



KAMARAJ IAS ACADEMY
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Law commission Report on Adverse Possession

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Why in News:

The Law Commission, headed by former Chief Justice of Karnataka High Court Ritu Raj Awasthi and comprising retired Kerala High Court judge KT Sankaran, said in its 280th report that there is no justification for introducing any change in the law relating to adverse possession

About adverse possession

The concept of adverse possession stems from the idea that land must not be left vacant but instead, be put to judicious use. Essentially, adverse possession refers to the hostile possession of property, which must be “continuous, uninterrupted, and peaceful.”

According to the Law Commission’s report, the rationale behind this comes from considerations that the “title to land should not long be in doubt”, “society will benefit from someone making use of land the owner leaves idle,” and “persons who come to regard the occupant as owner may be protected.”

The maxim that the law does not help those who sleep over their rights is invoked in support of adverse possession. Simply put, “the original title holder who neglected to enforce his rights over the land cannot be permitted to re-enter the land after a long passage of time,” the report reasoned.

While the concept originally dates back to 2000 BC, finding its roots in the Hammurabi Code, the historical basis of “title by adverse possession” is the development of the statutes of limitation on actions for recovery of land in England.

The first such statute was the Statute of Westminster, 1275. However, it was the Property Limitation Act, 1874, that set the period of limitation at twelve years from when the cause of action first arose, which laid the groundwork for the limitations model inherited by colonial India

The first attempt to bring the law of limitation to domestic shores was the “Act XIV of 1859”, which regulated the limitation of civil suits in British India. After the passage of the Limitation Act in 1963, the law on adverse possession underwent significant changes.

Provisions of Limitations Act of 1963

The 1963 Act fortified the position of the true owner of the land, as he now had to merely prove his title, while the burden of proof of adverse possession shifted to the person claiming it.

Under the Limitation Act, 1963, any person in possession of private land for over 12 years or government land for over 30 years can become the owner of that property, as laid down in Articles 64, 65, 111, or 112 of the 1963 Act, relating to suits for possession of immovable property.

According to Article 65 of Schedule I of the 1963 Act, a person in adverse possession of immovable property acquires title to that property. However, the possession must be open, continuous, and “in defiance of the title of the

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real owner for twelve years.” Similarly, Article 64 governs suits for possession based on previous possession and not on title.

Meanwhile, Article 112, which applies to government property, mandates a requirement of 30 years for granting a title by adverse position.

Further, Article 111 says that the limitation period for the State will be 30 years from the date of dispossession for land belonging to a private person where any public street or road or any part of it has been dispossessed and no suit has been moved for its possession “by or on behalf of any local authority”.

Main ingredients of adverse possession

In the 2004 Apex Court ruling in *Karnataka Board of Wakf v Government of India*, the court dealt with the ingredients of adverse possession.

According to the observations made by former SC judge S. Rajendra Babu in the case, “A person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.”

For the adverse possession to be “open,” or without any attempt at concealment, it doesn’t need to be brought to the specific knowledge of the owner. However, such a requirement may be insisted on where an ouster of title is pleaded.

Further, the mandate for such possession to be “undisturbed” requires a “consistent course of conduct, which means that it cannot be shown by a “stray or sporadic act of possession.” In the 1981 ruling in *Kshitish Chandra Bose vs. Commissioner of Ranchi*, the top court delineated the requirements of openness and continuity.

However, in a series of decisions, the SC recommended that the government seriously consider the issue of “adverse possession” and make suitable changes.

SC Ruling on adverse possession

A two-judge SC bench, in its 2008 ruling in *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others*, while dealing with Article 65 of the Schedule of the Limitation Act, 1963, observed that the law of adverse possession “ousts an owner on the basis of inaction within limitation” and is “irrational, illogical, and wholly disproportionate”.

“The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who has illegally taken possession of the property,” the court said.

Adding that the law should not benefit the illegal action of a “rank trespasser” who had wrongfully taken possession of the true owner’s property, the court said that it also “places a premium on dishonesty”.

Emphasising the “urgent need” for “a fresh look regarding the law on adverse possession”, the court recommended the government “to seriously consider and make suitable changes in the law of adverse possession”.

Following this, on December 19, 2008, a reference was made to the Law Commission by the Ministry of Law and Justice, requesting it to examine the matter and furnish its report on the same.

Consequently, the 19th Law Commission prepared a “consultation paper-cum-questionnaire”. After receiving responses, the Commission concluded that the present provisions afforded sufficient protection to the land’s true owner and there was no need to amend the law. However, the Commission failed to file a final report on the subject.

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Owing to the importance of the subject, coupled with the fact that the reference had been pending since 2008, the present Law Commission found it “expedient to deliberate afresh over the subject.”

While the Commission’s opinion was that the law on adverse possession should stay the same, two of its ex officio members, namely legislative secretary Reeta Vasistha and law secretary Niten Chandra, filed a dissent note saying that the law promotes false claims.

Dissent note’s view

Asserting that courts have rarely ruled in favour of adverse possession owing to its contradictory requirement that the nature of possession is “peaceful as well as hostile”, the dissenting opinion said that the law should be struck off.

Citing troubles that true owners have been subjected to, such as “avoidable and expensive litigation” by unscrupulous persons” who are acquainted with fraud, the note said that the already overburdened machinery of the courts is further saddled with avoidable work, much to the misery of the litigants.

“If the law of adverse possession is struck off from the Limitation Act it will not hinder anybody’s right nor will it cause any neglect of land resources,” the note reads.

The fact that land prices are skyrocketing in both rural and urban areas defeated the Commission’s argument that land is not put to proper use, the note said. “In an over-populous country like India where land is scarce, the law of adverse possession only promotes false claims under the colour of adverse possession which ultimately does not stand judicial scrutiny,” the note contended.