

The Spatial Organization Dialectics of the City of Jeriquara/SP, Brazil

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Abstract: The present paper aims to analyze and discuss the morphological formation of the city of Jeriquara, located in the countryside of the state of São Paulo, Brazil. The importance of this study lays on its primary documentation, that is, the long lease deeds (cartas de aforamento). These deeds are part of the medieval legal system implemented in Brazil by the Portuguese. The long lease, perpetual lease or tenure, or fiefdom (in the Brazilian legal system, aforamento, enfiteuse or emprazamento) are synonyms of this legal institute that divides urban land between two holders: the Catholic Church and the civil individual. This article employs as research method the interpretive and descriptive analysis of such deeds, based on theoretical bibliography on the referred legal institute, civil law and the Brazilian forms of urbanization. Following the presentation of a case study there will be the discussion of the juridical issues at the core of the national colonization implemented by the Portuguese and which are at the genesis of several of the current conflicts. This study shows that the urban territory of many cities is still ruled by these past contexts and, without understanding them, we will not be able to efficiently interfere with city spaces.

Key words: Urban land, ground lease, emphyteusis or leasehold state, urban law, urban management, Jeriquara/SP.

1. Introduction

The core issue of this paper is the land long lease, a contract by means of which the direct owner of the land grants the land's perpetual use to a third party, the fief-holder, in exchange for the payment of a pension or fee. This estate system was in force in colonial Brazil, having originated in medieval Portugal. However, this legal relationship of property still impacts modern urban land issues. That way, it is probable nowadays that, when we sell a property in the central area of an urban locality, we commonly discover that we are the leaseholders of some landlord, emphyteutas, and that we must pay a retribution to be able to alienate the useful domain of the property.

The city of Jeriquara, located in the countryside of

São Paulo state, in the region of Ribeirão Preto, Brazil, presents a serious problem regarding the management of its urban space. In the processes of applying for funds or loan through the state and federal governments for constructions, it is common for municipal public authorities to have their requests denied. This fact happens because the local representatives can not prove the ownership of the property, since there is no registration that can be attached to the process. This contemporary difficulty of managing the city comes from its foundation. When analyzing the ownership of an urban land, it is necessary to study the regulation of the social production of an urban locality. In order to do so, the aim of this article is to examine the conformation of the ground-leased urban land so that it is possible to understand its present reality. When the problem of the emphyteusis institute is also included in this analysis, the urban law of urban spaces built through

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time is directly debated. The residents whether they own the direct domain of the urban land or not, along with the religious and public powers, compose the agents of urban construction, establishing a space-social dynamics.

It is important to highlight that the primary data used in the research of long-leased land in Jariquara were those found in the “log books”: documents belonging to the local Church listing the long-leased land granted to the populace, with the specifications of the lease conditions, taxes and other regulations of the urban space belonging to the church. In this sense, it is also necessary to clarify the research method used.

2. Research Methods and Techniques

The goal of methodology is to perfect procedures and criteria used in research. Method, in its turn, is the path to reach a certain end or objective. As to research methods and techniques, we have adopted strategies of scientific investigation with general and specific techniques that allow for the construction of a social science of the spatial configuration of a city based on documents scarcely used in urbanism, that is, the long lease deeds.

As to the general research technique, we have performed literature review on the broad topic, i.e., the long lease legal institute. As for specific scientific technique, we have employed the analysis of primary data (long lease deed and legal process). The methodological approach uses analysis of information, data and empirical evidence. In order to apply this approach of primary data, selected directly at the source, the qualitative exam is essential in understanding the urban formation of the subject city. In this sense, the present study concentrates on the analysis of the legal process and long lease deeds filed at the forum and diocese¹ of the city of Franca. To

systematize the data contained in the deed, we have consulted various registration books with information on urban land appropriation in the referred cities.

3. Sesmarial Land Concession System Implemented in Brazil Colonia

Firstly, we have considered it paramount to perform a historiographic review on the sesmaria system of land distribution implemented in Brazil by the Portuguese during the colonial period. The review aims to clarify how this review directly contributed to the formation and foundation of urban centers and how this legal system, still present nowadays, ruled the principle of long lease.

The land long lease is at the core of the religious estate formation in a certain location in colonial Brazil and our interest is to analyze the permanence of the process of access to urban land through this legal system that is still recurrent nowadays.

Through the studies of the researcher Murillo Marx [1], as well as those of Claudia Damasceno Fonseca [2], Maria Fernanda Derntl [3], and Maurício de Almeida Abreu [4], the process of founding cities from the formation of religious patrimony could happen, usually and generalizing, in the following way: an owner or a group of owners, according to interests or conflicts, donated a strip of land to the church, which would be represented by a saint of devotion. Besides, this land became part of the church assets and began to form the patrimony of this oracle, therefore the term religious patrimony.

Then, after receiving the land by the religious leader of the territory, the bishop, the chapel was built and around it began the construction of the first homes.

This staged process of urban foundation presented a web of conflicts that reverberates until the present time. One of the central conjunctures of these conflicts permanence is concerned to the urban land tenure. When the land was donated to a saint of devotion, it was recurrent the ground lease (emphyteusis) of this land by the church, since some income was necessary

¹ In Brazil, diocese means a territorial unit administrated by a bishop. It is an important geographic unit in the territorial organization of the Catholic Church. The diocese can also be called a bishopric, an episcopal area or episcopal headquarters.

for ecclesiastical expenses. Thus, the resident happened to be the emphyteuta and the church happened to be the landlord. The permanence of these ground-leased areas by the church in the Brazilian cities up to the present time is a subject of little study in the literature on urban formation. In a recent survey on urban ground leasing in the region of Ribeirão Preto, in the state of São Paulo, Dirceu Piccinato Junior [5] showed the complex processes in maintaining the religious properties in the cities of the region that still have their urban center being ground-leased by the church nowadays.

Walter Rossa, in his study of “regulated” urbanism, adds that the city is the work of power and society. The formulation of new concepts and mechanisms of urban action that can happen in avant-garde cultural settings, however its application is not immediate or complete, and there is always a consequence between the rhythms and rules of the society evolution.

This preamble leads us to highlight the positions of Murillo Marx [1] and Cláudia Damasceno Fonseca [2] on the process of urban formations in Brazil. The first reveals that, through the regulation of land granting and the structuring of the municipal environment, kingdom ordinations, transposing Portugal’s legal framework to the distinct realities of its colonies, influenced the landscape and the morphology of urban areas. Nevertheless, the norms that outlined the urban spaces and planning were very parsimonious and generalizing [1].

Claudia Damasceno Fonseca [2] states that the precepts of city foundations in Brazil cannot be considered according to a rule, a model or even a normative, spatial or chronological linearity. For the researcher, political, economic, and especially local conflict factors could influence and determine the general propositions of urban space. For these reasons, the author ponders the general tendencies of the settlement process in her work.

The system of land concession, named “sesmaria”, implemented in Brazil by the Portuguese contributed

directly to the formation and foundation of urban centers. Maurício Abreu [4] explains that since these “sesmarias” were large “latifundia”, they entailed costs. Many of the people who received land as “sesmarias”, named “sesmeiros”, could not afford to pay the expenses to maintain the land. This fact indicates that the majority did not have access to the land directly. Consequently, this landless population was very important for the emergence of the religious patrimony, which would give rise to many cities, since one or more of the great “sesmeiros” granted some clods of land so that these landless workers could settle there and build their houses. However, the donation of these lands did not benefit the little “sesmeiros” directly; the church was the beneficiary of these lands in the name of a saint of devotion, being in charge of the (religious) land patrimony administration.

The local Church entity usually administered this plot of land granted to constitute the patrimony of the saint, that is, the factory. Valéria Eugênia Garcia [7] reveals that the factories were associated to the factory idea of the sacristy, in other words, to the expenses and revenues related to the divine worship. Taking the legal basis as a parameter, the factory is everything that is added to the works of nature by human action and, in this sense, it means construction. Referring to the commercial law, it would be a house or workshop where goods are manufactured. In the ecclesiastical law, it refers particularly to the church, having various connotations here: the factory was in charge of the administration of the churches’ restorations, their assets, their incomes that were applied in the preservation of the religious buildings, in the celebration of the divine worships, and in the corporation and assemblies of those responsible for the timeframe administration. Those in charge of administering the factory were called “fábriqueiros ou fabricanos”.

The first step for urban formation was the spatial configuration of a camp. In Brazil colony, the term

camp could designate a type of rustic shed, with a simple roof supported at the ends by wooden pillars, which served both to shelter the goods and the travelers during the stops. This word could also include the meaning of “stay”, a point of stopover [2]. According to Murillo Marx [1], this condition means the dependence of the need for land for each inhabitant and family, since they could certainly have access to land, but would depend on the recognition of an organized society.

The second condition for the future urban formation is the constitution of the chapel, that is, a religious building where the altar is located, the chancel. However, it was also an institution linked to certain incomes and charges. Thus, the chapel did not only mean a building, but also an institution that possesses a strip of land (the religious patrimony).

On the other hand, the raise of a chapel to the condition of parish took into consideration economic and demographic order criterion, although political factors could even prevail.

The residents pleaded for this parish raising condition, claiming that they were in need of spiritual assistance due to the distance to the parochial seat, the difficulties of the ways to face in order to carry out the civil, birth, death and marriage records as well.

The population civil administration was responsibility of the parish, and for that, it was assigned a term (territory) of jurisdiction. As for the building of the chapel, it was necessary to be remodeled into a larger, generally more solid building for the transformation into a parish, the main church. The territory where the worshipers who attended the chapel lived was not physically delimited. However, the parishes, once founded, needed to demark their territory insofar as neighboring parishes arose [3].

As the parish grew and densified, the residents could feel strong enough to plead and get political autonomy, that is, to achieve the village status.

The creation of a village implied the imposition of a

legal institution proper of an urban center, being formally integrated to Portugal by then. More precisely, it would be necessary to speak about the formation of municipalities, a minimum territorial unit in the civil sphere, that is, whose government was in charge of a council. The word village originally designated only the main built center where the council was located, but since most of the councils were based in a village, the words village and municipality ended up having the same meaning [3].

When a parish raised its condition to a village, it was granted the right to self-manage, to have a City Council, the jurisdiction of a territory, and a plot of land for the municipal income: the “*rossio*”.

However, as Nestor Goulart Reis [8] emphasizes, in the Brazilian Empire, under the domination of a slave-like agrarian system, the complete urbanistic apparatus by which the Portuguese Crown culturally imposed itself during the colonial period was easily dispensed. The imperial government established after the independence, ignored and dispensed this apparatus, possibly as superfluous and even inconvenient for its purposes. The municipality was left to local legislative interests and interpretations.

The city councils had the responsibility of managing the fundamental aspects of the life and the quotidian of the villagers through the elaboration of codes of conduct. However, during the Brazilian imperial period (1822-1889), the legislation failed regarding the necessity of delimitation of the “*rossio*” when a parish raised to the condition of village. This normative absence allowed the permanence of ground-leased urban land in many Brazilian localities up to the present day.

It is important to introduce here, before approaching land long lease in the region of Ribeirão Preto, the historical definition of this type of lease based on the historiography of the theme, highlighting that, since it refers to land ownership, it encompasses both rural and urban estates.

4. Emphyteusis, Ground-Lease or Lease Hold State: Equivalent Synonyms of a Legal Institute

As Claudio Monteiro [9] explains, the legal regime of ground-lease varied over the course of time as well as in its own material content, that is, its economic and social purpose. From its economic and social function, the emphyteusis (or ground lease) was seen sometimes as a form of exploration of property and sometimes as an autonomous form of property. Therefore, it is necessary, in order to understand its legal nature, to draw a balance between what it would represent as limits to the full use of property and what it could constitute as an opening and multiplication of the outstanding institute opportunities of participation.

According to Manuel Antônio Coelho da Rocha [10], the ground-lease regime can be considered a contract in which the owner of a building, in this case of urban land, grants another person the useful domain of this land with direct reserve of ownership. The full ownership or the set of the different rights that compose this contract divides, becoming one part of the former landlord, to whom the right of some taxes is reserved and the direct ownership of the property is recognized. The other part passes on to the emphyteuta, and it consists especially of the ability of cultivating the property, in the case of rural land, benefiting from all its usefulness, which is called useful domain. For the urban case, benefiting from the property means to build on the ground-leased land and get benefit from this property. The former is known as direct lord, or simply landlord; the second is the useful lord, emphyteuta, leaseholder or housekeeper.

According to the Brazilian Civil Code of 1916, the existing emphyteusis contracts at that date could be maintained, even for perpetuity. The permanence of the landlord's right of ownership on urban land in the ground-leased land before the Civil Code of 1916, is the basis of the conflicts discussed in this paper.

It was agreed by the Brazilian Civil Code of 1916,

that the emphyteuta or leaseholder cannot sell or pay using the useful domain as currency without prior notice to the direct landlord, so that he can exercise the right of option. In this case, the direct landlord has a thirty-day term to declare, in writing, the preference in the sale, for the same value and under the same conditions. Thus, when an emphyteuta of a construction, an urban dwelling, for example, intends to sell this property and the direct landlord, who is usually the church in the cities of the region of Ribeirão Preto/SP, as is the case of the city of Jeriquara, manifests no intention to purchase it, the emphyteuta can carry out the business.

If the landlord does not want to exercise his preemptive right and the alienation accomplishes with a third person, the landlord shall be reserved the right to receive the *laudemium*. The *laudemium* can be understood as a compensation that must be paid to the landlord for not exercising the right of option. If the transfer is done on a beneficial basis, by donation or by inheritance, the *laudemium* is not demandable. In Brazil, according to the Civil Code [11], still valid related to this issue, the *laudemium* is 2.5%. The *laudemium* is prepaid. Therefore, at present, for land under the emphyteusis regime, no deed of sale is drawn up, nor is a letter of public sale issued without the said charge being paid.

The emphyteuta is responsible for the annual payment established in the deed of sale or ground-leased letter directly to the landlord. Usually, it is a modest value applied on production. At present, in Brazil, in the region of Ribeirão Preto/SP, this charge is still practiced in the church religious patrimony lands. In the case of Jeriquara, a city of this region and our case study, the charges on urban lands whose direct landlord is the Catholic Church were abolished, remaining only the *laudemium* charge.

The National Civil Code of 1916 extinguished the emphyteusis by the general ways of extinction of the real rights, that is, by the loss of the property, the *usucapion*, the abandonment, and by the expropriation.

The regulations by emphyteusis determine their extinction by the following means: (1) by the natural deterioration of the ground-leased building; (2) by a fine²; (3) by the death of the emphyteuta without leaving heirs [11].

In Brazil, the emphyteusis was based on the Philippine Ordinances. They regulated and managed the Brazilian lands for little more than three centuries until the first National Civil Code promulgation in 1916. The code recognized the ancient emphyteutas and regulated, under the positivist law, the ground-leased land and other real states. In the year 2002, the new Brazilian Civil Code recognized the previous emphyteusis and started to prohibit new ground leases and sub ground leases. Therefore, among us, the emphyteusis regime is not an open field for histories, but a process still under construction.

In this way, we can propose a concept that the emphyteusis is a shared relation between two individuals on one certain property or certain properties. The division of the property domain occurs due to the presence of the landlord and the emphyteuta, producing and inferring effects in its own scope, meaning that for both the holder of the direct domain and that of the useful domain, it can be identified a distinction of subordination and superiority, according to the aspect of the exercise of the emphyteusis itself, with its diversity of obligations and rights. As a result, the emphyteusis aims at obtaining income on the land and maintaining perpetuity over it. Thus, in all conjunctures of a ground-lease agreement, what is being discussed is to whom it is intended and to what degree the useful domain of property is conditioned.

5. The Ground-Eased Urban Land in the Region of Ribeirão Preto/SP

In this part of the article we present the recent

results of our research on land long lease in the region of Ribeirão Preto, characterized still today by large presence of long-leased urban land. The results of this research, based on the methods described above, have already been partially published when we analyzed certain cases, such as those of the cities of Buritizal, Ribeirão Preto and the district of Cruz das Posses.

We call attention to the singular case of the city of Buritizal, in which the original religious urban land estates are still under the ownership of the local church and diocese, the Diocese of Franca. The church has the responsibility of the urban parceling nowadays promotion, that is, it organizes the whole process and develops the sale of the urban lots. The municipal public authority has the responsibility to bear the costs of the clod of land infrastructure [12].

In another example analyzed, in the district of Cruz das Posses, we found that the heritage still remains under the responsibilities of the Catholic Church [12] and that residents do not own the land property, but only the domain, which result in some obstacles, for example, the difficulty in obtaining banking loans or endorsing a business. This is because the private and public institutions imply that there is no guarantee of debt settlement, since the residents have only one ground lease letter, which is not valid as a deed.

The city of Ribeirão Preto has also a similar scenario. The religious patrimony of the foundation of the city was donated to Saint Sebastian in 1862. Even nowadays, in order to sell and purchase a property in the central area of the city, it is necessary to pay for the laudemium. The presence of this tribute shows that the ground leased original urban lands of the city foundation remain under the tutelage of the church. Thus, Saint Sebastian is the landlord of this area and the inhabitants are the emphyteutas, who have the right to use and enjoy the asset, but not the property [5].

The permanence still today of urban land tenure in the Ribeirão Preto region can only be understood if we analyze its historical origin from the creation of

² The fine is the penalty, or loss of the right or of the thing, or the incidence on the resolution of a contract, whether imposed by law, or established in that contract, or arising from a judgment, due to non-compliance with one of its clauses or conditions.

the bishopric of Ribeirão Preto in 1908. With the institution of the Republic in Brazil, the church underwent a process of restructuring and expansion of its domains. For Oscar de Figueiredo Lustosa [13], the multiplicity of dioceses, with the consequent redistribution of the parish territorial divisions, emerged as a distressing need for a policy of creating closer decision centers strategically located to stimulate, supervise and control the pastoral tasks.

The expansion of ecclesiastical circumscriptions in the country would not achieve the desired results for the implementation of the plan of action if there were not a minimum of convergence of points of view, coordination of efforts and unity of objectives.

According to Lustosa [13], between the years 1890 and 1900, there were 17 dioceses in Brazil. Between the years 1901 and 1910, this number reached 30 dioceses; until 1920 another 58 dioceses were created. These numbers reveal the church's idea of dividing itself to centralize her field of activity.

In the first decade of the twentieth century, the foundation of Ribeirão Preto's diocese occurred on June 7, 1908 and the chosen bishop of Ribeirão Preto was Alberto José Gonçalves, from the state of Paraná, Brazil (Fig. 1).

According to the reorganization of the Catholic Church, following the model established in Rome, the bishop Alberto José Gonçalves had to carry out the pastoral visits, organize the curia and the administration of the ecclesiastical businesses as well as to discipline and to manage the secular associations. After taking the first step at the diocese's head office, the bishop Alberto prepared himself for the pastoral visit, willing to go through the diocese to know the cities with their head offices, chapels and the worshipers who were under his rule. This itinerary also intended to identify and to know the situation of the cities religious patrimonies that were circumscribed to the lands of the bishopric of Ribeirão Preto.

The administrative visit to the patrimonial lands

was very evident. Nainóra Maria Barbosa de Freitas [14] reports that, along with the Pastoral Letter of the visit announcement, the bishop sent a "commandment" directing the vicars to prepare the books of the parish, the mother factory and the brotherhoods to be checked at the time.

It is important to point out that in the books of the factories there was the relation of the ground-leased lands granted to the residents, besides the specifications of the ground lease institute, taxes and other regulations of urban space jurisdictional to the church.

This presence of the legal emphyteusis institute, transplanted to Brazil by the Portuguese during the colonial period, is still present in the urban spaces of many other localities. The research we conducted in the Ribeirão Preto region revealed three common situations among the cities of this region: (1) cities where urban ground leased lands still remain under the tutelage of the church, such as Ribeirão Preto; (2) cities where the ground leased religious patrimony, for some reason, ceased to exist, as in the city of Franca; (3) cities where there are conflicts of ownership, such as the city of Jeriquara. In order to understand the logic of these conflicts, we chose Jeriquara city as the object of study for the present paper.

6. The Legal Pathways (or not) in the Formation of Urban Space of Jeriquara/SP

The city of Jeriquara might not even arouse interest in the studies of local history, because it is a small Brazilian city, located in the countryside of São Paulo, in the jurisdiction of the district of Franca and ecclesiastically belonging to the Diocese of Franca. Its population is 3,168 inhabitants presently, according to the population census surveyed in 2010. However, when examining the history of its formation process, we identify some peculiar conjunctures that can help us to understand the urban land issue in Brazil. There are no dissertations, theses or books that individualize the city, so the bases to support the issues that will be

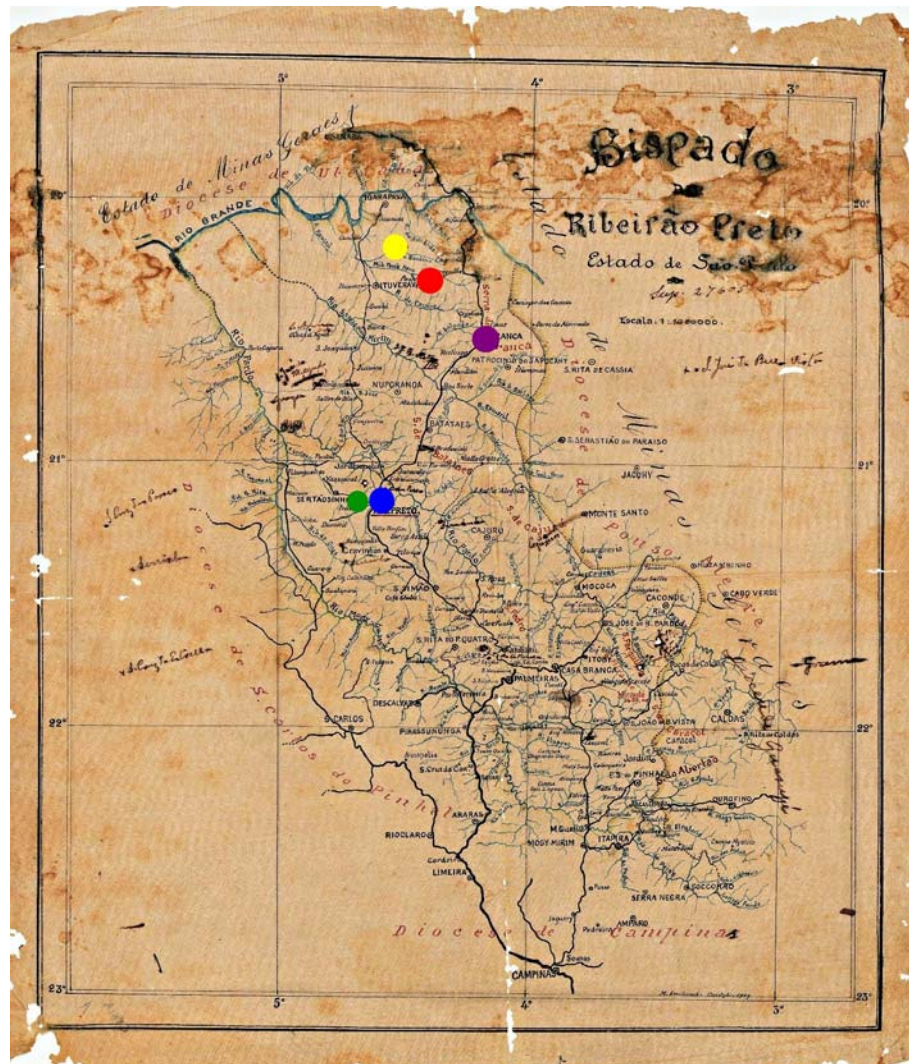


Fig. 1 Bishopric of Ribeirão Preto, state of São Paulo, 1909. In this map, we can observe the territorial circumscription of Ribeirão Preto region, that is, the territorial bishopric area. On the map we highlighted the cities mentioned in this study: in yellow color, the city of Buritizal; in red color, the city of Jeriquara; in violet color, the city of Franca; in blue color, the city of Ribeirão Preto; and, in green color, the city of Cruz das Posses.

Source: public and historical archive of Ribeirão Preto, Ribeirão Preto, Brazil.

discussed are the legal documents of the legal archives of the Diocese of Franca. This diocese is to which the city of Jeriquara is linked and which keeps the records of the land.

The city, currently, faces serious difficulties regarding the municipal administration. In its history, a couple of residents donated land for the formation of the religious patrimony of Saint Sebastian of Jeriquara in the year 1876, however, the donors relatives filed a lawsuit of land tenure against the Church of Jeriquara, in 1937, claiming that “the saint of devotion had not

taken possession of the donated land”. Only in 1946, the judge of law of the city of Franca, a city next to Jeriquara, granted successful appeal to the Church of Jeriquara. This situation generated a particular context: the city developed and the residents built their houses without the property title, a condition that still remains. This problem has serious consequences when the municipal public authority needs to prove the ownership of a building for its renovation or expansion work, in which Caixa Econômica Federal, a national bank, is usually the financing agent and can

not prove the title of property.

The residents and even the local public authority did not have records of their properties. For this reason, in the 1990s, the City Hall and the City Council of Jeriquara, the Jeriquara Church and the Diocese of Franca joined in an exhaustive work of historical, cadastral, and registration survey in an attempt to solve the land tenure problem. Numerous documents and legal proceedings were drawn up and brought together; but, for reasons we do not know, the work did not advance when it came to the judicial settlement of the lots. Thus, the study is based on the analysis of those processes, memorials, opinions and other documents that allow us to clarify the unfolding of the ground-landed process of urban land in Jeriquara city.

According to the descriptive document of the physical and planialtimetric survey of Jeriquara city, its formation occurred from a land of 44.3 bushels donated by the captain Antônio Joaquim de Souza Costa and his wife, Maria Hipólito de Oliveira, to Saint Sebastian on October 25, 1876. This clod of land would be the chapel's religious patrimony.

The lands remained in a quiet and peaceful possession of Jeriquara's Saint Sebastian Church Factory until 1937, when the heirs of the donor filed a land tenure lawsuit, alleging that they had always owned the donated lands and that the church had never taken possession *de jure* and *de facto* of the mentioned lands.

On June 4, 1895, the land patrimony of Ponte Nova, Jeriquara's original name, received another donation. Pedro José de Carvalho donated a clod of land of 15 bushels in the farm of Retiro with the purpose of erecting a chapel there under the invocation of Nossa Senhora Aparecida. The first donation, by Captain Antônio Joaquim de Souza Costa, was on the right bank of the Jeriquara stream and this last donation was on the left bank of the same stream.

In 1928, the movement for the construction of the present Mother Church of Jeriquara initiated and

gained force, so that in the same year, the process of ground leasing of the Mother Church lands began. In the year 1930, Antônio Felipe was named the first "fabiquireiro". In 1937, the heirs of the captain Antônio Joaquim de Souza Costa filed a lawsuit of land tenure alleging usucapion³.

On July 22, 1946, the sentence of the judge of law Atugamim Medice Filho, from the city of Franca was published, being favorable to the Mother Church of Jeriquara, in the usucapion process brought by the donor's heirs of the patrimony for the foundation of the camp of Ponte Nova, current Jeriquara⁴. In 1947, the Court of Justice from São Paulo recognized the church's rights over the patrimonial lands, and only in 1951 the patrimony lands of Ponte Nova, Nossa Senhora Aparecida of Jeriquara and the patrimony of Saint Sebastian of Jeriquara's Church had their registration in Franca.

The formation problem of Jeriquara city is that there were two donations, the first from the captain Antônio Joaquim de Souza Costa, in 1876, and the second from Pedro José de Carvalho, in 1895. This meant hundreds of dismemberments, to the detriment of the second donation, since the process involved the heirs of the first donation, in different ways, such as donation, ground lease, etc. In the second clod of land deed of donation, there was a specification that the land could only be ground-leased for the benefit of Nossa Senhora Aparecida. On June 17, 1982, the properties located in the lands of the second donation belonged to the Real Estate Registry Office of Pedregulho city, to which belongs Jeriquara, which did not realize the error and continued to verify the dismemberment of these lands⁵ (Fig. 2).

According to the records about the assets of Jeriquara, the judge of Pedregulho County would have suspended all real estate register transactions of the

³ Legal Archive of the Diocese Jeriquara (AJDF): "Patrimony of Jeriquara", folder, p. 2.

⁴ AJDF: "Patrimony of Jeriquara", folder, p. 3.

⁵ AJDF: "Patrimony of Jeriquara", folder, p. 4.

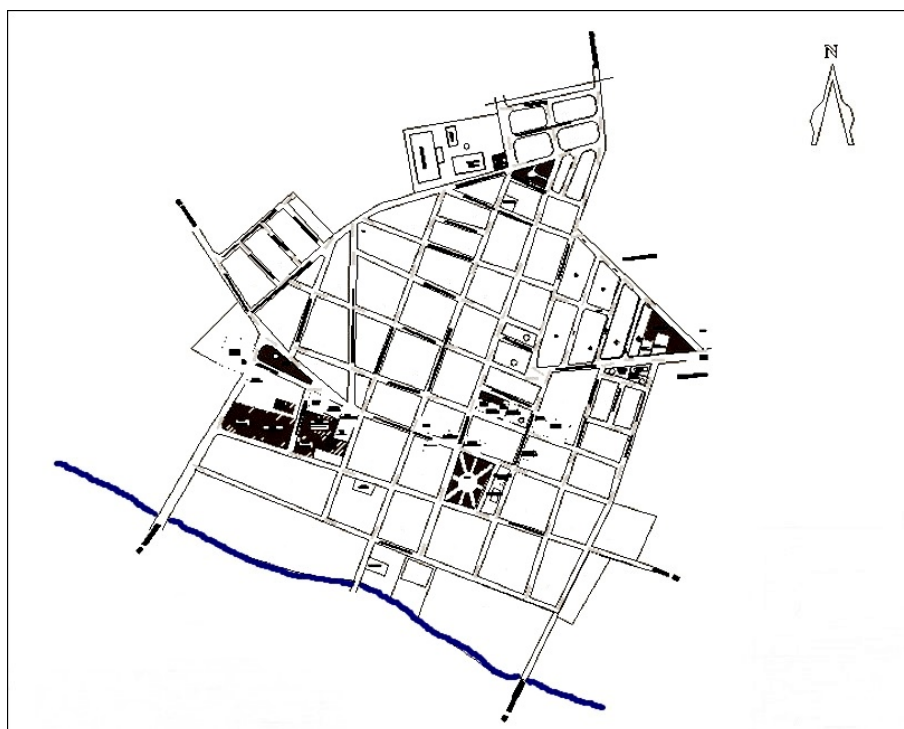


Fig. 2 Urban perimeter planimetric survey of Jequara, SP, in 2009, with the urban center implanted on the right side of the Jeriquara stream, highlighted in blue, on the clod of land donated by Antônio Joaquim de Souza Costa and his wife, Maria Hipólito de Oliveira, to Saint Sebastian on October 25, 1876. On the left side of the river is the clod of land donated by Pedro José de Carvalho, in 1895 to Nossa Senhora Aparecida.

Source: City Hall of Jequara, SP.

city until a topographical survey of the real situation of all urban properties was prepared, done by the City Hall.

The problem only got worse. Pedro José de Carvalho donated 15 bushels of land, the second donation of 1895, with the objective of constructing the chapel under the invocation of Nossa Senhora Aparecida. These lands could not be expropriated, only ground leased for the saint for the construction of buildings or small plantations. Curiously, on April 24, 1944, these lands were sold to Antônio Alves dos Santos, so that the property continued to be encumbered with sales, donations, ground leases, etc.

Regarding the land patrimony established from the original donation of Captain Antônio Joaquim de Souza Costa, from 1876, we also identified a conflict. According to the report of July 1946, about the patrimony of Jequara, the Mother Church Factory, represented by its “fabriqueiro”, filed a usucapion

lawsuit referring to the area donated by the late captain Antônio Joaquim de Souza Costa and his wife Maria Hipólito de Oliveira to the martyr Saint Sebastian in the year 1876.

After consulting the Civil Code of 1916, the Mother Church Factory claimed that they had had the land tenure for 41 years, which means that since the donation, the church had come to exercise possession over the donated property patrimony.

Only in 1937, the donor Antônio Joaquim de Souza Costa’s heirs, “disturbed the possession of the Church Factory, causing a turbulent possessory suit in this district; but by virtue of a friendly composition, those heirs recognized that the patrimony belonged *de jure* and *de facto* to the Church Factory”⁶ of Saint Sebastian of Jequara. One of the heirs, José

⁶ AJDF: usucapion lawsuit, “Patrimony of Jequara”, folder (separate documents).

Lourenço Lino, made a friendly composition in this process whereas the other, Francisco Fernandes Pinheiro, kept the strife.

In an attempt to prove the ownership of these lands, both the Mother Church Factory and the contestant, Francisco Fernandes Pinheiro, gathered various documents. The Mother Church Factory presented a clearance certificate of the property, a slip of the property tax collection of the year 1945, a provision for nomination of the “fabriqueiro” also in 1945, a letter from the diocese of Ribeirão Preto stating that the “fabriqueiro” was able to testify, a sentence certificate that ratified the waiver of the suit filed by José Lourenço Lino, a certificate of the witnesses testimony, a certificate of the asset declaration in the Captain Antônio Joaquim de Sousa Costa’s inventory, a copy taken from the Tombo Book of Franca Parish about the donation made to Saint Sebastian, certificates of deed of purchase and sale in which there is a reference about the boundary with the assets of Saint Sebastian, among other documents.

The contestant, Francisco Fernandes Pinheiro, presented a certificate of Captain Antônio Joaquim de Souza Costa second wife’s distribution of inheritor’s estates, a certificate of protest notification, and some statements from people interested in those lands and the expert’s report exposing the legitimacy of the request⁷.

For some reason, the contestant mentions the existence of Saint Sebastian, but was ironic stating that the “beneficiary at least physically did not accept the donation.”⁸

After analyzing the documents, the judge, based on the evidence in the files, dismissed the usucapion lawsuit filed by the Mother Church Factory of Jeriquara. The Church Factory filed an appeal, after the rejection of the lawsuit.

The lawsuit process was taken to the district of São Paulo, on April 22, 1947, and the sentence was favorable to the Mother Church Factory. As the report reveals, it has not been proven that the political head (mayor) of Jeriquara, Colonel Francisco Lino, who was also a “fabriqueiro”, had owned the Saint Sebastian estate lands during a considerable time. He, as the mayor, administered the lands of the patrimony, but never failed to recognize that they belonged to the Church Factory of Jeriquara, as the witnesses revealed. Thus, the land tenure that led to the usucapion, considered by the Civil Code of 1916, was the “possession of good faith. The good faith referring to usucapion is the belief in which the possessor thinks that the thing possessed belongs to him”⁹. The Mother Church Factory as recorded in the sentence, “owns and possessed the lands of Jeriquara’s patrimony in good faith: it was always convinced that the lands belonged to it”¹⁰.

In Brazil, notary records started in 1874, with the regulation of the birth, marriage and death civil registration offices. However, only in 1888 the ecclesiastic records ceased to produce effects, then giving way to civil notaries. Only in 1928, with Decree 18542, of December 24, general public records are regulated, particularly those of titles and properties. Until that date urban land ownership was registered by the local churches. Such scenario demonstrates the importance of research and analysis of the real estate records of the city of Franca, since it holds the primary documentation for this paper. It is important to highlight here that the referred Decree (18542) did not change registrations overnight, and in small countryside towns such as Jeriquara ecclesiastic records continued being used for longer years.

Among these registers, we pointed out some to help us to figure out the requests for ground lease and the dimensions of the requested lots.

⁷ We can understand that if there were a deed of donation, the contest would have been resolved with more agility and tranquility. However, the possession of the church demonstrates the existence of usucapion on this patrimony.

⁸ AJDF: usucapion lawsuit, “Patrimony of Jeriquara”, folder (separate documents).

⁹ AJDF: usucapion lawsuit, “Patrimony of Jeriquara”, folder (separate documents).

¹⁰ AJDF: usucapion lawsuit, “Patrimony of Jeriquara”, folder (separate documents).

On February 13, 1951, Emilio Coelho da Silva and Juliete Borges da Silva, Jeriquara's residents, and the Mother Church Factory of Jeriquara, sold to Geraldo Rodrigues de Carvalho a house in Largo da Matriz, no number. It was a brick house, covered with tiles, with four rooms, "built on ground-leased land". The dimensions of this lot are: frontage line measuring 15.00 m facing Largo da Matriz and rear line facing Euclides Rodrigues Carvalho by 34.00 m deep, facing the "same Euclides and successors"¹¹.

José Vilhena is another example of useful domain transmission. On December 7, 1952, José Vilhena sold to Realindo Mendonça the following property: the first, letter "a" of the certificate, a lot that faced the street Captain Antônio Joaquim 33.00 m frontage and rear lines by 54.00 m deep on both sides; second, letter "b", a land facing the street Captain Antônio Joaquim, with 99.00 m frontage and rear lines by 132.00 m deep on both sides; the third property, letter "c", a vacant lot facing the "road that leads to Ituverava", measuring 213.00 m, bordering the ground leaser Antonio Alves Santos, with 297.00 m "with a 10-meter-reserve between that land and the ground leaser mentioned above, to the irrigation of the patrimony, bordering the road Buritizal for 129.50 m, confronting the land of the letter 'b' mentioned above for 135 m until reaching the landmarks of an old corral"; the fourth property, letter "d" of the certificate, was another land of 24.75 m frontage line facing the street Captain Antônio Joaquim by 21.00 m deep¹².

These sales were accomplished, possibly based on a private deed signed between the interested parties. Another mechanism employed by those interested in effecting ownership or possession of the useful and lawful domains was filing the usucapion lawsuit.

On October 31, 1953, by private deed signed between the parties, the Mother Church Factory of Jeriquara transmitted by usucapion to Carlos Ribeiro

Filho a plot of vacant lot located at 571, Alferes Manoel Joaquim Street, in Jeriquara, measuring 35.00 m frontage line by 35.00 m deep. The frontage line confronted with the street Alferes Manoel Joaquim, on the one side with Siqueira Campos Street, on the other side with Abrão Elias and the rear line with Rodrigo Chacon Molina, "this land, ground leased"¹³.

Another example of usucapion transmission is Nelson Ribeiro. On November 18, 1953, the Mother Church Factory of Jeriquara transmitted by usucapion a vacant lot in Jeriquara to Nelson Ribeiro. The frontage line faces the church square, measuring 30.00 m by 27.50 m deep. This is a ground-leased lot and faces, according to the records, the Largo da Igreja, one side with Alferes Manoel Joaquim Street, the rear line with the street Siqueira Campos and on the other side with the church, "this land, without improvements"¹⁴ (Fig. 3). At the time of the transmission, in 1953, the process revealed that the lot had 30.00 m frontage line by 27.50 m deep; examining the current measures, the lot has 22.78 m frontage line facing Largo da Matriz, nowadays the Saint Sebastian Square; to the right, it has 18.20 m across the street Alferes Manoel Joaquim; the rear line, measures 25.10 m across Jorge Abdalla Bitar Street, old Siqueira Campos Street, and, on the left, it has 24.30 m, bordering with the Mother Church of Jeriquara. At present, there is a health post of the city in this lot.

In the late 1950s, Jeriquara city was much smaller than it is nowadays; however, the interest of some people in the urban land of that locality caused the increase of interest in the patrimonial lands, which can be confirmed, for example, in the dimensions of the lots and in the sales movement, and usucapion lawsuit¹⁵.

¹¹ AJDF: certificate, "Patrimony of Jeriquara", folder (separate documents), p. 1.

¹² AJDF: certificate, "Patrimony of Jeriquara", folder (separate documents), p. 1 (verso).

¹³ AJDF: certificate, "Patrimony of Jeriquara", folder (separate documents), p. 2.

¹⁴ AJDF: certificate, "Patrimony of Jeriquara", folder (separate documents), p. 2.

¹⁵ Even outlining the attempt to register properties carried out in the 1950s, only from 1990 onward, the City Hall of Jeriquara as well as the religious institutions, that is, the Mother Church of the city and the Diocese of Franca, joined forces to regularize the land ownership of Jeriquara.



Fig. 3 Interpretation of the usucapion transmission to Nelson Ribeiro, in 1953, in Jeriquara. In red, we highlighted that the plot under analysis is next to the church, and its front is to the church square.

Source: prepared by the authors on a cadastral basis of the City Hall of Jeriquara, in AutoCAD—2014.

According to the records examined, three studies were carried out in an attempt to legalize the land tenure situation of the city: the physical survey that consisted of the urban lots descriptions and their constructions; a planialtimetric survey that sought to trace the axes of the streets and their intersections as well as the measurements of the blocks; and finally, the convocation of the residents, “real estate owners” in Jeriquara, to appear before the City Hall of the city with the title of property, which could be a deed, a letter of ground lease, contracts, purchase and sale commitments, among others. The notices of convocation were sent from house to house and published in the newspapers of Jeriquara and Franca, besides having been published in *Folha de São Paulo*, a state newspaper.

The notice issued by the City Hall of Jeriquara in December 1990 was as follows:

Dear Proprietary,

We are again requesting, IN THE LEVEL OF LAST WARNING, the presentation of the copy of the deed, letter of ground lease or receipt of your property, within a non-extendable period of 15 (fifteen) days, from this date, in order that the City Hall can complete their registration work. The non-registration will imply in the impossibility of regularization of your property (deed). The mentioned document must be presented at 615, Captain Antonio Joaquim Street

(former Agroferraz). Municipal Mayor, Jeriquara, December 12, 1990.

In the notice published in 1990, there was also an observation that emphasized that this warning was valid, even for those who had already a registered deed¹⁶. In May 1991, the City Hall distributed the notice again requesting, as an emergency nature, the necessary documents for the registration of the real estate.

Once in possession of the owners’ titles, the contracted civil engineer, Orlando de Oliveira, graduated from the Faculty of Engineering of Bauru, UNESP (Universidade Estadual Paulista), went into the field in order to compare the measures resulting from the physical survey with those of the possession titles, resulting in considerable divergences. The problem was that the owners did not give the respective titles of the second property.

This work resulted in Book No. 2 of *General Property Registry of Jeriquara*. In this document, it is noted down the registration number of the property, the description of the property (location, measures, etc.), the owner (Mother Church), and the description of the ground lease letter or other document of similar content.

The situation caused during the process of

¹⁶ AJDF: certificate, “Patrimony of Jeriquara”, folder, p. 10.

foundation and formation of Jeriquara city, taking the institute of the emphyteusis as legal parameter, allowed the structuring of a contemporary problem: the management of its urban space. Even today, the city suffers from the absence of notarial records that allow it to attest the ownership of a property and, consequently, to develop public policies that fairly contemplate local society, under the legal issues of urban law.

7. Conclusions

This case study allows us to verify that many of the current Brazilian problems have origins that are distant in time and have followed us since the beginning of colonization. We frequently come across old and strange languages and terms, difficult for many of us to understand but are still employed. Lordship, ground lease, emphyteuta, laudemium, among others, terms that are notably disseminated in legal circles, however their origins are often unknown to our contemporaries.

The territorial organization, as a source of study, is a fertile field for the perception of the legacies of the past. The agrarian structure, in any historical dimension, is always related to an organized, hierarchical or stratified social system. Thus, when we sell a property from the central area of an urban locality, we often discover that we are the ground-leasers of some landlord, that we are emphyteutas, and that we must pay retribution to be able to alienate the useful domain of the property.

Since the first survey carried out in 1991 until the year 2014, when a cadastral base was made in AutoCAD, Jeriquara was in a certain way developing and sometimes sought a way out of the set up conflict, or made it go on a little more. When analyzing the structure of the local landscape and urban morphology, we can observe that the variation of the dimensions of the blocks and lots reflects the affluent people interest in the urban land, in a perspective of wealth accumulation.

From the performance of the different local governing authorities, the city of Jeriquara was gaining orthogonality in its definitions of blocks and lots. However, the lack of definition or imprecision of those who were definitively the owner of the direct domain of urban land allowed the constitution of an urban incompatible with the right of property established by the discipline of law.

The lot is not just a real fraction of the territory, or any land area with urban purpose. It is a small part of a set composed of social, economic and political dynamics. This means that it does not exist in isolation, but requires a permanent contact, communication and exchange with the surrounding area. Therefore, the interpretation of the urban ground-leased and conflicted land in Jeriquara is that it is more the configuration of the desire to construct the urban and less the intention to solve the urban space.

The urban space delineation of this locality, through the divergences of interests regarding urban land ownership, represents the specific legal duties derived from an urban order, the ground-leased patrimonial property, guaranteed by lawsuits and legal procedural sanctions¹⁷.

Jeriquara city has shown that the territory is still governed in many aspects by norms instituted in the past and that, without understanding them, we will not be able to comprehend the real value of the present spaces and we will not be able to intervene effectively on them, either to improve, or to modify them.

It is important to emphasize in these considerations that Jeriquara is not a single isolated case in the region of Ribeirão Preto and Franca, in the state of São Paulo. In this region, there are many other cases of cities that face contemporary issues associated to the institute of emphyteusis or ground leases of their respective urban

¹⁷ At that time, both the municipal public authority of the city and the Diocese of Franca resumed the discussion aimed at resolving the right to property of the urban land conflict in Jeriquara.

lands. Thus, we can hypothesize that this urban land situation is not specific to this region and that this problem can be present in other regions of Brazil, as well. Therefore, this is a subject open to investigation.

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