

AN ANALYSIS OF JUDICIAL APPROACH ON LAND GRABBING IN RELATION TO ADVERSE POSSESSION IN INDIA

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Abstract

Land grabbing is a big issue in India. The present research study is a novel study in which the researchers examine the core concept of land grabbing in relation to Adverse Possession in legal sense. It defines land grabbing and discusses about law relating to prohibition of land grabbing in one hand and on the other side, it talks about meaning, development, essentials and provisions relating to Adverse Possession under Limitations Act, 1963 after which it analyses the relationship between land grabbing and adverse possession in the light of legal principles, issues and various judgments of Supreme Court of India and Gujarat High Court. It also explores how courts have considered the above relationship in view of act of individual and state and as well as applicability of Land Grabbing Prohibition Law in absence of civil action.

Keywords: relationship, adverse possession, land grabbing, supreme court, cases

INTRODUCTION

“What greater grief than the loss of one’s native land.”

-Euripides

Land is a very important resource for mankind which provides not only basic needs but also necessary for existence and development. Basic needs include livelihood, food (e.g. crop grow), shelter (e.g. house building). Besides it, various economic activities, transport etc. are performed on land. Therefore, it can be said that land is overall most significant resource for human being and prosperity of humanity.

India is an agriculture country. Numerous workforce of nation is engaged in the agriculture which has high impact and contribution to the GDP of the nation. But on the other hand, land grabbing is also big issue in India. While land is centre of livelihood, customs and distinctiveness for many people, there is increasing apprehension that their land is illegally occupied, grabbed, dispossessed, evicted or trespassed by usurpers, land grabbers, encroachers or land mafias.

Methodology of the study:

This research study is based on doctrinal legal method which is exploratory in nature and secondary sources such as books, journals, dictionaries and judgments of honourable Supreme Court of India and Gujarat High Court is referred and analyzed. Qualitative analysis of various laws which contains provisions relating to adverse possession such as Limitations Act, 1963 and relevant provisions for land grabbing under Gujarat Land Grabbing (Prohibition) Act, 2020, Constitution of India, Indian Penal Code, Code of Criminal Procedure, Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, Assam Land Grabbing (Prohibition) Act, 2010 and Karnataka Land Grabbing Prohibition Act, 2011 etc. are referred and cited.

Research Questions

This research is a novel study in which the researchers try to look various aspects of land grabbing in relating to adverse possession. It covers different dimensions. Following research questions are framed:

1. How is land grabbing related to adverse possession?
2. In the name of adverse possession, can an individual's property/land be grabbed and then claim true title?
3. Is Land Grabbing Prohibition Law applicable in absence of civil action?
4. Whether the adverse possession by land grabbing a caution to judiciary?

CONCEPTUAL FRAMEWORK OF THE STUDY

2.1 Land Grabbing- Definition and Law

Land grabbing is a burning issue. It has serious impact on law and order, society, social welfare as well as economy. According to Webster Dictionary, Land grab is a usually swift acquisition of property (such as land)

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often by fraud or force.³ On the other hand, Oxford Dictionary defines it as the act of buying or taking land illegally or in a way that is considered morally wrong.⁴ In simple words, “land grabbing” means the application of force to coerce individuals to illegally give up their land or the otherwise illegal dispossession of land.

The concept of land grabbing has different meaning at International perspective in compare to India. European Economic and Social Committee define land grabbing as “Land grabbing is generally understood to mean a process of large-scale acquisition of agricultural land without consulting the local population beforehand or obtaining its consent.⁵

In India, various states have enacted special law to curb the malice of land grabbing. Gujarat, Assam and Karnataka are such states in which the law is in existence. The names of the Acts are Gujarat Land Grabbing (Prohibition) Act, 2020, Assam Land Grabbing (Prohibition) Act, 2010 and Karnataka Land Grabbing Prohibition Act, 2011. On the other hand, Andhra Pradesh had enacted the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 but it was repealed later.

2.2 Adverse Possession- Meaning, Development and Essentials

Adverse Possession is a legal principle or doctrine which gives the right to the possessor of the property to claim for the ownership of immovable property or land. It implies possession commenced in wrong and maintained against right.⁶ Long back, the mentioning about this concept can be found in Code of Hammurabi which is said to have been created during 1755–1750 BC periods. In it, the limitation period was 3 years i.e. if a person left or forgets his land, immovable property etc. and other person take over it and in possession of 3 years, and then the other person (possessor) shall be deemed be the owner and it entitled to have it. Notably, concept of adverse possession has been recognized and settled in England by Privy Council in a landmark case of *Perry v Clissold*⁷.

Besides it, most of the nations have recognized this doctrine including America, England, France and so on. In India, the specific provisions with regard to adverse possession are provided under Limitation Act, 1963. Under article 65, the plea of adverse possession is maintainable after expiration of statutory period. For general immovable property (title based), there is 12 years possession period. (Mentioned in articles 64 and 65) On the other hand, in case of Government (either central government or state government), there is 30 years possession period. (mentioned in article 112). In case of *Sivasubramanya v. Secretary of State*⁸, it was held that as like adverse possession against private individual, it can be also applicable against government. In such case, burden of proof is on person to prove that his title based on prescription is open and hostile.⁹ The logic behind concept of adverse possession is that the law protects true owner of its property for certain period and he has to check and protect it from others but if after lapse of certain period, if he fails to do, he is liable to lose the land.

The two major elements to consider the plea of adverse possession are (1) Peaceful and continuous possession without any hindrance from the true owner of property. (2) Hostile, actual, intentional and exclusive possession.¹⁰ In order to acquire title by adverse possession, the possession must not only be open and exclusive but it must also be shown to have been adverse for the full statutory period i.e. it must be continuous for the full period without any break or without any interruption.¹¹

2.3 Provisions relating to Adverse Possession under Limitations Act, 1963

The main articles that covered the provisions relating to Adverse Possession under Limitations Act, 1963 are article 64 and 65. Article 64 of the Limitations Act is relating to suits that based on possession (and not on the title). In it, the period of limitation commences from the date of dispossession.

Article 65 is relating to the suits for possession based on title in which burden of proof is required to be proved within the period of 12 years. In it, the period of limitation commences from the date when the possession of the defendant became adverse.

In *Ramaiah v. N.R. Narayana Reddy*¹², Supreme Court of India has differentiated Article 64 and Article 65 and explained that while Article 64 is relating to suits for possession in case of dispossession or discontinuance of possession, Article 65 is relating to suits for possession suits based on the title of plaintiff title in which there is

³ Merriam Webster (2020) Land grab. In Merriam-Webster.com Retrieved March 05, 2021 from <https://www.merriam-webster.com/dictionary/land%20grab>

⁴ Soanes C. (Ed.). (2014) Oxford English Mini Dictionary Indian Edition (7th ed.) Oxford University Press, 312

⁵ ” Nurm, K. (n.d.) “European Economic and Social Committee on ‘Land grabbing—a warning for Europe and a threat to family farming.” Retrieved on March 09, 2021 from Official Journal of the European Union. <http://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52014IE0926&from=SV>

⁶ M. Krishnaswami (1983), Law of Adverse Possession (10th ed.) Law Book Company, Allahabad 117

⁷ (1907) AC 73, at 79

⁸ 9 Mad 285, 303, 307 affirmed in 15 Mad 101 (PC)

⁹ Abdul Wahab v. Secretary of State AIR 1926 Lah 437

¹⁰ M. Krishnaswami (1983), Law of Adverse Possession (10th ed.) Law Book Company, Allahabad 121

¹¹ Udit Narayan v. Gulab Chand, ILR 27 Cal 29

¹² (2004 AIR SCW 4695)

no allegation of prior possession. It means that article 65 shall attract only after subsequent dispossession. The court further said that whether Article 64 or 65 would apply in a case is question of fact and it can only be decided looking to pleadings of particular case.

Reading to Explanation (b) to the Article 65, on the death of Hindu or Muslim Female, successors have right to file suits for possession of immovable property. Here, the term, 'Hindu' means and includes those who are (1) embracing Hindu religion by ethnology (2) who has the legal status of Hindu as per hindu law of inheritance (3) Hindu is a person who is a Hindu by religion in any of the form of developments including virashaiva, lingayat or a follower of Brahma, Prarthana or Arya Samaj or any person who is a Buddhist, Jain or Sikh by religion and any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless governed by custom or usage.¹³ In case of Arumugam v. Raja Gopal¹⁴, the court has decided that a person may be a Hindu either by birth or by conversion and in case of conversion; it is not always required to have ceremony or purification etc.

In an important case of Atul Chandra Adhikari¹⁵, the view of court was that statutory period of limitation is very crucial in case of adverse possession. It should be proved by evidence and not, presumption and therefore, specific mentioning of area of land as well as age of possession is required to be stated.

RELATIONSHIP BETWEEN LAND GRABBING AND ADVERSE POSSESSION IN INDIA AND ITS JUDICIAL APPROACH

3.1 Nature of relationship

Adverse Possession and land grabbing are closely related with each other. Firstly, it is important to mention that Adverse Possession is a legal act in which claim is raised based on title for holding property long time. On the other hand, land grabbing is a illegal act of the land grabber or encroacher by which he takes possession and occupy or unauthorized construct on such land or immovable property.

It is prudent understanding that when the possession itself is source of illegality, based on it, even though no attempt to voice against it, cannot be considered for adverse possession. The doctrine of adverse possession is applied to the detriment of the person who is entitled to immediate possession, but is not in possession.¹⁶ No adverse possession can run against a person until he becomes entitled to the property.

3.2 Act of State

In India, there is democracy and state acts as per rule of law. Though Right to property is not a fundamental right, it is still constitutional and statutory right guaranteed to all its citizens under article 300-A of the Constitution which states that "No person shall be deprived of his property save by authority of law." It is important to note that by 44th Amendment, 1978, Articles 19 (f) and 31 have been deleted and article 300-A was inserted.

The state has right to acquire the land of individual for public purpose but it does not mean to forcefully dispossess the individual and claim for adverse possession after lapse of statutory period. Due process is required to acquire private property. It's human right of individual.

While government can acquire title by 12 years, adverse possession against private person or body, it can be deprived of its title by a private individual only if the latter had adverse possession over 60 (now 30) years.¹⁷ In case of *Vidya Devi v. State of Himachal Pradesh*¹⁸, the Honourable Supreme Court has delivered historical judgment regarding adverse possession and land grabbing. Supreme Court has noted that in the name of adverse possession, individual's property cannot be grabbed and then claim true title.

3.2.1 Facts of the case: *Vidya Devi v. State of Himachal Pradesh*¹⁹

One Vidya Devi, 80 year old widow's land of 4 acre at Hamipur district was forcefully taken (grabbed) by the Himachal Pradesh Government in the year for constructing road. Before acquisition, no consent was taken, nor did any due process was followed. Due to her poverty and illiteracy, she was unable to take any legal actions. When the case went to Supreme Court, the State Government during hearing has stated that it has the right over the land due to adverse possession of more than forty two years.

3.2.2 Decision of the case and observations of Court :

The Court had invoked its extraordinary powers under article 142 of the constitution of India and decided the case in favour of applicant widow Vidya Devi. The plea of adverse possession of state was rejected by the court. It directed the State govt. (Himachal Pradesh) to compensate the applicant for land deprivation as well as costs.

¹³ Section 2 of the Hindu Succession Act

¹⁴ (AIR 1976 SC 939),

¹⁵ Atul Chandra Adhikari v. State of Orissa¹⁵

¹⁶ Priyasakhi v. Manbodh Bibi, ILR 44 Cal 425

¹⁷ Secretary of State v. Krishnamoni, 29 Cal 518 (PC)

¹⁸ Civil Appeal No. 60-61/2020

¹⁹ Ibid

Following observations are significant to mention:

- The court has observed that it is gross violation of human right if a person is forced to evict and lead to dispossession from his procedure in absence of following due procedure.
- Further, the Court had said that state has no permission to raise claim of adverse possession after grabbing its citizen's property.
- Supreme Court has made it clear that this doctrine cannot be misused by state in order to have title after 12 years.
- A welfare state shall not have permission for which trespasser would get title of land by adverse possession.

On January, 2020, the Supreme Court has pronounced the above verdict in bench comprising Justice Malhotra and Justice Rastogi.

3.3 Adverse possession by land grabbing-a caution to judiciary

In case of *Mandal Revenue Officer v. Goundla Venkaiah*²⁰, the Apex Court has remarked that that the Court should be careful while giving title based on adverse possession due to land grabbing in public property. In the present case, the court was of the opinion that it may be possibility that land grabber has occupied the land illegally and then regularized the occupation. After lapse of statutory period, they ask for title due to adverse possession which is bad in law. Further, the court opined that such persons are called “unscrupulous elements” for which the local authorities have connivance and therefore, no or fewer actions are taken against them.

3.3.1 Facts of the case: *Mandal Revenue Officer v. Goundla Venkaiah*²¹

In this case, 5 acres of land was grabbed in 1950s by ancestors of one Gonda Mallaiah in Rangareddy district of Andhra Pradesh for which necessary procedure of action was initiated by the authorities in 1980s by issuing notice for eviction but no fruitful result was found. In meantime, Andhra Pradesh has enacted Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, a special law to curb land grabbing in the state. By it, special tribunal was constituted in which application was filed by the revenue authorities. Respondent Gonda Mallaiah had taken plea that he has valid title by adverse possession of more than fifty years. The tribunal had passed the order in favour of authorities. So, Gonda Mallaiah had challenged the order in high court. The high court accepted the plea of adverse possession stating that from 1950s till 1980s, no action was taken by the authorities. The court called them landless poor instead land grabber. Then after, Revenue authorities had filed appeal against decision of high court.

3.3.2 Decision of the Supreme Court:

The Supreme Court has reversed the order of High Court which granted title to illegal occupants of government land for more than 50 years. The high court had granted title to the successor of the occupant who was in illegal possession of government for over 50 years on the ground that the authorities had not taken any action for eviction. The Supreme Court has said that Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 was important piece of legislation to provide remedy against land grabbing. The special tribunal constituted under the Act had power to consider aspect of adverse possession in land grabbing. In Andhra Pradesh, cases of encroachment, land grabbing etc. have been increased with regarding to government land as well as private and others. So, when a land grabber cannot be permitted to raise plea of adverse possession because there is unauthorized occupation. When it is illegal, for howsoever long it may be, adverse possession cannot be permitted.

On January, 2010, the Supreme Court has pronounced the above verdict in bench comprising Justice G.S. Singhvi and Justice A.K. Ganguly.

3.4 Applicability of Land Grabbing Prohibition Law in absence of civil action

In case of *Raees Ahmed Patel v. State of Gujarat*²², Gujarat High Court has observed that considering possession of land from last 33 years, without any civil case for recovery of possession of the land in view of Section 27 of the Extinguishment of the Rights of the Property (Disturbed Areas Act) read with Article 65 of Limitations Act, 1963 in case of the action under Gujarat Land Prohibition Act, 2020, the accused is entitled for bail.

3.4.1 Facts of the case: *Raees Ahmed Patel v. State of Gujarat*²³,

In this case, Raees Patel, son of Ahmed Patel filed a habeas corpus petition before Gujarat High Court in which senior advocate Mihir Joshi and advocate Muhammad Isa Hakim represented the petitioner and submitted that his 72-year-old father, Ahmed Patel was illegally in custody of police. Legal position is that Ahmed Patel was in possession of a land from the year 1987. The original owner of the land, one Harish Ambalal Seth, had

²⁰ Civil Appeal No. 1569 of 2001

²¹ Ibid

²² R/Special Criminal Application No. 733 of 2021

²³ Ibid

transferred the land to two others in 1984 by way of registered agreement to sale and in the year 1987, conveyance and assignment rights were transferred to Ahmed and 4 others by another registered agreement to sale.

After the death of Harish Shah in 2006, his son Pravav inherited his property and found that his land was possessed by Ahmed. (Revenue records entry showed his name, previously his father's name). Pranav took legal action against Ahmed under the Gujarat Prohibition of Transfer of Immovable Property and Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 (also known as Disturbed Areas Act). Ahmed had challenged the above proceedings before Honourable High Court of Gujarat by saying that no action against him can be initiated under Disturbed Areas Act, 1991 because his transactions and case was of 1987 and such Act was enacted in 1991 having no retrospective effect.

After the enactment of new anti land grabbing law in Gujarat in December, 2020, Pranav has filed a complaint against Ahmed under the provisions of the Gujarat Land Grabbing (Prohibition) Act, 2020 on January 13, 2021.

After the registration of complaint, due process of law was followed provided under Gujarat Land Grabbing (Prohibition) Act, 2020 and subsequently, Ahmed was arrested on January 14, 2021. On January 15, police has produced him before the concerned court. He police ask for remand under Section 167 (2) of the Code of Criminal Procedure in order to have custody of accused Ahmed. Court granted 5 days remand.

It is important to note here that the main argument made in the case was the applicability of principle of adverse possession as Ahmed was possession of land from last 33 years and in 2021, the criminal case was filed against him. It is argued that all claims in relating to such land is barred by limitation as Ahmed was possessing it for 33 years and complaint under anti land grabbing law is the attempt to make a back-door entry in the said land.

3.4.2 Decision of the Court:

A division bench of the High Court of Gujarat led by Honourable Justice Sonia Gokani granted bail to accused 72-year-old Ahmed Patel of Ahmedabad, Gujarat who was arrested by police under the provisions of Gujarat Land Grabbing (Prohibition) Act, 2020. Further, the court has set aside the order of Special court established under Gujarat Land Grabbing (Prohibition) Act, 2020 which granted 5 days remand to police. In this case, the court had accepted the case of petitioner and directed the corpus (body of Ahmed) to be produced before it. Subsequently, it was produced virtually through the Mirzapur court and the high court has released him on bail. As mentioned earlier, High Court has observed that considering possession of land from last 33 years, without any civil case for recovery of possession of the land in view of Section 27 of the Extinguishment of the Rights of the Property (Disturbed Areas Act) read with Article 65 of Limitations Act, 1963 in case of the action under Gujarat Land Prohibition Act, 2020, the accused is entitled for bail.

On 19 January, 2021 the Gujarat High Court has pronounced the above order in bench comprising Justice Sonia Gokani and Justice Sangeeta K. Vishen.

CONCLUSION AND WAY FORWARD

Land grabber is an encroacher, unauthorised occupant or trespasser Therefore, no right, title or interest can be vested for his long term adverse possession over land, whether public or private. For valid acquisition in India, Special law called Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR, 2013) is enacted by the parliament. Land acquisition after due process is legal while land grabbing is illegal. Hence, though adverse possession claim is admissible after long uninterrupted possession of property for long period of time, it cannot be allowed in case of land grabbing.

In case of *Hemaji Waghaji Jat v Bhikhabhai Khengarbhai Harijan*²⁴, Supreme Court has opined that the doctrine of adverse possession based on limitation period is illogical. Court had directed the government to reconsider the principle of adverse possession because on one hand, it gives reward to the dishonest person who acquired possession illegally and on the other hand it punishes real owner for inactions within statutory period of limitation.

Again, taking a note from Hemaji's case (Supra), the Apex Court in *State of Haryana v. Mukesh Kumar*²⁵, has said that the concept of adverse possession requires fresh look and suggested the Parliament to either abolish it or make certain amendments in it because ultimately, the person in claiming adverse possession is just a trespasser.

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²⁴ (2009) 16 SCC 517

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