

Forest Cadastre and Evaluation of 2/B lands in terms of forest engineering

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Abstract

In the study, by mentioning what cadastre is, forest cadastre and the work and processes of removing the lands that have lost their forest qualification from the forest are mentioned and evaluated in terms of forest engineering. Making forest cadastre and knowing the ownership of forests is a very important study in terms of forest management. It is argued that the implementation of the 2/B article of the forest law numbered 6831 amended by the law numbered 1744 and the additional article 16 constitute a national problem on forests. It is thought that the repeal of the 2/B law and additional article 16 will be beneficial for forest lands.

Keywords: Forest Cadastre; 2/B Application; Additional Article 16; Cadastre

1. Introduction

In the historical cycle, the word cadastre generally means the determination and recording of the boundaries of lands and the determination of the taxes to which the owners will be subject. Cadastre has been used for both financial and legal purposes over time. With the change in the view of property, it is transforming into a multifaceted application to meet the needs of the era and with the developing technology [1]. Accordingly, many similar but renewed definitions have been made in the process. In addition, cadastre also undertakes the tasks of determining the past and current status of land ownership, determining, processing and recording the data required to fulfill the public responsibilities related to the land by meeting the needs of the land economy, and recording them in the land registers accompanied by maps [2]. It is clear that a mismatch in cadastral records can lead to conflicts in property rights [3].

It is seen that cadastral studies in the world are classified as land cadastre, tax cadastre and legal cadastre. As for the cadastral works carried out in Türkiye, it is noticeable that they are classified as tax cadastre before the Republic and legal cadastre after the Republic [4].

2. Cadastre in Türkiye

According to the Turkish Civil Code, there are five basic principles of Land Registry and Cadastre. These are the principles of state responsibility, openness, trust, causality and registration [5]. These principles are important in terms of the legal protection of the immovable properties of the people, as well as the knowledge and protection of the ownership of the lands belonging to the state.

In our country, cadastral studies; The application, which aims to record all immovable properties within the borders of the country by a committee by delimiting them on the land, appraising their value and estimating their income, was first started in 1912 in Çumra district of Konya province. However, it was interrupted due to the outbreak of war [6].

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On 22.04.1925, the Cadastral Law No. 658 entered into force. Although in 1912 the first cadastral work was carried out, 1925 is accepted as the starting year of the cadastre. With the Law No. 658, it is aimed to determine the changes on immovable properties and to determine their value; to classify immovable properties according to their value, to tax them and to tax them separately according to each class of immovable properties and to provide an economic basis for every investment by accessing all kinds of information [7].

Since all cadastral laws in Türkiye, starting from the Cadastral and Land Registry Survey Law No. 2613, which entered into force in 1934, have been made to determine the geometric conditions of immovable properties and to determine their legal status, the understanding of property cadastre has not been able to go beyond [7].

The most common type of cadastre in our country is Property Cadastre. This type of cadastre aims to determine the rights of immovable owners on immovable properties and to create land registries. It is also known as legal cadastre because it determines the rights and obligations on immovables [8].

In our country, cadastre of immovables is carried out according to three different laws and by three different public institutions. If we list them, they are classified as general cadastre according to the Cadastral Law No. 3402, forest cadastre according to the Forestry Law No. 6831 and pasture cadastre according to the Pasture Law No. 4342 [9]. The works of these cadastral types are carried out by three different institutions.

Carrying out the works by different institutions causes problems such as delay in cadastre, lack of coordination and incompatibility in maps made at different scales [10]. The Cadastral Law No. 5304 was enacted in 2005 in order to speed up cadastre and overcome the problems that arise by providing coordination and cooperation between institutions. With this law, some articles of the Cadastral Law No. 3402 were amended [11]. With the enactment of Law No. 5304, a lot of progress has been made in cadastre.

Cadastral works should be up-to-date in terms of attribute and geometry. The fact that cadastre is up-to-date and its implementation within the framework of errors occurring within acceptable limits enables it to regulate the relations between the state and citizens in areas such as land-based development projects, land reform, public order, tax system [12].

3. Forest Cadastre

Article 1 of the 1937 Forest Law defines forest. Accordingly, areas where trees and shrubs that grow spontaneously or are cultivated by labor and yield forest yields of any kind are collectively located, together with their locations, are considered forests [13].

How to determine whether an area is a forest or not is the basis of the qualification process. Qualification is also referred to as Article 1 application. In order to determine whether a place is a forest or not, it requires that the places that comply with the legal definition of forest in the forest law be determined as forests and the areas that are not forests in the definition be determined as non-forest areas [14].

The cadastre made to determine the ownership of forests is called forest cadastre and is carried out by forest cadastral commissions on behalf of the General Directorate of Forestry. For this purpose, the Forest Law No. 3116 entered into force on 18.02.1937. Later, this Law was replaced by the Forestry Law dated 31.08.1956 and numbered 6831, which is still in force.

Forest cadastre should not be considered separately from general cadastre. In the Law No. 2613, general cadastre is defined as determining the geometric conditions and legal qualifications of immovables. Article 7 of Law No. 6831 amended by Law No. 1744 states the purpose of forest cadastre. According to this purpose; cadastre of forests, immovables within and adjacent to these forests and other forests are aimed to determine the common boundaries with state forests [15].

According to Article 11 of the Forest Law No. 6831, forests are subject to registration [13]. Forest cadastre is the process of delimiting the forests and the places taken out of the forest and registering them in the land registry on behalf of the treasury. After the boundaries of the forests are determined and measurements are made by the Forest Cadastral Commissions, a notice of suspension is published. The date of finalization of the suspension announcement is accepted as the date of registration. Registration is the process of registration in the land registry on behalf of the Treasury.

In order for the forest cadastre to be finalized, the legal process must be valid. One of these processes is that, in accordance with Article 11, paragraph 1 of the Forest Law No. 6831, the minutes issued by the forest cadastral commissions should not be objected within the specified periods, in other words, the objection periods should have expired. The second situation refers to the finalization of the forest cadastre with finalized court decisions [16].

Although whether a land has the characteristics of a forest or not is determined by forest cadastral commissions, some lands may not have forest cadastre. In practice, when determining forest lands, a distinction is made between lands that have undergone forest cadastre and lands that have not undergone forest cadastre and lands that have been excluded from forest boundaries [17]. The determination of whether the land that has not undergone forest cadastre is forest or not is possible with the decision made by the Court as a result of the examination made by the experts. The court conducts an exploration on the land with expert forestry and agricultural engineers assigned by the court. During the discovery, the experts technically examine the land and submit a report on whether the land is a forest or not. The court evaluates the expert report together with other evidence and decides whether the land is forest or not [18].

According to the Constitutional Court, an area delimited as a forest is now a forest. Except as permitted by the last paragraph of Article 169 of the Constitution, forest boundaries cannot be reduced [19].

Article 170 of the Constitution requires the State to take measures to ensure the development of the people in villages located within or adjacent to forests, to protect the integrity of forests and forests, and to ensure the cooperation of the State and these people in the protection and management of forests. 31.12.1981 in terms of science and science before the date of 31.12.1981; the evaluation of the places that have completely lost their forest quality; the determination of the places that are not beneficial to be preserved as forests and their exclusion from the forest boundaries; the reconstruction of the aforementioned places by the State in order to partially or completely resettle the people of the villages within the forest to these places and the allocation of these places for the benefit of the people is regulated by law [20].

The implementation of forest cadastral activities in our country by different institutions according to different laws has caused significant problems from the beginning. In particular, the fact that forest cadastre and general cadastre activities have not been carried out in harmony has led to the unnecessary filing of many lawsuits objecting to the determination and lawsuits objecting to the forest cadastre, and some areas have been excluded from determination, and these transactions have also been subject to litigation. In order to solve this problem, the General Directorate of Forestry (OGM) and the General Directorate of Land Registry and Cadastre (TKGM) have issued various circulars about acting in accordance with the land registration or forest delimitation since the beginning of the forest cadastre, and even mutual protocols have been made on this issue, but the problems could not be solved [21].

The establishment of Forest Cadastral Commissions, which will carry out forest cadastre, has been changed many times. Forest Cadastral Commissions, which have not been able to reach a healthy structure and working tempo until today, have many theoretical and practical problems. In this study, the existing problems were investigated and as a result; it was determined that the number of commissions is insufficient, theoretical and technical issues are lacking, the staff working in cadastre are reluctant due to financial and moral reasons, cadastral commissions are seen as a place of exile in the professional community, there are political and social pressures, etc. [22]. However, cadastre is important in every issue. One of the primary conditions for protecting forests and ensuring their operation is to ensure that the boundaries are determined and legally secured [23].

4. 2/B Application and Forest Exclusion

In developed countries, areas subject to forest regime are allowed to be removed from the forest regime in some exceptional cases. In France, the Forestry Law authorizes the Ministry of Forestry to sell degraded forests up to 150 hectares, which cannot be rehabilitated. Similar regulations are also included in the British Forest Law. In the same way, extraction of forest boundaries is also carried out in our country [24]. In our country, with the intensity of internal migration, the housing and nutrition needs of people and the bond of possession, forest lands are continuously occupied in a manner supported by laws. This occupation is supported by special laws and encouraged by politicians on the grounds that income can be obtained.

The first extraterritorialization of forests dates back to the 1961 Constitution. Article 131 of the 1961 Constitution prevents political parties from having the authority to dispose of forests and enact amnesty laws. However, while this provision of the Constitution is expected to solve the problems, it is becoming more complicated. With this provision, a large part of the forest villagers become defendants. To summarize the situation, Article 131 of the 1961 Constitution was amended in 1970 with the enactment of Law No. 1255. Thus, the process of "exclusion from forest boundaries" was

first legally practiced in 1973 with the amendment made to Article 2 of the Forestry Law by Law No. 1744. Subsequently, the laws numbered 2896 and 3302 are accepted [17]. 2/B Application; It is referred to by this name because it is an application made according to Article 2, paragraph 1, subparagraph B [25] amended by Laws No. 2896 and 3302, which reorganized Article 2 of the Forest Law No. 6831 amended by Law No. 1744. Law No. 3302 is still in force today as the basis for the practice of excluding forests from forest boundaries, i.e. 2/B studies. The amendments introduced by Law No. 3302 reveal that contradictory practices are carried out compared to the works carried out with other laws. Based on the law amendments enacted at certain times; different studies were carried out on the same land and different decisions were made [26].

According to Article 2/B of the Forest Law No. 6831, the places that can and cannot be taken out of forest boundaries are listed in Article 22 of the "Forest Cadastre and 2/B Implementation Regulation" [25]. According to this article; it is stated that the areas that have lost their forest qualifications in terms of science and science, the places that are determined to be useful for use as agricultural areas such as fields, orchards, olive groves, vineyards, gardens, hazelnut groves, pistachios, and the places that are found to be useful for animal husbandry such as pasture, winter pasture, pasture, and the settlement areas where villages, towns and city structures are located collectively are taken out of the forest boundaries on behalf of the treasury [27].

Article 5 of the Law on Places to be Excluded from Forest Boundaries published on 02.07.1974 expresses in more detail the phrase of loss of forest quality in terms of science and science [28,29]. According to the article of this law, in such a way that the unity and elements of life on the lands are lost, the communities of trees and shrubs are lost and the soil of the land does not contain stumps, dead cover, thick or thin root remains in the section of the soil one meter deep, or areas full of humus or loose mineral matter formed by the decay of these remains, In places where there is no accompanying flora and companion plants, where there are no environmental problems, where there is no benefit in becoming a forest again in terms of forestry and forest economy, are considered to have completely lost their forest qualities in terms of science and science [29].

The loss of forest quality of a place should not be characterized as a natural process, it occurs as a result of external interventions. It occurs when people create settlements in forests, create agricultural areas and make clearings from forests to be used in animal husbandry. Although all these acts are crimes, they can be rewarded at the end of twenty years [30]. In forested areas, people deliberately open up fields, vineyards and gardens, lay hundreds of foundations through cooperatives, and continue to build villas or shanty houses, especially on forest lands that merge along the coastline. Forests are being deliberately destroyed and destroyed. Thousands of hectares of forest areas are excluded from forest boundaries with the 2/B application in the presence of authorized commissions [31].

In 2012, Law No. 6292 was enacted. Article 6 of this law regulates direct sale to the right holder. Regarding the immovables located in the areas regulated as regulation 2/B, it is stated that the persons who are shown as the users of the immovable before 31/12/2011, the owners of the structure or planted things on it, and who apply to the administration within the time limit to purchase the real estates, will be considered legally entitled [32].

Apart from this practice, on 07.01.2021, a new procedure was established under the name of "Regulation on the Procedures for Exclusion from Forest Boundaries within the Scope of Additional Article 16 of the Forest Law No. 6831". According to this regulation, it is possible for the Ministry of Agriculture and Forestry to exclude from forests areas that are not beneficial to be preserved as forests in terms of science and science and cannot be used as agricultural areas, areas that have settlements on them as of 28.04.2018, when the Law dated 19.04.2018 and numbered 7139 entered into force, stony, rocky areas suitable for settlements, and areas that are unproductive and do not actually have forest characteristics. At the same time, the procedures and principles regarding the registration of the areas whose borders are determined by the President of the Republic in the name of the Treasury in the title deed by the General Directorate of Forestry. In addition, the regulation states that a new forest will be established in any part of the country not less than twice the area that has been excluded from the forest boundaries [33].

With the 2/B application, 626 thousand hectares of land have been excluded from forest boundaries since 1973 on the grounds that they lost their forest quality. With the Law No. 6292, which entered into force in 2012, priority is given to the occupants of the places taken out of the forest and their ownership is transferred to the owners. [34]. With the Additional Article 16 added to the Forest Law No. 6831, a total of 3,500 hectares of forest areas were deforested in 14 provinces by presidential decree [35].

5. Evaluation of forest cadastre and 2/B lands in terms of Forest Engineering

Türkiye ranks first among European countries in terms of biodiversity with 23.2 million hectares of forests [36]. This natural wealth is of great environmental, economic and social importance. In Türkiye, 99.9% of forests are registered as state forests. In addition, in order for a place to be a forest, it must be larger than 3 hectares and it must be one of the places considered as forest according to the forest law numbered 6831.

Forestry in our country is generally based on wood production. However, sustainability is also tried to be achieved through conservation forestry. According to the National Forestry Policy of Türkiye, the principle of sustainability is explained as the management of forest areas and resources in a way that will protect and improve their biological diversity, productivity, integrity, rejuvenation capacity and health, provide economic, ecological, social and cultural multifaceted benefits now and in the coming years in a sustainable manner at local, national and global scales, provide social benefits and not harm other ecosystems [37].

Forest cadastre is a very important issue in terms of forestry and forest management. It is not possible to operate without knowing the ownership. If we operate in a place where the ownership is not forest, we may have to pay compensation as a result of the right holder suing the institution. It is important both to operate and to determine forest boundaries.

In our country, the protection of forests is guaranteed by the constitution. However, according to Article 2 and Paragraph B of the Forestry Law No. 6831, the process of deforestation of areas that lost their forest status before 31.12.1981 has come to the agenda. In our country, the vast majority of 2/B lands are used as agricultural land. However, with the latest additional 16 regulation, it has been on the agenda that areas such as buildings, houses, facilities, etc. can also be taken out of forest boundaries.

When we evaluate the 2/B implementation studies within the scope of the sustainability principle of the national forestry policy, it is seen that it contradicts with this principle. However, agricultural lands in our country are generally obtained by converting pasture and forest areas [38]. A large part of the areas designated as natural meadows within the forest are areas with pasture status and 55% of these lands have been converted into agricultural land. The proportion of land converted into agricultural land from areas that have lost their forest status is around 7% [39].

In Türkiye, as in many countries around the world, overpopulation, resource scarcity, lack of institutional support, faulty and unplanned land use threaten our natural resources. Forest lands are continuously affected by human misuse of land. The main land misuse is the clearing of forests to create agricultural areas and new settlements. Forests are also destroyed by fires, illegal cutting and overgrazing [40]. Apart from this, forests are also plundered when political parties submit legislative proposals that cause the destruction of forests in order to provide rent and some of these proposals are enacted into law. One of the most important indicators of improper land use is the transformation of areas of Anatolia covered with drought-resistant steppe forests into anthropogenic steppe pastures as a result of overuse and misuse [41].

Forests have numerous benefits. If we list some of them; forests are carbon sinks, prevent landslides, reduce the impact of global warming, provide water retention, are a source of recreation, produce oxygen, host animals, etc. can be considered. In addition to these, the forest organization supports rural development by producing various afforestation and non-wood product cultivation projects as well as providing earnings and jobs for forest villagers within the scope of rural development. With the increase in forest revenues, it transfers a share of around 15 percent to the treasury [42]. In other words, forests benefit us both for human needs and economically.

Some of the forest lands are taken out of the forest boundaries with the 2/B application works envisaged by law. The benefits we have mentioned are interrupted in this way. Meanwhile, the forest organization tries to increase forest areas with afforestation activities every year. With this law, thousands of hectares of land are taken out of the forest on the grounds that they have lost their forest quality. However, it is not possible for a place to lose its forest status.

Reducing forest boundaries leads to erosion as well as a reduction in biodiversity. Globally, reducing deforestation, combined with the carbon-absorbing role of forests, is seen as an important action to mitigate climate change [43].

6. Discussion

Many authors such as Ayanoğlu [2], Aygen [9], Atasoy [10], Bilgin [27] have mentioned the legal status and problems of forest cadastre. Due to the fact that cadastral works are carried out by different institutions regardless of the type of cadastral works, various errors are exposed due to changing laws and technologies used. Sometimes the numbers do not match the data, sometimes the maps created differ. Carrying out cadastral works by a joint commission to be established by institutions will reduce errors. It will also allow the cadastre to be completed earlier.

Ayanoğlu [18], Çağlar [23], Aslan [24], aslan et al., [26], Aydın [32] and many other authors aimed to provide information on the subject by explaining the process of exclusion from forest boundaries according to Article 2, paragraph B of the Forest Law No. 6831 and the developments in the historical process.

The 2/B application has been the subject of constant debate since the day it came into force and has never lost its topicality. Governments and some segments of the public see 2/B lands as a source of rent. So much so that the government aims to make millions from the sale of 2/B lands.

Eraslan [44] states that the most important task of forest management is to ensure the continuity of the enterprise. While making the definition of forest enterprise, it describes the protection and sustainability of the forest, the utilization of the functions of the forest and the income from the sale of the products, as well as the forest of a certain size with clear purpose, boundaries and owner. This refers to a forest with defined boundaries and ownership. This means determining the boundaries of the forest with other immovable properties on the map and in the field, making forest cadastre, registering and registering it to the title deed, ensuring the elimination of boundary disputes, and ensuring the creation of an important condition in which the forest enterprise can fulfill its functions comfortably.

With the forest cadastre, forest existence can be clearly revealed. Since the management plans will be made in areas with clear boundaries, more accurate results will be obtained as there will be no disputes or production losses. Again, since the boundaries are clear, wrong afforestation works or wrong productions will be prevented in the empty lands of citizens.

Köktürk and Bakırtaş [7] emphasize that the cadastre in Türkiye consists only of spatial basic data, that is, it focuses on property cadastre, while in Europe, a cadastre is carried out at administrative, environmental and economic levels.

In Türkiye, cadastre is carried out as land cadastre, forest cadastre and pasture cadastre in terms of ownership. Türkiye should consider adopting a system similar to the one in Europe.

Uysal and Birben [45] investigated the opinions of the people about 2/B as a result of their studies in Amasya province. It shows that citizens do not have enough information about 2/B, and that they are willing to pay more money in order to claim their ancestral lands, as an agricultural half tool and to pass them on to their children.

In Türkiye, citizens tend to reclaim their ancestral lands and pass them on to their future generations by thinking emotionally rather than rent-seeking. Those who want to use it as an agricultural area and make a profit usually commit a crime by clearing forests. Apart from clearing, some citizens in our coastal areas set fires in order to gain rent from forests due to lack of legal knowledge. However, burnt forest lands cannot be subject to settlement under any circumstances by law and must be afforested within the year.

Since the implementation of Article 2/B also causes a contraction in the forest, the integrity of the forest is disrupted as a result of the process, resulting in more fragmented forests. Although Additional Article 16 states that stony and rocky areas should be excluded from forest boundaries, these areas are also home to wild animals. In other words, the forest is a whole with its stone and soil and should not be fragmented.

7. Conclusion

As important as forest cadastre is in terms of ownership, it is equally important to prevent deforestation by abolishing 2/B implementation works. 2/B implementation works constitute a serious problem on a national scale. Since the enactment of this law, thousands of hectares of land have been deforested, leading to a shrinking of forest areas. At the same time, the integrity of the ecosystem is being disrupted.

Today, there is a great increase in migration from villages to cities. Even the deeded lands of citizens tend to form forests in many places. Trees in some areas have even reached a level to form a closed forest. As such, it seems impossible for a place to lose its forest status. In areas where migration is intense and agricultural lands are left empty, afforestation works should be carried out with fast-growing species to contribute to the ecosystem.

In times of intense global warming, it is very important to protect forests and increase forest areas. 2/B lands should be afforested instead of deforestation. In this way, landslides will be prevented, carbon sinks will be created, biodiversity will be preserved, the nests of animals living in forests will be protected, recreation will be provided and the effects of global warming will be reduced to some extent. Again, as forest areas will be rehabilitated, they will contribute to the economy. The unseen economic contributions of forests will be greater than the income generated.

Repealing the 2/B regulation and Additional Article 16 will also reduce forest crimes. Rent-seeking citizens will stop committing the crime of opening. For those who do not, the protection of the forest should be ensured by increasing the penalties.

Cadastral works should be carried out from a single source with the joint coordination of institutions. This will reduce the error rate and workload. In addition, cadastral systems should be developed in accordance with the developing technology and the conditions of the day.

Compliance with ethical standards

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Disclosure of conflict of interest

The authors declare that they have no conflicts of interest in this study.

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