

Statutory Conflict in Property Law: Analysing the Limitation Act, 1963 vs. the RERA Act, 2016

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Abstract

One of the laws is the Doctrine of Adverse Possession which allows a person staying in possession of a piece of land that belongs to a different individual to acquire the title. This doctrine is mostly regulated in India with the help of the Limitation Act of 1963. According to this Act, 12 years possession of the immovable property is a time frame on which one can initiate a suit concerning the private land and 30 years concerning the government land. This doctrine is based on the idea that a failure of a landowner to claim his or her rights to his or her property after some time should make it cede its rights to the person who has been running and sustaining the land. Under adverse possession, when an individual can prove that he or she has occupied a piece of land openly, in defiance, and against authorization over the time that they require them to be so occupied, then they may prove their legal title. The doctrine has brought in a great deal of debate and controversy in India. Critics feel that it is unfair and retrogressive and favors intruders and punishes the rightful landholders. It has a practical application according to its advocates, as land is put to productive use, and one way of overcoming the long-standing land disputes. The historical background of the adverse possession, the legal basis of adverse possession in India, and the most prominent court cases that affected the interpretation of adverse possession would also be discussed in this paper. It will also look at the existing

problems and controversies of this doctrine and how it impacts the property rights in India.

Research Design: Doctrinal and Qualitative

The article is based on a doctrinal method of research, which deals with the problem of black-letter law. It involves a rigid scrutiny of the legal statutes, judicial dicta and the will of the legislature existing at the time. "The kind of study is qualitative because the investigator has been examining the conflict between two laws whereby the legal argument is prioritized to the statistical data¹.

One of the colonial-era principles of law, the Doctrine of Adverse Possession, which is governed by the Limitation Act of 1963, is also coming to be thought of as an exception to the Indian modernizing property landscape. In the past, this doctrine had favoured the proactive owner against the passive owner by allowing the loss of title to be lost upon a period of open and hostile continuous possession of twelve years. However, with the enactment of the Real Estate (Regulation and Development) Act (RERA), 2016, the statutory conflict has emerged on a significant level challenging the historical doctrine of *animus possidendi*. The statutory repose of Limitation Act against statutory transparency of RERA is discussed in this paper. The paper is a doctrinal discussion on the recent judicial trends, trying to respond to the question: is the open and notorious condition of

adverse possession here legally viable in the cases where the property ownership is a digital compulsory record, according to the RERA?

More importantly, the research questions the overall validity of Section 89 of RERA and or its ability to nullify prescriptive claims on registered real estate developments. The findings show that even though the Limitation Act might permit finality to any title to land, it will encourage some form of legalized robbery, which is increasingly incompatible with the constitutional right to property as a human right, expressed in Article 300A. The paper concludes by proposing a Functional Utility Framework, which recommends the substitution of absolute title forfeiture with equitable compensation and inclusion of digital land mapping as the solution to gaps in enforcement of the Property Titles Act 1926 that is currently confronting Indian homebuyers in response to the paper tiger.

Literature Review

The debate on land utility as opposed to consumer protection is now replacing the issue of property rights in India. Within the framework of this review, the available literature is divided into three thematic pillars that are the classical doctrine, the judicial turn towards human rights and the present system of regulations.

The Classical Doctrine: Final vs. Equity

²The doctrine of adverse possession is an example of one of the statutes of repose that have been observed in early commentary The Registration Act by Mulla and The Law of Limitation by Ratanlal and Dhirajlal. The legislation as it is in accordance with the literature on which it was founded, is against the squatter, and in favour of the sleeping owner. These writings clarify that 12 years (of the privately owned land) is an adequate amount of time during which the industrious owner can make his/her claims. A traditional perspective is

however being increasingly disregarded as having only been a by product of the colonial land grabbing process that can no longer be applied in the digitally mapped economy.

The Judicial reform: human right of property

The P.T.M. Reddy v. was the case of a substantial mass of the legal investigations that are now up to date. Revamma (2007)." The humanization of the Indian property law according to legal scholars such as Upendra Baxi was this litigation case. The case law in this field identifies that the court has moved to the stage where there must be some good faith and absurdity of a law that protects an unscrupulous possessor must be criticized. Ravinder Kaur Grewal (2019) is another case that has also spawned a fresh argument over the possibility of adverse possession being employed as a sword (to sue title) but not a shield (a defence in court).

RERA Revolution and Statutory Overload

The new articles in the journal have discussed the Real Estate (Regulation and Development) Act, 2016 (RERA). Even though effects of RERA on the project delays and responsibility of the builder have been widely debated, there is significant gap in the literature on the intersection of the act with Limitation Act. Some such as Madabhushi Sridhar have suggested that the RERA provision of disclosure of the title in the public in electronic form can be seen as an enforcement of the so called hostile secret nature of the possession. Nonetheless, the academia has not examined in finer details the workings of the Section 89 of RERA (the overriding clause) as a legal barrier to adverse possession claims in registered projects³

Foreign images: the colour of Title requirement

The comparative law of English and American property law indicates that there has been a tendency towards responding to the demands of Color of Title- i.e. it must be shown that they acted in good faith in believing that they had a legal title to the land. The research paper will follow this trend in the international front and allege that India is experiencing a paradigm of a disloyal possessor; a possessor, who is being redressed by an unknowingly RERA.

The "Paper Tiger" Phenomenon

A critical analysis of the inefficiency of land recovery in the administration is in the reports of the Law Commission of India (that of 190th Report). The bureaucracy as pointed out in the literature is likely to delay the decree implementation, even where the decree is in favor of the owner, irrespective of whether the RERA or a Civil Court rules in his favor. This paper identifies the loophole in the enforcement as one of the forefronting reasons why the Doctrine of Adverse Possession still remains a viable (albeit unethical) remedy to the issues faced by people purporting to possess land⁴.

Objectives of the Methodology

To Interpret: Analyze the specific wording of Article 65 of the Limitation Act and Section 89 of RERA. To Compare: Analyze the shift in the judicial approach to more property-oriented approach to human rights-oriented one.

Information assets (The legal desk)

The present study is founded on the Secondary Sources of information and they include:

- Primary Legal Materials The Limitation Act (1963), The Real Estate (Regulation and Development) Act (2016) and the Constitution of India (Article 300A)⁵.
- Secondary Legal Sources: significant verdicts of the Supreme Court and the High Court (e.g. Ravinder Kaur Grewal v.).

Manjit Kaur), Law Commission of India Reports (the 190 th Report specifically) and parliamentary debate of the RERA Bill.

- Annotations of the Law: The academic journals (SCC Online, JSTOR), legal commentary by the authors, e.g. Mulla or Ratanlal and Dhirajlal, and online land record databases are all sources of scholarly commentary on the law⁶.

Analytical Tools

Comparative Analysis/Comparison of adverse possession test of peaceful/ open /continuous and RERA, as to its transparency/digital, disclosure requirement.

Teleological Interpretation: How can the intent (mischief rule) of RERA⁷ to secure home buyers and whether this intent will effectively preclude the finality of title principle of the Limitation Act be harmonised?

Scope and Limitations

It operates within the jurisdiction of the Indians only and engages in real estate developments in the urban areas under RERA. One of these deficits is that, as the case law following RERA in that regard especially about adverse possession, is mostly non-existent, most of the analysis will be speculative and normative based on current law tendencies.

Historical Development of Adverse Possession

The history of adverse possession is connected to the Roman law of ancient world the so-called usucapio in the terms of which the individual could assert the property possession under the conditions of constant occupation during a certain amount of time. The English common law then perfected this principle, and gave rise to the doctrine of seisin and adverse possession.

Much of the introduction of the doctrine in India was as a result of the British colonial rule in India in the form of a

number of laws and rulings by the courts of law. The first written rule of adverse possession in India was the Limitation Act of 1859 that introduced a time limit which is 12 years within which a suit can be initiated to recover any immovable property. This was succeeded by Limitation Act of 1908 that gave a further explanation to the law and which contained more specific details in reference to adverse possession.

The Indian Statutory Framework.

Limitation act of 1963⁸ contains the major legal provisions in adverse possession in India. The key sections are:

- Section 27: According to this section, the right to property of an individual is lost when the time of limitation lapses. Under it, the right to the property is lost when passing a certain time period within the course of which the action can be taken in the suit regarding possession⁹.
- Article 64: Article 64 is a time period that is used in the possession cases of former occupation as opposed to title. The current date of dispossession is 12 years.
- Art. 65: This article relates to time restriction of possession by title lawsuits. It is also 12 years commencing with the time when the possession of the defendant is to their prejudice against the plaintiff. Subdivision of government land and land belonging to individuals is brought about by the Limitation Act¹⁰. In the case of the government land the time of limitation of adverse possession is 30 years, such as Articles 112 of Schedule to the Act gives.

Bad faith (Animus Possidendi)

An individual making an assertion of adverse possession should have an intention that possession of the land should be unfavourable to the true owner. Someone can not simply sit on the ground and say that he is acting in the spirit of a real owner and he is not taking care of the real holder of title.

The ownership must be in existence at the 12- or 30-year legal term. The so-called

limitation clock starts afresh when the real owner either receives possession back at least provisionally, or the occupant releases possession.

Criminal Cases and case interpretations

The Indian court has played a significant role in bringing out and condemning the doctrine of adverse possession.

- Karnataka Board of Wakf v. Government of India (2004)

Significant principles of adverse possession were developed by the Supreme Court of India. The Court indicated that a title claimant based on adverse possession must seek to establish clearly the existence of hostile possession of the premises as opposed to a real title owner. It is not only pure physical possession of land. Claimant must prove the existence of animus possidendi i.e. the will to own the property in the position of an owner and dispossess the true owner.

- P.T. Munichikkanna Reddy v. Revamma (2007)¹¹

The decision in P.T. Munichikkanna Reddy v. Revamma was a still more judgmental method of approach to the doctrine. The Supreme Court examined the historical and philosophical ground of adverse possession and approached the case with much concern whether it was fair or otherwise. The Court recognised the right to property as not only a constitutional right but also a statutory right in addition to human right. It observed that the doctrine appears to be irrational and illogical because it favours a trespasser and penalises an owner of the law as an inactive owner over a long period of time. Marked in the case is the fact that successful adverse possession places the property in hand of a party that may have illegally taken possession of a property. The Court further urged the legislature to reconsider the doctrine as one of the

methods through which the judiciary was not at ease with the drastic consequences of the doctrine.

- Ravinder Kaur Grewal v. Manjit Kaur (2019)¹²

A second step of clarification was clarified in Ravinder Kaur Grewal. The Supreme Court resolved a protracted legal ambiguity there. Prior to this ruling, it was not certain whether adverse possession needed to be proven only as a defense (a shield) or that it could be proven as a foundation to a suit (a sword). The Court felt that any liable person possessing an adverse possession and already having perfected title, could initiate a suit of declaration of title and permanent injunction. In other words, adverse possession can be used as a weapon, and defense. The reasoning behind the Court decision was that once the time limit in the statute had taken place and the title of the original owner was lost under Section 27 of the Limitation Act, the latter was the lawful owner and could initiate a legal action to protect his ownership.

Adverse Possession and Government Land

The law has a different perspective on the government property. Limitation Act, article 112, states that 30 years is the time period to assert adverse possession over the State. This longer duration is grounded on the conception of *nullum tempus occurrit regi* (time does not run against the king). This is since the people own the public property and the State as the custodian simply may not be able to patrol all the acreage of the public land.¹³

The courts are however not generally ready to give adverse possession against the government. *State of Haryana v. The Supreme Court* was not displeased that the government should lose its property to an encroaching party and offered to review the law (Mukesh Kumar, 2011).

The Ethical and Legal Debate

The issue of adverse possession remains

quite controversial within the Indian property law.

Arguments in Favor

- Productivity: It encourages the productive use of land. Land is a very valuable asset and it cannot be wasted or idled.
- Uncertainty of Title: It helps to end wrangles in the past. Witnesses and evidence are lost with time. The adverse possession provides a statute of repose i.e. long-term occupied premises ultimately becomes legal.

Arguments Against

- Theft of the Law Critics of the doctrine claim that it legalizes land grabbing. It gives such an individual, who knowingly engages in an unlawful activity (by trespassing), the opportunity to gain ownership after sometime.
- Human Rights Property rights are regarded as human right according to international rules and in Article 300A of Indian constitution and therefore most of the people find it outdated losing their property without a compensation¹⁴

Recommendations for Reform

Review of the doctrine has occurred on a periodical basis by the Law Commission of India. The Commission in its 190th Report suggested amending the law to ensure that it was difficult to have the so-called bad faith squatters acquire land.

Possible reforms include:

- Extension of Limitation Period: It will be a situation of extension of the 12 years limitation period to 20-25 years.
- Good Faith Requirement: The adverse possession is not to be granted to individuals who only have in mind that they are the owners of the land (color of title) and not individuals who purposely trespass the land.

- Taxes: It is claimed that payment of taxes should be required to portray adverse possession.

The Supremacy of RERA vs. The Limitation Act

Non-Obstante Clause (Section 89)

In accordance with the section 89 of the RERA Act, 2016, it is stated that:

The suppositions of this Act shall come into force despite any thing in it, which is inconsistent with any thing in any other law then in force.

This presents a significant difficulty in the legislation in the Adverse Possession. By way of the Limitation Act a person who has 12 years of possession of a piece of land can be able to claim ownership. However, RERA entails the transfer of title by the Promoter to the Allottee pursuant to a conveyance deed that is registered (Section 17).

As long as a third party attempts to claim adverse possession of a project upon being registered by RERA, the court must decide: Does statutory protection of the buyer under RERA bar the common law entitlement of the squatter?

The Notion of Statutory Title.

The heading under the RERA does not mean the issue of privacy between two people, but it is the issue of publicity on the RERA portal.

The Open and Notorious Requirement: The adverse possession must be open in order to prove the adverse possession.

RERA Counter-Argument: Because RERA requires that all quarterly updates be publicly registered, any true owner (a buyer) will have a chance to assert its ownership to be a matter of record of statute to which a squatter claims to have an interest will be defeated by law.

Impact on "Animus Possidendi"

Adverse possession calls a condition to occupant of possessing the animus possidendi, which is the intention to lock out the whole world and the real owner of

the house.

A group (an Association of Allottees) is often the legitimate owner in the RERA projects.

Cases of late e.g. Ravinder Kaur Grewal v. Manjit Kaur (2019) allows a person to do that by allowing an individual to sue when he/she possesses adversely the title. However in the case of a RERA when there is no handing over of the Common Areas yet by the builder to the Association the so-called owner is technically still the Promoter possessing a statutory duty.

Tendency Jurisprudential: Death of Adverse Possession?

The Indian judicial systems are discarding the Indian Colonialism adverse possession rationale. In P.T. Munichikkanna Reddy v. The Supreme Court noted that right to property was now a Human Right.

The Proper Due Diligence: These are the Documents which need to be included in the checklists which include Title Deed of the Property, Chain/Mother-Deed of the Property, Approved map with the local Authorities, Encumbrance Certificate, Mutation Record, Clear record of cleared Property tax receipts, utility bills.

To make the project credible to end-user specially it is required that the APF is acquired by secured financial institutions such as NBFC, Nationalize Banks, Hence the adverse possession can also be contested on these above considerations.

Paper Tiger Problem: Enforcement Deficit

Criticism is most readily available that the authorities of RERA give orders (e.g., to a developer repaying money with interest) but lack power to enforce such an order so that it is the police who can do so. House buyers are frequently thrown off with a piece of paper saying that all is well in their favor, but no money or keys, as the collector must rely on local district collectors to levy the dues - a long and snarling process¹⁵.

Extension: A Study of a "Functional Utility" Approach

These could not be termed as competing legal silos but a more up to date method would be a Functional Utility Framework. This involves:

Digital Land Mapping: The easementary claims under role of the mandatory digital disclosure under RERA to prevent the presence of the so-called hidden encumbrances.

Fair Compensation:

The fair compensation principle entails the shift in the priority of the Adverse Possession to compulsory purchase rather than title transfer and the illegal possessor to pay the market price rather than getting the land on a free basis.

Proportionality Test: Using judicial discretion to balance the right of the developer to construct and the prescriptive easement of the neighbor and riding with the all-or-nothing judgments.

Conclusion

An Indian doctrine related to the doctrine of adverse possession is a remnant of the colonial law that remains dominant in Indian law. Even though it helps to resolve ancient disputes related to land and ensure that the land is used, it tends to clash with the principles of justice and human rights of today. The Indian judicial system has been shifted to a more critical stance on the doctrine, and it is more concerned with the rights of the actual owner. The doctrine will remain nonetheless a potent weapon to those who have long been in the land until the amendments happen in the Limitation Act of 1963. The challenge to come is to make finality in the title of land go hand in hand with a fundamental right of the owner that he or she is safe against dispossession of the property unlawfully.

The Statutory Impasse

The most drastic conflict is between the common law's rights of a possessor and the mighty consumer protection which

RERA Act of 2016 provided. The act in Section 89 RERA is the law that prevails over any inconsistent law, and this is also a tremendous legal challenge to the fact that adverse possession can be claimed in real estate projects registered under the act.

The Digital Transparency Shifting: The adverse possession test of animus possidendi is undermined by the novel requirement of RERA of digital disclosure to the masses; which in the instance of organized developments puts the whole world on constructive notice of the actual title of the real owner"; a collective Association of Allottees or an Promoter, under the statutory liability.

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Judicial Re-evaluation: This move by the

Indian courts is that of non-enforcement of property, yet, property is now seen by the courts as a right of man and condemnation of rewarding to the illegal occupants. Paper Tiger Problem: Despite the hypothetical legal safeguards there is still the so-called Paper Tiger problem, the authorities of RERA lack direct police force to enforce the orders and this pushes the owners to have to go through the red tape