


## SOCIAL FUNCTION OF PROPERTY AND SMALL RURAL PROPERTY: A LEGAL ANALYSIS OF THE EXCEPTIONALITY REGIME

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### ABSTRACT

This article investigates small rural properties in the context of Brazilian law, asking: what are the reasons for the insusceptibility of expropriation of these properties for agrarian reform, even when they do not meet the social function provided for in the Federal Constitution and Law No. 8,629/1993? The objective of the research is to analyze the legal exceptions related to the fulfillment of the social function by small rural properties and to understand why these properties are exempt from the same requirements applicable to other types of property. The research is justified by the legal relevance of understanding the motivations of the legislator in granting special protection to small rural properties, even in the face of their failure to fully meet their social function. The methodology adopted was based on an exploratory and qualitative approach, based on bibliographic and documentary research procedures, especially in the analysis of the Federal Constitution, the Civil Code, Law No. 8,629/1993 and Law No. 4,504/1964. The conclusion indicates that, although the Brazilian Constitution establishes the social function as a fundamental principle of property, small rural property is subject to an exceptional regime that exempts it from expropriation for agrarian reform, as long as its owner does not own another rural property.

**Keywords:** Social Function of Property. Small Rural Property. Vulnerability. Sustainable development.

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## INTRODUCTION

The right to property in Brazil, which was historically considered absolute, underwent a significant transformation with the promulgation of the Federal Constitution of 1988. The constitutional text imposed the social function as a restrictive principle, redefining individual property rights by linking them to the collective interest and establishing limitations on the use of land, ensuring its use in a responsible and socially beneficial way.

Any rural property in Brazil, regardless of its size, is obliged to fulfill the social function stipulated by the legislation, under penalty of expropriation for agrarian reform if it does not meet the legal requirements of productivity, sustainable use of natural resources and respect for labor relations. However, Brazilian legislation establishes an exception for small and medium-sized rural properties and productive properties: even if they do not fully fulfill their social function, they will not be subject to expropriation, as long as the owner does not own another rural property.

Therefore, the objectives of the present study are threefold. First, it is intended to understand the social function of property. Secondly, it is intended to analyze in detail the legal exceptions, specifically to the social function of small rural property. Finally, it seeks to investigate the underlying justifications for these small properties not to be required to comply with the same requirements imposed on other rural properties in Brazil.

The research is justified, therefore, by the legal relevance of understanding the legislative basis that grants special protection to small rural properties, even when they do not fully meet the criteria of the social function.

The study was structured in three main chapters. In the first chapter, the social function of property in Brazil is discussed, addressing both urban and rural property, and the legal principles that underlie its use for the benefit of collective well-being. In the second chapter, the focus falls on small rural properties, detailing their specific characteristics, their role in family farming and the laws that govern them, especially about the fulfillment of the social function. The third chapter deals with the legal protection granted to small rural property, highlighting the exceptions to expropriation and the legal implications of non-observance of the social function, in addition to discussing the importance of small property in the promotion of social justice and the correction of historical inequalities.

To achieve the intended results, the methodology used is based on a bibliographic and documentary analysis, comprising the Federal Constitution, the Civil Code, in addition

to Laws No. 8,629/1993 and No. 4,504/1964. The methodological approach allows for a detailed and contextualized analysis of the legislation, highlighting the legal exceptions to the social function of small rural properties and exploring the reasons why these properties receive differentiated treatment compared to other rural properties.

## **THE SOCIAL FUNCTION OF PROPERTY IN BRAZILIAN LAW**

In Brazil, the property right, guaranteed by the Federal Constitution of 1988 (CF/88) and by the Civil Code (CC/02), is one of the pillars of the legal system. Historically considered an absolute right, the property right began to be relativized with the imposition of the social function, restricting its absolute character.

The concept of property according to the Civil Code of 2002 is defined in article 1,228, which establishes: "The owner has the right to use, enjoy and dispose of the thing, and the right to recover it from the power of whoever unjustly possesses or detains it" (Brasil, 2002). The civil concept reflects the idea that property confers on the holder full control over the asset, allowing him to exercise all the faculties inherent to possession, use, enjoyment and disposal, as well as the legal protection to recover possession in case of dispossession or unjust detention.

The promulgation of the Federal Constitution marked a transformation in property rights in the country, linking them to the social function. As a result, individual property rights became relative to the collective interest (Rezende; Freitas, 2020, p. 267).

To meet the social interest and make property more accessible, limitations were established for owners, preventing irresponsible use of land. Thus, the principle of the social function of property emerged. According to Masson (2016), land in urban areas must respect the Master Plan of each city, aligning itself with the social function, while Oliveira and Damasceno (2015) warn that rural lands must seek profit without compromising environmental preservation and meet all the requirements of the social function.

Article 1,228, paragraph 1 of the Civil Code establishes that the exercise of property must be carried out by social purposes.

Article 1,228. The owner has the faculty to use, enjoy, and dispose of the thing, and the right to recover it from the power of whoever unjustly possesses or detains it.  
Paragraph 1 - The property right must be exercised by its economic and social purposes and in such a way that flora, fauna, natural beauty, ecological balance and historical and artistic heritage are preserved, by the provisions of a special law, as well as avoiding air and water pollution.  
Paragraph 2 - Acts that do not bring the owner any convenience or utility and are motivated by the intention of harming others are prohibited. (Brazil, 2002).

In this regard, Gonçalves (2020, p. 239) *apud* Silva (2021) teaches that rights are legitimized only through the social mission for which they are intended, suggesting that the owner should act as a public manager in the administration of his assets. In other words, the legitimacy of the exercise of property rights is conditioned to collaboration with social interests.

Therefore, by the principle of social function, the exercise of the property right must be aligned with social and collective interests, since the owner is responsible for fulfilling the social function associated with his right, contributing to the general well-being and prosperity through his goods.

In the case of rural property, although belonging to the owner, it must also fulfill a social function, as already mentioned, which implies its use for the collective good (Santos; Gates; Costa, 2023). Thus, the exploitation of the land must be productive rationally and adequately, preserving natural resources and the environment, as provided for in article 186 of the CF/88, *in verbis*:

Article 186. The social function is fulfilled when the rural property simultaneously meets, according to criteria and degrees of demand established by law, the following requirements:

I - rational and adequate use;

II - adequate use of available natural resources and preservation of the environment;

III - compliance with the provisions that regulate labor relations;

IV - exploitation that favors the well-being of owners and workers. (Brazil, 1988).

Silva *et al* (2023), citing Diniz (2004), argue that the function of rural property should be understood as an intrinsic element of the legal concept of property itself. That is, it is configured as an internal aspect, through which the property right is not effected in isolation.

There are different types of rural properties, classified according to their size and use. Rural properties can be small, medium or large, varying according to the extension of the land and the productive capacity (Brasil, 1993).

There are also recreational sites and farms, which are rural properties specifically intended for leisure and recreation, offering a refuge for rest and entertainment activities outside the urban environment (Malta, 2022).

According to Oliveira and Damasceno (2015, p. 10-11), citing Borges (2009, p. 377), the social function imposed by law on rural landowners is the obligation to exploit their property in a rational, adequate and technical manner, to make it productive to generate

goods and wealth necessary for consumption. The process must provide for the well-being of the owner, his family, employees and society, always respecting the laws that regulate labor relations, including agrarian legislation.

In the same sense, Law No. 4,504/1964 (Land Statute), in its article 2, paragraph 1, establishes the requirements for the full fulfillment of the social function of rural property.

Article 2 - The opportunity to access land ownership, conditioned by its social function, is guaranteed to all, in the manner provided for in this Law.

§ 1 - Land ownership fully performs its social function when, simultaneously:

- a) favors the well-being of the owners and workers who work there, as well as their families;
- b) maintains satisfactory levels of productivity;
- c) ensures the conservation of natural resources;
- d) observes the legal provisions that regulate the fair labor relations between those who possess and cultivate it. (Brazil, 1964).

It should be noted that the terms "rural property" and "rural property" are often used interchangeably, but they have distinct nuances that are worth exploring.

The concept of 'rural property', under the terms of the Land Statute and Law No. 8,629/1993, refers to any land located outside the urban area, regardless of its use (Brasil, 1964; Brazil, 1993). In other words, it means that a rural property can include land that has not been explored or used for various purposes, such as leisure, environmental preservation, or rural activities.

On the other hand, according to Queiroz (2021), the term "rural property" generally refers to a rural property that is economically exploited for agricultural, livestock, forestry, extractive, agro-industrial or agricultural activities. For the author, rural property should emphasize the aspect of productive use and the fulfillment of the social function of the land itself.

The social function of rural property, regardless of its size and destination, must meet criteria established by legislation, such as the rational and adequate use of the land, the sustainable use of natural resources and the preservation of the environment, among others (Santos; Gates; Costa, 2023). Failure to comply with the requirements may subject the property to expropriation for agrarian reform, as provided for in article 184 of the CF/88.

Article 184. It is incumbent upon the Federal Government to expropriate for social interest, for agrarian reform, rural property that is not fulfilling its social function, upon prior and fair compensation in agrarian debt securities, with a clause for the preservation of the real value, redeemable within a period of up to twenty years, from the second year of its issuance, and whose use will be defined by law. (Brazil, 1988).

Thus, it is understood that, as a rule, regardless of the size or destination of the property or rural property, it is essential that it meets the social function.

## **SMALLHOLDER FARMS AND THEIR ROLE IN THE DEVELOPMENT OF SUSTAINABLE FAMILY FARMING AND DOMESTIC SUPPLY**

The small rural property, according to Marques (2015), is a concept that is directly related to the physical dimensions of the area, specifically delimited between one and four fiscal modules. The criterion was established by Law No. 8,629/1993, which regulates article 185 of the CF/88.

Initially, the legislation tried to include elements that required the direct and personal involvement of the family in the exploitation of the property, however, these elements were vetoed by the President of the Republic at the time of the law's approval, as Marques (2015, p. 59-60) teaches:

By this law, in its article 4, item II, paragraph a, the "Small Property" was defined as the rural property of an area between 1 (one) and 4 (four) fiscal modules. He only demanded the size of the area and nothing else. The President of the Republic vetoed the other components of the legal definition, approved by the National Congress, which were: b) directly and personally exploited by the farmer and his family, with occasional help from third parties admitted, in times of peak demand for labor; and c) that guarantees the absorption of all the active labor of the family as a whole, also ensuring its subsistence and social and economic progress.

The previous legislation recognized family property as that exploited personally and directly by the farmer and his family, absorbing the entire family labor force (Marques, 2015). However, with the new legal definition of small property, it omitted the need for direct family exploitation, limiting itself only to the size of the area.

Law No. 8,629/1993, in its article 4, defines small property as a rural property with an area between 1 and 4 fiscal modules, and medium property as a rural property with an area greater than 4 and up to 15 fiscal modules (Brasil, 1993). Thus, by analogy, it is understood that the large rural property has an area greater than 15 fiscal modules.

The small rural property fulfills its social function when it simultaneously satisfies the requirements explained in paragraph 1 of article 2 of the Land Statute: a) it favors the well-being of the owners and the workers who work on it, as well as their families; b) maintains satisfactory levels of productivity; c) ensures the conservation of natural resources; d) it observes the legal provisions that regulate the fair labor relations between those who own and cultivate it (Brasil, 1964).



Small rural properties can achieve their social function through sustainable family farming, a model of responsible environmental production that is based on the management of the land by the family itself, aiming not only at economic production, but also at sustainability and the quality of life of rural workers (Potrich; Grzybovski; Toebe, 2017). In this context, family farming emerges as a fundamental pillar in the maintenance of the social function;

According to a survey by Embrapa (2024), small-scale rural properties dedicated to family farming cover an area of 80.9 million hectares, which corresponds to 23% of the total agricultural establishments in the country. The data highlight the significant importance of family farming in the Brazilian agricultural context, evidencing its essential role in the occupation of rural areas and national agricultural production.

The 2017 Agricultural Census, which covered more than 5 million properties across the country, revealed that 77% of these establishments are classified as family farming (IBGE, 2019). In September 2017, this sector employed more than 10 million people, corresponding to 67% of the workforce in agriculture and generating income for 40% of the economically active population (IBGE, 2019). The census also revealed that family farming developed in small rural properties is the basis of the economy of 90% of Brazilian municipalities with up to 20 thousand inhabitants (IBGE, 2019).

These data show that family farming has been transformed, allowing family farmers to assume the role of rural entrepreneurs, boosting the economy and generating income beyond self-consumption. It is, therefore, essential to recognize the need to demystify the historical idea that family farming is restricted to subsistence, destined exclusively for family consumption.

First of all, it is necessary to demystify the historical heritage that family farming is subsistence agriculture, focused solely and exclusively on family consumption, and to break down the barriers that prevent or hinder the transformation of a family farmer into a rural entrepreneur (Bittencourt, 2020, p. 29).

According to Malta (2022), small rural properties perform their social function not only through agricultural or productive activities. He points out that properties intended for leisure, such as farms and farms aimed at recreational activities, also contribute significantly to the fulfillment of this social function. However, Malta warns that rural allotment intended for urban purposes, such as recreational sites, must comply with the requirements established by the City Statute.

In the same sense, Domingues and Garcia (2022) adduce that the recreational use of small rural properties supports the maintenance of local culture and traditions, fostering the economy through rural tourism.

Municipalities can incorporate rural areas into the urban perimeter, as long as they do so in the public interest and through a technical and participatory process. The public interest may be to expand urban areas immediately, if the welfare needs of the city's inhabitants so determine; It may be to predict future expansion, or it may be to contain urban expansion through the regulation of land use that fosters economic activities conducive to generating income and containing the advances of real estate speculation. Such activities can be urban agriculture (in this case, peri-urban), they can be rural tourism or leisure, combined with environmental conservation, or they can be recreational farms, housing units. Such activities can be carried out in rural areas, and it is also the responsibility of the master plan to encompass rural areas and propose public policies to improve the well-being of the rural population and to promote economic activities. (Domingues; Garcia, 2022, p. 133).

The use model, according to the authors, promotes a more harmonious relationship between man and the environment, reinforcing the idea that the social function of property is not limited only to agricultural productivity, but also includes the generation of quality of life and leisure for society (Domingues; Garcia, 2022).

It is understood, therefore, that small rural property, regardless of its destination, whether for family farming, recreation or any other activity, is important to fulfill its social function. Compliance ensures that land is used responsibly and productively, contributing to broader social and economic development.

## **THE LEGAL PROTECTION OF SMALL RURAL PROPERTIES AND THE REASONS FOR THE EXCEPTIONALITY REGIME**

According to the provisions of Brazilian legislation, every rural property is required to meet strict criteria that include adequate productivity, efficient use of natural resources, compliance with labor standards and promotion of the well-being of owners and workers, to ensure the social function of the land. However, if these criteria are not met, the owner faces the possibility of expropriation of the property, a measure that aims to reallocate land that does not fulfill its social function for agrarian reform purposes.

Law No. 8,629/1993 establishes, in article 2, that rural property that does not fulfill its social function (article 9) is susceptible to expropriation by the terms of the law and respecting the constitutional provisions (Brasil, 1993). Paragraph 1 of the same legal



provision reaffirms that it is up to the Federal Government to expropriate, for social interest and agrarian reform, any rural property that is not fulfilling its social function.

On a constitutional basis, article 184 dictates that the expropriated rural property will be destined for agrarian reform. Compensation to the owner will be made through agrarian debt securities, which can be redeemed in a period of up to twenty years, starting two years after issuance (Brasil, 1988).

Expropriation for public interest to carry out agrarian reform, according to article 184 of the Federal Constitution of 1988 (BRASIL, 1988), is a declaratory competence; therefore, it is the only case in which the competence was conferred only on the Union, and a prior decree by the President of the Republic declaring the certain properties as useful to society is indispensable. This type of expropriation is important to achieve the objective of the Public Power, which is the well-being of the community. (Santos; Gates; Costa, 2023, p. 162).

In turn, article 185, item I, of the CF/88 established an exception to the general rule of expropriation: small rural properties are not susceptible to expropriation in the public interest, as long as the owner does not own another rural property (BRASIL, 1988).

Small rural property is exempt from expropriation, according to article 185 of the Magna Carta, regardless of whether it fulfills the social function. However, only the property that reaches the minimum indices of exploration efficiency, calculated according to the technical criteria contained in INCRA Normative Instruction No. 11 (INCRA, 2003), as well as another parameter, the Degree of Land Use (GUT) is considered productive, which must be equal to or greater than 80% (eighty percent), being calculated by the percentage ratio between the area effectively used and the total usable area of the property (INCRA, 2003). (Faria; Pertille; Miranda, 2019, p. 433).

Marques (2015, p. 144) adds that:

This means that, in principle, any rural property that does not fulfill the social function is subject to agrarian expropriation. But the sole paragraph of article 4 of the same law excepts small and medium-sized property, as long as the owner does not own another rural property. Likewise, productive property is also not subject to expropriation, by the provisions of article 184 of the Federal Constitution. And more than that: the property that proves to be the object of the implementation of a technical project that meets certain requirements established by law (article 7 of Law No. 8,629/93) cannot be expropriated either.

Historically, Brazilian legislation has made it difficult for small farmers to access land, perpetuating economic and social inequalities. The Land Law of 1850, for example, restricted access to property only through purchase, excluding those who did not have financial resources, which consolidated the power of large landowners and marginalized

small farmers, who depended on subsistence agriculture and family labor to survive (Vicente; Capellari, 2018).

The authors Vicente and Capellari (2018) recognize the importance of considering the historical, social, and economic reality of smallholder farmers to ensure fair and equitable application of laws.

Likewise, Barbieri Filho and Veiga Junior (2021) point out that the legislation to protect small rural producers is by the fundamental principles of freedom and equality outlined in the Constitution. Such compliance is justified by the understanding that there is no valid justification for expropriating the land of a small rural producer and leaving him in a disadvantaged position compared to other producers who may come to enjoy the same property (Barbieri Filho; Veiga Junior, 2021).

Thus, it is possible to verify that ensuring that smaller properties, often exploited by family farming, receive a differentiated and more favorable treatment in the legal and economic spheres is justified by the need to correct historical inequalities and promote social justice.

Nevertheless, the legal protection granted to small rural properties does not minimize the relevance of efficient and responsible territorial management. By defining criteria such as the Degree of Land Use, the legislation encourages landowners to optimize both the productivity and sustainability of their land (Faria; Pertille; Miranda, 2019).

Small rural property, although not susceptible to expropriation for agrarian reform, as well as medium property and productive land, is not exempt from other responsibilities. The inappropriate use of natural resources, such as soil degradation and water contamination, can result in fines, restrictions on use and other penalties imposed by the Government (Rosa; Almeida, 2019).

It is observed, therefore, that even if the Federal Constitution grants legal protection to small rural properties in cases of non-compliance with their social function, exempting them from the possibility of expropriation for agrarian reform, it is essential that the owner gives adequate destination to the property, whether for their subsistence (family farming), recreation (leisure, social welfare) or national economic development.

## **CONCLUSION**

The analysis reveals that small rural properties, in the context of Brazilian law, receive a differentiated legal treatment that grants them specific protections, even when

they do not fully meet the criteria of social function provided for in the Federal Constitution and Law No. 8,629/1993. This protection is justifiable from the perspective that smallholder property plays a crucial role in promoting social justice and correcting historical inequalities, especially about family farming and the preservation of rural traditions.

Historically, Brazilian legislation has sought a balance between the protection of the rights of small landowners and the need to guarantee the social function of land. This balance is expressed in the exemption of small rural property from expropriation for agrarian reform, as long as the owner does not own another rural property. This measure aimed to protect smallholder farmers, who often depend directly on the land for their livelihoods and well-being.

In addition, the analysis showed that the small farm not only fulfills a productive function, but also a social and environmental function. Sustainable family farming, for example, emerges as an essential pillar for the fulfillment of these functions, promoting economic production, environmental preservation and improving the quality of life of rural workers. Data from the 2017 Agricultural Census and Embrapa surveys highlighted the economic and social importance of small properties focused on family farming.

However, even with the legal protections about expropriation for non-compliance with the social function, the small rural property is not exempt from responsibilities. The inappropriate use of natural resources, such as soil degradation and water contamination, can result in penalties imposed by the Government. Thus, rural landowners must adopt sustainable management practices to ensure productivity and environmental preservation.

The incentive to sustainable practices combined with state inspection mechanisms is essential to ensure that small rural properties not only survive, but effectively contribute to a sustainable development model, balancing the social, economic and environmental needs that the current context requires.

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