

# SANTA FE REAL ESTATE CONTROVERSY

## CONTROVERSY OVER CERTAIN ASSETS IN THE SANTA FE NEIGHBORHOOD OF MEXICO CITY

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Since September 12, 2022, certain newspapers of national circulation made public a number of controversies related to certain real estate assets located in the Santa Fe neighborhood of Mexico City, which are apparently exclusively linked to the property formerly identified as Prolongacion Paseo de la Reforma #371, currently segregated into 19 plots of land with an approximate aggregate surface of 20,740 sqm.

The journalistic notes state that this situation had been initiated since the year 2016, following the filing of lawsuits by the Institute of Administration and Appraisal of National Assets (Instituto de Administracion y Avaluos de Bienes Nacionales) ("INDAABIN") claiming (i) the return of certain real estate assets including the constructions, accessories and improvements thereon, as a consequence of the invalidity argued by such authority of all the precedent actions over the property formerly identified as Prolongacion Paseo de la Reforma #371, or (ii) the imposition to the owners of such properties of an indemnity payment penalty in favor of the Federation in connection with such assets.

In this regard, in 2018 INDAABIN's legal action was dismissed by the Fourteenth Civil District Court in Mexico City, upon concluding that INDAABIN, responsible for administering the assets belonging to the Federation in accordance with the provisions of the General Law of National Assets, was not legitimized to commence this type of litigation and that, if applicable, the entity that would be entitled to promote such action should be the Attorney General's Office, leaving harmless the right of the Federation to re-try this procedure in the future.

Subsequently, and in accordance with certain Resolution published in the Official Gazette of the Federation on May 9, 2022, INDAABIN filed the lawsuit assigned file number 339/2019-IV before the Twelfth Civil District Court in Mexico City, seeking on a second occasion the claims described in the preceding paragraphs.

It is worth mentioning that among the arguments that said governmental entity has used in the proceeding mentioned in the foregoing paragraph, which seems to be the main argument of this claim, is that such real estate property belongs to the Federation based on a Presidential Bill dated October 30, 1907, corresponding to the governmental period of Mr. Porfirio Diaz, published in the Official Gazette of the Federation on November 4, 1907, whereby a considerable amount of land was reserved for public use and forests, becoming (as construed by INDAABIN) Federal reserved property.



As a result, in 2021 the Special Prosecutor's Office for Organized Crime (Fiscalia Especializada en materia de Delincuencia Organizada) ("FEMDO") opened several investigation files deriving in the seizure operations that have been recently carried out against several real estate companies that own or manage some of the assets related to the legal proceeding in question.

Recently and as a result of an amparo proceeding initiated by one of the owners of the disputed real estate assets, a Federal District Criminal Judge granted an injunction against FEMDO's seizure operations, ordering to reverse the seizure; provided that, several governmental entities are prevented to carry out any actions relevant to this particular asset until the amparo is resolved.

It is important to note that, as of this date, the complete version of the relevant files are not available to the public as they are strictly reserved for the authority and the parties involved.

In this sense, certain discussions and analyses within the public forum (including the legal sector), seem to interpret that the referred Bill of 1907 ceased to be effective as a result of the enactment in 1917, during the government of Mr. Venustiano Carranza, of the Political Constitution of the United Mexican States currently in force (the "Constitution"), at which time the then president recognized that such real estate assets were the property of their occupants, ratifying private property.

With the limited access to the corresponding official records available today, there is little ground for determining whether the jurisdictional proceedings above referred shall pass, however, it is important to mention that any party interested in defending its patrimony (including the Federation) has the right to exercise the actions it deems pertinent based on the applicable regulations in Mexico, and the resolution thereof will correspond to the Judicial Branch.

On the other hand, it is interesting to review the legal provisions that nowadays allow the authority to cancel ownership of title from private parties for the benefit of the State:

#### 1.National Law on Asset Forfeiture

- In this respect, the Law outlines the crimes in relation to which asset forfeiture may proceed, without any payment or compensation, on patrimonial goods whose legitimate origin cannot be proven; and provides the presumption of good faith in the acquisition of assets provided evidency (i) with a document containing a certified date prior to the occurrence of the illegal act, (ii) that the taxes and contributions on such real estate were duly and timely paid, (iii) that the property subject to asset forfeiture was acquired in a lawful manner and in the case of possession, that this has been exercised in a continuous, public and peaceful manner; in the understanding that the publicity will be established through the recording of its title in the corresponding public property registry, (iv) the authenticity of the contract with which it intends to demonstrate its fair title, with the suitable, pertinent and sufficient means of evidence to arrive at a full conviction of the legal act and its lawfulness, and (v) any other similar circumstance, in accordance with the applicable regulations.

#### 2.Constitution and Condemnation Law

- Establish and set forth the procedure and requirements for the authority to acquire real estate properties for public use purposes, prior compensation to the legitimate owners and interested parties of such assets.

Finally, it is important to remark that in Mexico, Private Property is a constitutionally protected right and the only manner on which any authority or the State may claim or condemn any property belonging to an individual or entity, requires an administrative or jurisdictional proceeding, as the case may be, filed before the corresponding courts, whose resolution or determination must be duly justified and motivated based on the applicable laws and provisions in force in Mexico (the Constitution being the supreme law). On the other hand, individuals affected by acts of authority may always appeal and challenge (as has been the case) such actions before the Judicial Power.

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