further weakens the already troubled environmental scenario. Brazilian, giving a safe conduct to administrators of the municipal executive power, as well as to local legislators, the possibility of legalizing areas of permanent preservation that agonize for years in the consolidated urban areas of the big cities. This practice will be yet another victory for the "grileiros", who are people who criminally invade, occupy, subdivision and illicitly obtain ownership of public lands without authorization from the competent body and in violation of the legislation.

GOAL(S)

The objective of this research is to show the ineptitude of the public power in the face of the demands that are presented today and due to the lack of human resources, technicians and even basic equipment, they are unable to present minimally technical solutions for medium and long term impacts, and the legalization of these areas it will have serious impacts on the courses of rivers and springs that often supply cities.

Also demonstrate the unconstitutionality of the law before the Federal Constitution and the principles described therein in relation to the environment, as well as the constitutional norms of competence of the municipalities to legislate on issues that go beyond their administrative borders.

METHOD

The method used for this article was the indicators available on official state websites, demonstrating that the capacity of the technical staff of the municipalities to carry out EIA - Environmental Impact Studies and RIMA - Environmental Impact Reports is meager in relation to the growing demand that the new law will bring. Brazilian laws related to the subject and the Federal Constitution of 1988, which guides the Judiciary in the country, were also used.

DEVELOPMENT/RESULTS

Law 14.285/21 establishes some prerequisites for the Executive, Legislative and Municipal Councils to "legalize" invaded APPs that are in consolidated urban areas of municipalities. To this end, this law amends several articles of the laws that provide for the protection of native vegetation, land regularization in Union lands and the subdivision of urban land to provide for permanent preservation areas around water courses in areas consolidated urban areas, in addition to changing the measurements of the marginal strips that border the rivers and water courses in the municipalities, through a list of rules that are currently impossible to be fulfilled by the legislative and executive powers at the municipal level. that this new law would remove the discomfort that the Public Prosecutor's Office imposes on municipal administrators in relation to solving demands for housing that are in permanent preservation areas, which, for the most part, are in risk areas. a lot of attention: The first talks about a technical body that can issue an environmental report demonstrating the impacts that the release of such an area can cause. On the CETESB website, which is the supervisory body of the State of São Paulo, it is clear through a Conama resolution that, in addition to the municipalities that have CETESB posts, only 70 municipalities in the state of São Paulo, which is at the forefront environmental legislation, have low, medium and high impact environmental licensing. This

way, the vast majority of the 645 municipalities in São Paulo do not have a technical body for such assessments. The second is popular participation in the form of a council for approval of these areas. According to José Augusto de Padua, Professor at the Institute of History at UFRJ, and coordinator of the History and Nature Laboratory, in a series that began in 1992, which was called "What Brazilians think about the environment", which was every five years, when asked what was part of the environment, the oceans appeared, forests appeared, but when asked about cities, for example, it dropped to 19%. Only 19% of people thought cities were part of the environment. And only about 10% thought that favelas were part of the environment. This idea that the environment is what's out there. In addition, in most municipalities there is no COMDEMA, Municipal Council for the Defense of the Environment, which weakens and makes important areas of water sources and water production vulnerable to the municipality and for the country. The third and last one is related to the legislator's lack of knowledge of constitutional principles regarding the environment, which are quite clear in Arts:Art. 5, LXXIII, any citizen is a legitimate party to propose popular action that aims to annul an act harmful to the public property or entity in which the State participates, to administrative morality, to the environment and to the historical and cultural heritage, being the plaintiff, except proven bad faith, exempt from court costs and the burden of succumbing, when it comes to denouncing an act harmful to the environment, which in this case the degradation of APPs;

Art. 23, VI, It is the common responsibility of the Union, the States, the Federal District and the Municipalities: to protect the environment and combat pollution in any of its forms; It is

VII – to preserve forests, fauna and flora;

Art. 24, VI It is incumbent upon the Union, the States and the Federal District to legislate concurrently on: forests, hunting, fishing, fauna, nature conservation, defense of the soil and natural resources, protection of the environment and control of pollution; It is

VIII, responsibility for damage to the environment, to the consumer, to goods and rights of artistic, aesthetic, historical, tourist and landscape value;

Art. 129, III, The Public Ministry's institutional functions are to promote civil investigation and public civil action, for the protection of public and social assets, the environment and other diffuse and collective interests; since one of the arguments of the legislator is to remove the pressure from the MP on the mayors.

Art. 170, VI, The economic order, founded on the appreciation of human work and free initiative, aims to ensure a dignified existence for all, in accordance with the dictates of social justice, observing the following principles: protection of the environment, including through differentiated treatment as the environmental impact of products and services and their preparation and delivery processes; where it is about principles that guide the Brazilian legislation as a whole, therefore this would be non-negotiable;

Art. 225, paragraph 3 of the Citizen Constitution: everyone has the right to an ecologically balanced environment, an asset for common use by the people and essential to a healthy quality of life, imposing on the Public Power and the community the duty to defend and preserve it for present and future generations. Conduct and activities considered harmful to the environment will subject violators, individuals or legal entities, to criminal and administrative sanctions, regardless of the obligation to repair the damage caused. are more incisive in prohibited conducts that alter or interfere

with the environment and with regard to the dignity of the human person when it comes to housing in risk areas, in addition to the importance of the social function of property.

It is also clear that the regional importance of the watercourses is not observed, that it is not possible to legislate locally on this subject without causing impacts on other cities that are downstream of the watercourse and depend on these rivers for supply. Any alteration would cause diffuse impacts.

Another important point is the date stipulated by the legislator, that these areas "invaded and consolidated" by 04/28/2021 can be legalized. The same practice happens in the illegal areas of the Legal Amazon, which year after year, government after government, the deadline for land legalization of these invaded areas is renewed, putting the entire ecosystem at risk, and, due to the Brazilian political history, there is no doubt that this practice may also happen with this new legislation.

CONCLUSION / FINAL CONSIDERATIONS

If we take CF/88 in its Art. 30 I, which clearly and objectively presents the following, "It is up to the municipalities: to legislate on matters of local interest", we know that rivers are clearly not a matter of local interest, but state and/or federal, except when they are born and die in the same municipality, which is not common. Rivers do not respect political boundaries and their management goes beyond borders, so it is a diffuse interest that in this case is not the responsibility of the municipality alone, through a "pen" that often will not have technical support, to legislate on this topic.

Today, ADI 7146 is pending judgment at the STF, which questions the legality of Law 14.285/21 with two possible solutions to the issue, 1st declaration of unconstitutionality of Law 14285/2021, or 2nd the compliant interpretation of its provisions in a way that the municipalities, in the use of the competences granted by article 30 of the Federal Constitution, can expand the protection of the marginal strips of the rivers that cross their territories and not reduce it, as is the desire of the legislator who proposed the law.

In view of everything that has been presented, and taking into account data from the State of São Paulo, which is at the forefront of environmental legislation and inspection, and is a state where there will inevitably be numerous irregularities, let alone in states with much less resources where political coronelismo dominates large regions, places where humble people have to bend to the ills that the state itself submits them to raise votes. We see a clear movement of urban land grabbing, destroying areas that must be protected because they have constitutional provisions for that.

Keywords Legislation, APP, land grabbing.