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The Possibilities of Possession – Exploring Ezemshil

A pivotal form of legal tenure over land is applied in different ways throughout Ulaanbaatar – that of ezemshil or possession. Often given in the urban context for fixed periods of time, this legal regime is applied in both Ulaanbaatar’s ger districts and in the development of the city’s urban core. Ezemshil forms a conceptual and legal framework that links up these two main built areas of Ulaanbaatar in legal, physical and temporal ways. Possession rights in Ulaanbaatar relate to Mongolian mobile pastoralist perceptions of land rights and custodianship in which herders can gain possession rights (ezemshih erh) over sections of rural land for up to 60 years in order to herd their animals. In Ulaanbaatar such rights also form an extremely important part in the bringing of portions of land into being as commercial assets in the capital. Following the preceding chapter’s discussion of social relations and ethical critiques emerging in times of tension and discussion, I move this discussion on urban change into legal domains by exploring a court case that took place during my fieldwork. Following a discussion of this case, I then explore two examples of residents maintaining possession rights over land in Ulaanbaatar’s ger districts. Here the topography of land and social relations that underpin how land became sectioned off in the first place are crucial factors in the formation of their respective ezemshil possession rights.

The court case I discuss was relevant to the ongoing situation surrounding building no.X (Chapter 3). It was an attempt by urban citizens to cancel the possession rights (ezemshih erh) held by a particular construction company to a block of land near to building no.X. Following the failure of this construction company to build, the claimants – some of whom were themselves residents from Ögöömör, the district where building no.X was located – disputed the continuing rights of this company to ‘hold’ a prime block of land in place. For several residents of
building no.X (who were not claimants in the case), this court case had become emblematic of wider attempts to hold construction companies to account for a failure to build. Cancelling the possession rights of this particular company opened up the possibility of finding an alternative construction outfit that could potentially be more successful in constructing an apartment building. While there were technically just a few claimants on the case, court appeal hearings that I attended during 2016 were often attended by large groups of residents from Ögöömör who had come along to support the claimants. Both the act of taking the company to court and the monitoring and attendance of court hearings formed ways in which people engaged in ‘situated civic action’ – types of public actions taken to assert their place within the city (Zhang 2010, 158).

Ethnographically charting experiences of the framework of *ezemshih erh* or possession rights highlights some of the ways Ulaanbaatar residents utilise legal frameworks to their advantage in attempts to gain better access to urban land. Examining the exercising of possession rights, attempts to gain full ownership over land and different kinds of bureaucratic contestations over land all reveal ways in which people define their world, the city space and their place within it (Pirie 2013, 52). Such exploration highlights the multiple combined elements that underpin the creation of land as a resource, where it emerges out of ‘complex arrangements of physical stuff … calculative devices, discourses of the market … the nation … and everyday practices’ (Richardson and Weszkalnys 2014). Land proves to be malleable and flexible (Verdery 2003), where its ‘uses and meanings are not stable and can be disputed’ (Li 2014, 589).

Central to this discussion is the very temporality of *ezemshih erh* (possession rights). Legally speaking, it is a temporary form of possession. While this is the case, I hesitate to define *ezemshih erh* in English as ‘temporary possession rights’. Firstly, the experience of gaining and holding possession rights was often similar in several ways to that of outright ownership – a fact that is especially true in rural areas. Possession rights can be transferred and be inherited between family members. Possession rights of grazing areas as well as urban land plots can last for a long time. Additionally, as the cases below reveal, in urban areas possession rights can form a type of ownership that can last a long time (Empson 2015).

Its limited nature, while having a potentially truncating element, can also give rise to new possibilities. For people with possession rights over land in the *ger* districts, *ezemshil* possession rights can also be extended for further, fixed periods of time. Indeed, they often are, by
people who are unable (for different reasons) to gain outright ownership over plots of land or ömchlöl in the ger districts. One of the main differences between ezemshil and ömchlöl is a financial one. An individual land holder in the ger districts with ömchlöl, or full ownership rights, can gain more compensation for their land from a construction company if a company wishes to acquire it to build on it. Ömchlöl ownership rights also allow a person to gain more money when using their land as a form of collateral when attempting to acquire bank loans. In such situations, ownership rights or ömchlöl increases a person’s financial stake, where it can become a productive form of höröngö (capital) that ‘grows’. However, while these avenues are more limited for those with ezemshih erh or possession rights, the temporally limited nature of ezemshil also offers a type of malleable flexibility. This flexibility can become productive for those with possession rights in the ger districts, as well as for those acquiring possession rights over land to build buildings. The flexibility underpinning temporally limited possession rights has formed an essential part of Ulaanbaatar’s capitalist urban land market. Ezemshih erh provided a paradigm through which fast rates of investment could be utilised during the time of Mongolia’s speculation-driven economic growth. Ezemshil thus forms an ongoing and fundamental part of how the city itself is being made from the ground up.

The legal framework of ezemshil

Since the end of socialism in 1990, the privatisation of land and real estate assets in Mongolia has occurred in different increments. This has often been influenced at different stages by both political shifts and from the influence of international finance institutions. Following the dissolution of the herding collectives (negdel) and state farms (sangiin aj ahui) in Mongolia’s countryside that took place from 1991–3, there has been a pull and push between the concept of land as a public resource, technically owned and regulated by the government, and the need – often partly advocated by the Asian Development Bank – to bring land into being as private assets that can be ‘protected’, invested in and owned (Sneath 2004, 164).

This resulted in the country’s first Land Law, which was passed in 1994, being one that balanced these two perspectives. It sought to produce a form of land tenure that ‘sidestepped the issue of outright ownership but still allowed for exclusive private rights to land’ (Sneath 2004, 165; 2003, 444). This form of land possession allows herders to possess
(ezemshil) areas of rural land in order to herd their animals; it gives them long-term and exclusive access to land for up to 60 years, land that is still technically owned by the state (tör). This legal category also became one that was applied to land plots within urban areas in Mongolia as well, from Ulaanbaatar itself to provincial centres (aimgiin töv) and to rural district centres (sumyn töv). In these urban areas, ezemshih erh or possession rights to land can be acquired for a temporary time period of between five and fifteen years. In the decades since the end of socialism, Mongolia’s urban areas have become spaces where other legal frameworks have been gradually introduced. These have encouraged the further privatisation of urban land as part of larger efforts towards ‘reorienting the Mongolian economy towards capital-development by legitimating the personal accumulation of land rights’ (Miller 2017, 11).

The introduction of the 2002 Law on Land Ownership, which came into effect in 2003, allowed people to begin to acquire ownership (ömchlöl) of urban land parcels in Ulaanbaatar of up to 0.7 hectares. These laws, plus the 1996 Law on Housing Privatisation, resulted in nearly all Ulaanbaatar apartments being privatised between 1997 and 2004 (Bauner and Richter 2006, 12), with the land beneath apartment buildings still technically owned by the state (Endicott 2012, 88–9). Prior to 2010, ownership rights of individual land parcels were assigned to whole families. Since then, however, following a constitutional reinterpretation, temporary possession rights and ownership rights have been assigned to individuals. This increased the proliferation of land plot applications within the ger districts in Ulaanbaatar and formed part of an increasingly privatised, individualised legal framework of urban land ownership (Miller 2017, 12).¹

The culmination of these changing and unfolding legal regimes has resulted in the emergence of three tiers of land tenure over urban land: ownership (ömchlöl), possession (ezemshil) and use (ashiglal). In the ger districts Mongolian citizens can settle on a piece of previously unused land in the city within the ger districts and apply for possession rights (ezemshil) for a block of land – although in the last few years the municipality has ceased approving such applications in a comprehensive way. Ezemshil possession rights can be bestowed to individuals in the ger districts for between five and fifteen years. One who has ezemshih erh (possession rights) over a piece of land is eligible to apply for outright ownership (ömchlöl) after five years.

When wanting to build an apartment building, construction companies can also apply for a form of ezemshil possession rights. This is the category of possession rights that permits the use of land to build upon
Companies wishing to build apartment blocks or other buildings need to apply for an *ezemshih erhiin gerchilgee* or possession rights certificate to ‘possess’ (*ezemshil*) and use the land, and to construct a building upon it. One can purchase ownership (*ömchlöl*) of apartments and blocks of land. For those living in apartments, people buying apartments receive *ömchlöl* ownership rights, while the land beneath the building technically remains the property of the state. In this case buildings themselves *hold* land in place.

Central to the legal framework of *ezemshil* is an understanding of land ‘use’. This partly stems from the fact that *ezemshil* possession rights emerged out of Mongolian pastoralist frameworks of usufructuary land tenure. Such frameworks allow herders to exercise rights to use the land as a resource to feed and grow their herds for up to 60 years. Within urban areas, similar emphasis on land ‘use’ prevails, albeit in different forms. The legal use and meaning of the two words *ezemshil* and *ashiglal* are different. The legal category of *ezemshil*, to possess, is given with the requirement to put the land to ‘use’ as a resource and (essentially) to ‘grow’ something on it in the form of a building that can be profited upon. If a company with a possession rights certificate does not complete their building within the time allotted (usually five years but sometimes longer), their certificate can be cancelled. The products built on the land form the ‘evidence of growth, not on-going possession of the land itself’ (Empson 2015). While a company’s possession rights certificate is technically to *use* the land (*heregleh*), it is categorised as a form of *ezemshil* on legal documentation and in court cases, as can be seen in the discussion below, and is a form of tenure given to Mongolian companies (World Bank 2015, 22).

The ability for individuals to successfully acquire *ezemshil* possession rights of land tenure over land plots in the ger districts and transfer it to ownership (*ömchlöl*) is often quite difficult; people can, and do, experience various types of bureaucratic obstacles (Miller 2017; Plueckhahn 2017). Because of this, and perhaps also because of the framework of ‘use’ underpinning these legal regimes of land tenure, land *use* itself in the ger districts thus becomes a central way in which people ‘hold’ onto land. Some people build fences and houses, for instance, as a way to solidify their hold over land when they do not have full legal tenure (Miller 2017; Plueckhahn and Bayartsetseg 2018; Højjer and Pedersen 2019). Even when they do have legal tenure, it is often fundamental that people either live physically on the land or arrange for a friend or relative to do so, to prevent the land being settled on by others in their absence (Højjer and Pedersen 2008; 2019). Land that has been sectioned off for construction in different areas of the city is also often watched over by a
person living in a ger, effectively working as a security guard keeping the land in place (Pedersen 2017).

While possession rights in the built areas undergoing developments of apartments often fall under the legal framework of ezemshil (to possess), and ger district inhabitants acquire more individualised forms of ezemshil rights (Miller 2017, 10–11), this chapter examines some commonalities between the two main built areas as experienced under this framework of temporally determined ezemshih erh (possession rights). The process of examining how ezemshil is maintained and contested in both main areas of the city reveals some similar themes that arise through this legal paradigm that traverse both environments. This chapter discusses the way in which possession rights implicate the material and environmental nature of the surrounding environment, perceptions of an urban citizen’s rights and the ethics of urban development more generally. The flexibility underpinning ezemshil can provide productive possibilities during times of economic decline.

**Ezemshil, custodianship and the economy of urban land**

Recent anthropological scholarship has highlighted the ways in which Mongolian concepts of ownership that pivot around a master-custodian relationship form a fundamental part of the country’s experiences of capitalism (Empson 2018, 264–5). Part of this is the way that ‘access to resources is [often] granted through a model of “custodianship” that pivots around a relationship between a “master” and a “recipient” (patron-client)’ (Empson 2018). This literature highlights how master-custodian relationships reverberate throughout different scales. Such a relationship may manifest when a person gains land possession rights from the state (tör). Master-recipient relationships also appear within domestic groups, where the head of a household is called the geriin esen or ‘master of the house’ (Sneath 2001, 46).

The work of Sneath (2001; 2002; 2004), as well as that of Empson (2015; 2018), has demonstrated that rather than ezemshil (possession) being a kind of residual ‘pastoralist’ regime of ownership that has not yet ‘caught up’ to ‘full’ private ownership, understandings of (temporary) possession based upon master and recipient/custodian relationships serve rather to form a fundamental part of contemporary Mongolian capitalist economic practices. These include those in relation to forms of mining and resource extraction (Empson 2018). Such practices can ‘disrupt our conceptual comfort zones of how capitalism, and especially
capitalist property regimes, should appear’, revealing the diversity that makes capitalist forms from within (Empson 2018, 265; Bear et al. 2015). Instead of being something ‘incomplete’, master/recipient relationships become a ‘way of managing items’ (Empson 2015) that extends into wider historical and current social and political institutions of land use (Sneath 2003, 441).

The ability to apply to possess (ezemshil) and own land was described by my interlocutors as an inherent right (erh). Each Mongolian citizen is legally entitled to obtain one section of land from the state (tör) simply by paying a minimal tax fee, either in a rural centre or in the capital. For many in Ulaanbaatar, whether seeking land in the ger districts or attempting to secure the tenure of a block of land to build a summer house (zuslan), land exists in one’s imagination as an important asset to have. When discussing surrounding landscapes in Mongolia, the word erh connotes a power or right that allows people to access land in order to prosper and survive. Evoked in song lyrics and poems, erh can refer to a power implicit in the nature of the surrounding landscape itself. Describing the erh or power of the surrounding landscape is an acknowledgement of how topography, climate, landscape and land deities can be fundamental in shaping one’s lived experience and relationships with other people.

Accessing erh, or rights to land from the state, forms a discourse of rights that allows people to seek the growth of their höröngö, or investment in the economy. Given this relationship between the state and the self that occurs when people exercise their rights to this relationship, it could be argued on first glance that possession rights in the city form an urban extension of a master/recipient relationship – a context in which people gain access to a part of the urban landscape from the rights-bestowing ‘master’, the state (tör) (cf. Zimmermann 2012, 84). Exercising possession rights potentially becomes another ‘fractal’ of nested hierarchies that exist on scales between the master-custodian relationship (Empson 2018). Here it also speaks to a wider Mongolian conceptual understanding of the landscape as having overlapping human (chiefly) and spiritual masters, where people are allowed to benefit from the land’s resources – either through herding animals in rural areas, or accessing urban land plots. Here the landscape itself becomes a fundamental part of people’s cosmological worlds (cf. Humphrey 1995). However, the way in which perceptions of Mongolian urban land custodianship unfold in urban contexts reveals a diversification and expansion of interpretations over the nature of master/recipient relationships and the unfolding of possession rights in Mongolia. When such rights are applied in an increasingly
commercialised land market, different connotations and implications appear. In this context, the exercising of master/recipient relationships forms only one aspect of ezemshil possession rights.

Ezemshil possession rights may have origins within a conceptual framework of master-recipient relationships within Mongolia, but they now significantly drive the commercialising processes within the country’s urban centres. The commercialising nature of ezemshil rights forms a fundamental conceptual frame through which land plots are brought into being as assets, with ezemshil providing a crucial ‘step’ in a series of gradations of ownership and the commercialisation of land. State land can become fenced off into parcelled allotments, either by the municipality giving permits to construction companies or by urban residents themselves in the ger districts. Land thus obtained can then be held under the name of an individual or company through ezemshil rights for at least five years. As mentioned above, while ostensibly ‘temporary’, ezemshil rights can last for a long time. The lived experience of ezemshil has been described as not that different from outright ownership (World Bank 2015, 27).³

Keen to better understand the framework of ezemshil from a legal perspective I visited a lawyer in Ulaanbaatar who specialised in urban land law. When we met one afternoon in her office, I asked her about the relationship between the term ezen, meaning a spiritual or other master, and ezemshil, meaning possession rights. I was keen to gain further insight into how this commercial category of land tenure in the urban context related to Mongolian perceptions of pastoral land use in the countryside.

Rather than conflate the two, however, or highlight any similarities, this lawyer’s legal perspective led her to differentiate significantly between the terms. ‘People in the countryside worship the land masters (gazryn ezen) in their own homelands’, she said. ‘According to the law, though, in my opinion, the right to possess land through ezemshil rights is quite different.’ She emphasised that ‘the legal right to possess is a process in accordance with the law’ (‘Huuliin üüdnees ezemshih erh gedeg n’ odoo yahav huul’ togtoomjiin daguu protsess yavagdaj baii üüsch baigaa erh sh deê te’), while acknowledging that both land tenure and custodianship formed extremely important relationships between people and land in Mongolia in rural and urban areas. However, in her legal perspective, ezemshil or possession rights were driven by law (huul’) and understandings of ezen, or master, by spiritual beliefs and acts of worshipping. She described how, in her legal opinion, the worship of sacred natural areas legally fell under the purview of laws protecting environmentally special areas, such as particular rivers or mountains.
This legal perspective formed one way in which ezemshil possession rights have come to play a commercialising role within urban Mongolia. However, while the two perspectives of master-custodian relationships can be linked to different laws, in practice the exercising of temporary possession rights reveals the combination of two overarching ways in which urban land is perceived and valued within Mongolia. Urban land can be both a resource that citizens have a right to receive from the state and also a marketable commodity that increases and decreases in monetary value, and for which one needs to work to obtain and keep through following bureaucratic procedures and other processes. As discussed in previous chapters, the concept of ‘private land’ in the Mongolian language reveals this tension between outright, individualised ownership and custodianship of wider state-owned land. The word for ‘private’, ‘huv”, means ‘a share, portion, allotment’, forming ‘notions of social and economic order that posit a whole’ (Sneath 2001, 48). Accessing land in Ulaanbaatar forms the lived experience of this synthesis between portioning wholes (larger land plots being portioned by the state, or between family members) and individualised economic decision-making.

The combination of legal, commercialising categories of land tenure, as well as rights discourse stemming from relationships between residents and the state, are made particularly apparent when considering the diverse ways in which ezemshil possession rights can be exercised by urban residents. During my fieldwork I learned just how much these were processes that implicated people and the law, as well as bureaucracies and power relationships. They implicated the social histories behind the formation of land plots and the topography and physical nature of urban land itself. This chapter will now explore three examples of the exercising (and contesting) of ezemshil possession rights. Doing so serves to highlight the inherent flexibility that underpins these rights. Their temporary nature opens up the landscape to capital investment, while at the same time allowing land to be contested and held by residents during uncertain economic times. Looking at land use through the legal and conceptual paradigm of ezemshil blurs distinctions between ‘formal’ and ‘informal’ land use across different built forms and reveals the various ways residents shape legal outcomes and land use in Ulaanbaatar.

Contesting possession rights in the redevelopment zone

Relevant to the situation surrounding building no.X, several citizens had decided to take legal matters into their own hands. Rather than take a
construction company to court (*shüüh*) for the failure to redevelop an area, or to try and claim compensation (a path that was unlikely to be fruitful in the current economic climate) the claimants in this court case sought to invalidate the *ezemshil* possession rights of a construction company itself. In doing so these citizens, some of whom were residents in the area, were engaging in forms of legal action as part of wider plans to improve the area where an alternative construction company could redevelop the area. This court case formed part of a continued emergence of a type of politico-economic subjectivity, in which economic engagement played a crucial part in developing forms of power and influence in the district.

Several residents of building no.X often attended the hearings relevant to this case, in support of those attempting to change the course of stagnated redevelopment processes in the district. The claimants had previously won this case earlier that year, when the construction company’s *ezemshih erh* (possession rights) had been cancelled. I was often encouraged to attend hearings of this case, along with my interlocutors from building no.X. During 2016 the court hearings I attended were appeal hearings, at which the construction company disputed the previous court decisions. This particular construction company had discussed their plans with a number of surrounding residents to redevelop the area of land sitting between the ex-dormitory buildings. However, a number of years had passed, and no building had yet materialised. In the meantime the square lot of prime land that the construction company had rights over had been lying ‘empty’. In the summer of 2016 it was surrounded by an extremely high metal fence that obscured the view of the land from passers-by. A concrete building base had been poured, further securing the land in place. In addition to this, the land was also physically ‘held’ by someone currently living in a *ger* on the land.

The case was being heard by the city’s administrative court: the *Niislel deh Zahirgaany Hergiin Anhan Shatny Shüüh*, or the Municipal Primary Administrative Court. The Administrative Court was established in 2004, a year after the 2002 Land Law came into effect in 2003 (Kim and Dorjderem 2012, 34). As noted by Kim and Dorjderem (2012), from 2004 to 2010 the majority of cases heard at the Municipal Administrative Court were those involving land-related conflicts. In the extremely politicised environment of urban land markets and the wider Mongolian economy during 2015–17, people often suspected others of corruption and bribery (Sneath 2006). Many daily dealings and collaborations exist within circulating economies of favours and money (Humphrey 2012). Political offices and bureaucracies in Mongolia are often widely
rumoured to be staffed by employees loyal to the political party in power. When a new major political party comes into power, bureaucratic staff were said to be replaced throughout different sectors of government administration, influenced by the shifting factors emerging in, and linking, national and municipal politics.

In this atmosphere of circulating economies of favours, the court building and court room itself instead was cultivated as a different kind of idealised space, one ostensibly very apolitical. An idealised projection of this ‘apolitical’ nature of the applications of the law and judicial processes themselves was evident in a promotional poster displayed in the court building foyer, showing court personnel contained in a circle.

Around the exterior of the circle were shown several ways in which court proceedings shouldn’t be influenced (nölöölöl) – actions prohibited from having anything to do with the court, court cases or the judges themselves. These forbidden actions included bribery (heel hahuul’), the giving of gifts (beleg) or rewards to judges (shan haramj). Other types of forbidden influence included oppressing or threatening behaviour (daramtla, zanalhiileh), as well as slander and insult (gütgeh, doromjloh). The circle in the middle, displaying the make-up of the court, was emphasised as impervious to all such actions. Alternatively, it could be said that it showed how people holding back from these kinds of damaging actions allow the court to be impervious, clearly separate from the oscillating, permeating, economy of favours and influence within the city. This diagram signified an idealisation of the law and ‘what the law promises’ in this uncertain environment (Pirie 2013, 1–2) – a purely independent space.

From the vantage point of my interlocutors from building no.X, this iconographic representation of the courts, and the ‘impartial’ application of the law that they could provide, formed part of the way the residents in the district viewed this legal avenue. Following Pirie (2013) and taking a perspective that considers ‘law as meaning’ rather than solely ‘an aspect of power’ (2013, 24), the courtroom was viewed by the residents as a space of agency. Here an impartial application of the law was viewed to be possible: one’s voice could be heard equally, alongside that of the municipality and the director of the construction company. The courtroom thus provided a welcome contrast to the streets of the district, where the residents’ political and economic positions had to be negotiated in other incremental and exhausting ways through street discussions and the cleaning of rubbish.

In the summer of 2016 a case was heard in the Administrative Appeals Court (Zahirgaany Hergiin Davj Zaaldah Shatny Shüüh). I attended this hearing with a large group of the residents from the district.
Until this point I had heard so many pained personal reflections voiced while talking with people in the dusty streets. My interlocutors had often bemoaned the severe lack of accountability and futility of their situation. However, entering the formal space of the courtroom provided a welcome contrast. In attendance was a lawyer for the municipality, a lawyer for the company and one of the claimants. Throughout my fieldwork thus far, official representatives of the municipality and construction company personnel were always discussed, but had been largely conspicuous by their absence. Here the legal system served to bring these figures into sharp relief.

This case was to appeal a previous decision made by the administrative court to cancel the company’s ezemshih erh or possession rights. The purpose of this court hearing was to decide whether or not the company had legitimate grounds of appeal, and whether the previous decision by the court to cease the ezemshil possession rights of the company should be overturned or not. The ezemshil certificate of this particular company for their pocket of land had been granted some years earlier, and it had just expired recently. The block of land in question had had a large pit, the size of a building base, dug out and a concrete base poured in, but as yet no building had been built on it. The matter in question seemed at first glance quite simple: the company had failed to build and were now in breach of their ezemshil possession rights, which had required them to build during that time frame. As the company’s period of possession had resulted in no effective use or anything grown on this land, their rights to possess it had become void (Empson 2015). However, as the court case unfolded, and drawing from the judges’ official court decision, it became clear to me that this case was not as simple as its immediate legal parameters. The official decision reveals many other different factors that impinged upon this case, exposing different kinds of relationships and ethics that defined these interactions between people and property (Pirie 2013, 52). The temporal juncture created by the expiry of the company’s ezemshil document exposed wider moral considerations, responsibilities and obligations that underpinned forms of emerging urban citizenship in Ulaanbaatar during this period of economic downturn and a failure to build.

Underpinning the case was the consideration that not only had the company failed to build, but that the residents in building no.X were consequently stuck in untenable, unsuitable housing. When outlining the case at the beginning of the hearing, the judges highlighted the fact that the windows and doors of building no.X were removed, and that this contributed to the slow disrepair encouraged as part of the anticipated
redevelopment in the area, leaving the remaining families stuck in a state of ‘disaster’. The claimant stated that the company had ignored the residents, refusing to acknowledge the situation that their inactions had given rise to.

Discussion during the court hearing that day circulated around how there had been numerous impediments beyond the company’s control that prevented them from being able to build. One of the issues creating problems for the company was the fact that regulations on redevelopment had changed during the course of their tenure. The company, it was claimed, had needed to delay their building plans accordingly in order to ensure that they complied with these new regulations. Conversation further circulated around how there was a city government faced with two mutually reinforcing requirements – to meet the housing needs of the citizens of Ulaanbaatar and to keep construction going in order to do so. Throughout the hearing that day, it became clear that among those present there was the belief that despite a slowdown in construction activity, keeping construction going should be something to be encouraged overall. Here construction and fluctuating investment had become a problem, but also held the key to a possible solution (Gleeson 2014). There was an imperative to keep building to create better housing for those in similar situations to building no. X.

This court hearing thus formed a representative reflection of several main themes and issues affecting the city at large. It became a space in which the dynamics between life experiences and the legal frameworks themselves became apparent and played a vital role in creating ‘conditions of possibility for the emergence of claims’ (Das 2011, 320) over influence in the urban landscape. The court hearing also became a place that revealed the multifaceted nature of the ethics of urban redevelopment to be something that expanded out excessively from everyday experiences (Mattingly and Throop 2018, 478) to include consideration of what was best for the direction of Ulaanbaatar as a whole.

In the end, the judges decided that, since the company had failed to build within the time frame allotted on their ezemshil possession rights certificate, the previous decision to cancel the company’s ezemshil possession rights was to be upheld; the company’s appeal was denied. In the official court documents detailing the judges’ decision, it was noted that this decision was also reached through considering the impact that the delayed construction was having on residents in the district. The official court decision states that ‘the uninhabitable dwelling was undermining the remaining residents’ rights’ and that the court’s primary objective was to protect citizens’ rights (irgediin erh) (Court Decision 2016, 4).
The company’s plans to build had been promissory in nature, but these had failed to materialise (Abram and Weszkalnys 2013). Here the temporary nature of ezemshil possession rights served to create a degree of flexibility that enabled the claimants to free the land in order to steer a different course in their urban environment.

At the conclusion of the appeal hearing the large group of residents jubilantly left the court, where everyone milled around outside. As I stood with everyone, a resident approached my research assistant and I and asked whether we knew of a different construction company that could be enlisted to redevelop the area instead. Residents themselves desired to take on the promissory task of planning. Possession rights in this instance allowed a degree of welcome flexibility that enabled people to adapt to the myriad number of other fluctuations in the urban environment, political or economic. In so doing they offered ‘precariousness as well as promise’ (Das 2011, 320) of economic opportunity.

Visiting the district again in 2017 I noticed that the high metal fences had been removed from the border of the land parcel in question – an indication that it was no longer being legally ‘held’ as a private asset by the construction company. However, the large pit that had been dug, and into which the concrete base of the building had been poured, remained – forming a physical marker that would long outlive the legal tenure previously attributed to it.

**Ezemshil possession rights in the ger districts**

Ezemshil also proves a flexible category of land tenure that enables residents to acquire and utilise possession rights over small plots of land in the ger districts. Social connections and topography all play a part in bringing this land into being as a resource. These land plots are described as hashaa – the term for the fences that surround them. However, given the fundamental work that fences do in shaping what land is understood to be, the word hashaa often connotes not only fences, but the land plot itself. The peri-urban area of Ulaanbaatar is largely comprised of such sprawling and expanding ‘ger districts’ (ger horoolol). These, as noted by Choi in 2012, comprise 60 per cent of Ulaanbaatar’s population, most of whom live in an extended accumulation of such hashaa (Choi 2012, 122). The ‘ger areas’ consist of numerous horoo (sub-districts) and often contain different types of built houses (cf. Miller 2013) as well as ger. Many people utilise their land in order to support a wide variety of small-scale businesses that comprises the extremely large, so-called ‘informal’
sector of Ulaanbaatar’s economy. Indeed, living on the land is often highly valued by ger area residents for the opportunities it affords—such as the chance to grow vegetables, collect large amounts of scrap metal to sell or run a car repair business—which are not possible when living in an apartment.

Within the make-up of the city, there is no single unidirectional flow of people arriving to the city from the countryside and setting up a new hashaa on the city outskirts. Instead, there is a lot of movement back and forth between rural and urban areas—and also within the city itself, as people move to live between different family members or try to gain hold of a separate hashaa of their own to create different economic and social futures. Within the ger districts, ezemshil can be something that, while creating temporal uncertainty, allows people the ability to hold onto land when the ability to acquire ömchlöl, or ownership, is not possible or is delayed.

Tsetsegmaa’s land

On a cold afternoon in late November 2015 I took a walk northward with my research assistant along a small river in a central district in Ulaanbaatar. It was fairly silent away from the main road, and the ground crunched with frozen layers of snow and ice beneath our feet. There was the occasional, distant hum of rumbling car engines as they criss-crossed the frozen, expansive waterway that carved this section of the city into two distinct parts. To my left, new, tall apartment buildings stood starkly juxtaposed against the sky. Around the bases of the buildings, smaller plots of land and self-built houses stood alongside newer concrete constructions; this was an area that had recently experienced considerable redevelopment.

Sitting at the base of one of these buildings is a plot of land (hashaa) held by Tsetsegmaa, an astute and engaging woman in her 50s. She lived with her four daughters and their children in a small but well-built, self-made house alongside a small ger on this land, overshadowed by a large building. The other side of her land, however, is met by the snow-covered dirt road that borders the icy expanse of the frozen river. Her land sits on the rough-hewn edges of this district and is an unusually narrow allotment of 300 square metres, nestled within the confluences of new apartment developments and environmental flows. Curious about the composition of her land, I spoke to Tsetsegmaa about her experiences. Her erudite summation of her physical place in the city included
reflections on larger entanglements between economic processes and the municipal government. Her physical land, stuck between a building and a river, formed a material manifestation of the way in which Tsetsegmaa conceptualised her own position in the city. She described to me how she felt she was legally and economically ‘stuck in this situation, where [I] can’t move’.

Tsetsegmaa’s location within the physical and economic urban landscape was uncertain. Because her land was less than 5 metres away from a watercourse, she could never gain ownership (ömchlöl) of her land. Instead she had been able to gain the rights of temporary possession (ezemshil), which afforded her a moderately secure hold over her land. However, recent economic developments meant that these possession rights were a lot more temporary than they used to be. Tsetsegmaa lamented to me that prior to 2008, ‘they used to give you a certificate of temporary possession for fifteen years … now they only give it to you for five years, because there is infrastructure around this area, because they are building new buildings’. The infrastructure she was referring to were sewerage pipes, installed in this area in anticipation of redevelopment to come.

Parts of this infrastructure (sewerage pipes) had been laid down on Tsetsegmaa’s land. She expressed hope that she could one day gain access to this infrastructure for her property (although this is unlikely if she stays on her land and does not move to an apartment). In the meantime she believed that the underground pipes, and the proximity to infrastructure they represent, will work as a possible incubator of value beneath her feet, increasing the value of this prime land. For Tsetsegmaa, there was no other option at that moment other than to sit tight. She calculated that the value of her land is quite high and anticipated selling her possession rights at the right time. However, she was also sceptical as to whether she would be able to sell it at the value that she would like. ‘It is probably valued at around 150 million tögrög (57,000USD), she said, ‘but I would probably get less than that amount. You know that people are forgotten by the state (tör), and only care about themselves and their own needs.’ In the meantime the inconvenient nature of her land, close to the river, allowed her to hold temporary possession rights in an uncertain economic climate.

The physical nature of Tsetsegmaa’s land had become a hindrance for her – she would never be able to gain full ownership rights due to it being too close to the river. However, it had also become a help. Her land was also alongside another building that had already been built, meaning that it was less likely someone else would build on her land. It was
also possible that she could extend the *ezemshil* possession rights of her land every five years for the foreseeable future. Here possession rights provided her with ongoing access to a ‘difficult’ piece of land close to the city core, enabling her daughters easy access to their employment. Given the location of her land, the price of her possession rights, should she wish to sell them, could remain relatively high.

**Bayar’s land**

A different example of the utilisation of *ezemshil* possession rights in the face of uncertainty over land tenure highlights another way that land in Ulaanbaatar is brought into being. This is through the long-term portioning off of sections of land between relatives. Bayar, a woman in her 20s, lived in a *ger* in a land plot with her extended relatives in a part of Ulaanbaatar. This particular *hashaa* was not too far from the city centre; it sat on a small hill with a great view of the central part of the capital (Figure 4.1). In early 2010 Bayar’s aunt told her that one of her neighbours was selling their land, and later that year she went with her aunt to visit this family. The woman selling this *hashaa* was also an *egch* – an

![Figure 4.1 Bayar’s *ger* on her land, with a view overlooking the city. Source: author](image-url)
elderly female relative from the same rural province as Bayar, and part of an extended family that lived in adjoining, surrounding plots of land.

When I visited this area in 2016, Bayar was quick to point out and explain which people in the surrounding hashaa were also from the same rural area as her. In 2010 Bayar had taken out a loan to pay for the hashaa and managed to purchase the rights to possess this land from her elderly female relative. Through this she acquired her certificate of possession (ezemshih erhiin gerchilgee), along with a cadastral map of her land. Once her certificate of possession ran out in 2015, she had planned to apply for full, outright ownership (ömchlöl) of this land. However, upon going to the district (diüüreg) land office in 2015, Bayar was told that her cadastral map of her hashaa was incorrect: her block of land did not technically exist on the record.6

The aunt who had sold Bayar the hashaa had had the original cadastral map of this block of land made through a private cadastral mapping company, rather than a company approved by the local government. This is a common practice throughout the ger districts, where numerous unofficial cadastral mapping companies offer their services at cheaper rates. Bayar’s block of land as a private, fenced entity had been sectioned off socially by family members and through private means with a private cadastral mapping company – but it had not yet been entered into the official, state bureaucratic memory. Her neighbouring relatives had previously owned this hashaa as a much larger plot of land, and this larger plot of land had since been sectioned off to include the area in which Bayar was now living. She needed, in a virtual sense, to negotiate and confirm the spatial boundaries as they existed on paper, to make reference to the social origin of her land in order to justify to the bureaucracy her continued use of it (Leach 2004, 52). Bayar’s land had become a ‘record of social ties’ (Myers 1986, 128). In attempting to gain ownership and pursue the bureaucratic legitimacy of her land, her quest for land ownership was ‘tied to a politics that emphasises both the claims of relatedness and those of personal autonomy’ (Myers 1986, 129).

While Bayar was not in dispute with her surrounding relatives living in adjoining hashaa about the physical fences themselves, the lack of bureaucratic legitimacy of Bayar’s plot of land now implicated their surrounding land. If her hashaa was proved to have been illegitimately sectioned off, her land could legally become subsumed within her family’s land. It could cease to exist as her own. However, Bayar was also very concerned that if she made a new, correct, cadastral map, then perhaps her family’s land might also be affected and valued for less money.
Considering these social ramifications of bureaucratic illegitimacy revealed the inherent power and politics surrounding the cadastral map itself. Bayar subsequently went through several attempts to commission a correct cadastral survey of her hashaa. She was finally able to have one made that was approved by the local land office after a land official came to view her land. While she was unable as yet to gain full ownership over her land, Bayar was able to extend her ezemshil possession rights over her land for another 15 years. Ezemshil possession rights provided a type of temporary solution that was beginning to last a long time, and at least gave her continued use of her land in the meantime.

In June 2016 I met with a land official in one of the municipal district offices to discuss this very process of bringing land into being as a private asset in the ger districts. The official described to me the processes required in order to make this happen, which included several crucial bureaucratic steps. First, a land official needed to visit the land, after which a cadastral map had to be made by an approved cadastral mapping company. Only then could permission be granted and a certificate of possession, or ezemshih erhiin gerchilgee, approved. These steps ostensibly seemed straightforward in this idealised, bureaucratic account of how the process should work. However, as we spoke further, the land official framed the whole process as one where points of ‘land tension’, or gazryn zörchil, could break out between these incremental bureaucratic nodal steps. An argument might arise between neighbours over rights to their land in the meantime, and an overlapping cadastral map might be produced. In such a case, the approval of one’s cadastral map of land-in-the-making would need to be put on hold until the dispute was resolved. Another person could put a fence up on the land in question and claim it as their own. Or a piece of land could be discovered to have overlapping conflicting bureaucratic history, as Bayar had experienced.

Central to ensuring land was secured, the land official noted, was that a hashaa fence be erected by the prospective possessor. This bureaucratic recognition of the importance of fencing has been noted elsewhere in the ethnographic literature discussing property rights over land in the ger districts (Højer and Pedersen 2019; Miller 2013). It formed an example, as Miller astutely notes, of the law providing a proscriptive boundary, as opposed to a prescriptive one, where the ‘government offers boundaries [or tensions and conflicts] to avoid, rather than rules to follow’ (Miller 2017, 17). As Bayar’s example reveals, negotiating these moments of ‘tension’ was an inherent requirement in securing the possession of blocks of land. Both Bayar’s experience and the land official’s account of the bureaucratic processes involved serve to
highlight the fundamental, highly pressured role of the cadastral mappers themselves in legally certifying the unfolding, highly valued, urban landscape.

**Conclusion**

*Ezemshil* possession rights form flexible entry points into the urban land market for people in different ways. They also form a pivotal legal space through which people legally bring land and buildings into being as assets. *Ezemshil erhiin gerchilgee* or possession rights certificates form a paperwork counterpoint to the social relations, fences and concrete building bases that are used to solidify this legal legitimacy, both before and after land tenure is acquired. These rights are technically temporary, in that they are bestowed for a set time frame. However, in the *ger* districts, the reality is that the length given to possession rights can often be extended. Indeed, in addition to residing on the land itself, this formed a way in which people such as Bayar and Tsetsegmaa were able to maintain a legal hold over their land. In an environment of unclear bureaucratic procedures and a recurring failure to build buildings, *ezemshil* possession rights are becoming a way in which people hold land (and exchange it) over long periods of time. Perhaps the best way to describe them is as ‘flexible’ possession rights. While they could be seen as tenuous, in that they are bestowed for limited time frames, the application of such rights within Mongolia historically forms a fundamental and ongoing way that people access land as a resource in rural and urban areas.

Considering *ezemshil* brings into focus numerous other factors that form part of bringing land into being. The discussion during the court hearing of the case in Ögöömör served to highlight the overlapping processes of regulatory conditions, social responsibility, citizens’ rights and economic necessities that underpin the enaction of possession rights. In Bayar’s case, her land was shaped by social, familial relationships; it was these social relationships that shaped the landscape and forced a beleaguered bureaucracy to catch up. For Tsetsegmaa, the surrounding landscape close to the river helped her to maintain *ezemshil* possession rights. This piece of land close to a watercourse meant that a building would be unlikely to be built in its place. *Ezemshil* possession rights were the one type of land tenure she could continue to have, keeping her land in place in a legal sense for the time being.

These social and environmental entanglements form one part of the combination of ‘life, law and exception’, all of which coalesce together. In
such a situation, it is the forces ‘that each of these concepts exert on the other that come to define the conditions of possibility for the emergence of claims over’ urban Mongolian citizenship (Das 2011, 320). The examples discussed in this chapter reveal the way in which different kinds of people and social relationships – or ‘relational infrastructures’ (Simone 2014b) – are integral in shaping the urban land market from within. In so doing, it is difficult to maintain a distinction between ‘formal’ and ‘informal’ built environments in Ulaanbaatar, or formal and ‘alternative’ capitalist economies (Empson 2015).

These examples concomitantly reveal how the temporally-fixed nature of ēzemshil possession rights is fundamental to the way in which Ulaanbaatar’s urban environment has flourished, both in apartment areas and ger districts. As noted by Zhang (2010) in Kunming, China, this challenges a previous tenet (common among economists) that ‘clearly defined private property rights are key’ to economic growth. As Zhang further notes, when considering urban development, ‘it is problematic to assume any neat, one-dimensional correlation between exclusive private property rights and economic development’ (Zhang 2010, 161). Instead, fixed temporal forms of possession rights in Ulaanbaatar provide a flexible malleability surrounding the formation of hold over land. While other actions are required in order to keep this shifting type of ownership in place, including the erecting of fences and taking companies to court, the flexibility of possession rights provides possibilities as well.

Ēzemshil possession rights have formed a fundamental part of the productive anticommons in Ulaanbaatar. These rights allow a government to ‘incentivise development’, in a situation where ‘few resources are expended on oversight and enforcement’ (Miller 2017, 17). Indeed, residents have taken up this ‘regulatory’ role, as can be seen in the taking of a construction company to court for failing to build within an allotted time frame. Ēzemshil rights have become part of deliberate economic strategies that provide possibilities to both citizens and businesses alike. Following examples of ēzemshil reveals alternative experiences of urban capitalism. Multiple people can gain different kinds of stakes, and boundaries of ownership can spill over (Empson and Bonilla 2019) – expanding beyond fences, implicating familial networks and allowing different citizens to forge economic and redevelopment aspirations for themselves. While the economic downturn resulted in the stagnation of many existing plans, the malleability of possession rights in the meantime gave rise to new sets of actions and prefigurative visions of what might be possible in the years to come.
Notes

1. For a detailed analysis of different developments and changes to Land Laws in Mongolia, and the ways in which they affect urban areas, please see Miller 2017. Miller’s article also provides an ethnographically detailed description of processes of auto-construction – the construction of self-built houses – in the ger areas, and its role in securing individual land rights in Ulaanbaatar.

2. The right to gain possession of a section of urban land exists in Ulaanbaatar as well as regional provincial capitals and the centres (töv) of rural districts. Living in more rural areas affords a citizen the ability to gain a bigger plot of land: one can obtain 0.50 hectares in a rural district (sum) and 0.35 hectares of land in a provincial capital (Miller 2013, 69).

3. In 2015 the World Bank noted the blurring of distinctions between possession and ownership rights in Ulaanbaatar, noting that ‘the benefits obtained by the possessor rights certificate are virtually identical to those of full ownership’ (World Bank 2015, 27).

4. In discussing the court case heard on that day, I am drawing from general observations I made while attending this particular hearing and an official typed description of the court judges’ decision. I obtained the latter from the court clerk some days after the hearing occurred. The case being discussed here has now concluded and the people, companies and locations discussed in this chapter have been anonymised.

5. It is highly likely this percentage would have increased by now.

6. For a fuller account of Bayar’s strategies in securing bureaucratic hold over her land, please see Plueckhahn (2017).