
A JURISPRUDENTIAL ASPECT OF THE RIGHT TO PROPERTY IN INDIA

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ABSTRACT

In general, Jurisprudence means the “Knowledge or Study of law”, which enumerates the evolution of law and every such aspects in the legal domain. Further “The Constitution of India” which is the supreme document of the country, comprises Part-III titled “Fundamental Rights” – referred as grund norm of the Indian Constitution provides property rights as a Fundamental right into it till 44th Amendment Act. Further in case of infringement of these rights, the enforceability is brought with the purview of the ‘High Court’ under Article 226 meanwhile in case of the ‘Supreme Court’ lies under Article 32; the same viz., been regarded as the heart and soul of the “Indian Constitution”. The term property generally refers to things attached to the earth that are immovable or such other things which is guaranteed under the constitution as a ‘fundamental right’ till the 44th constitutional amendment which as mentioned above is enforceable by the citizens in case of infringement, but after the said Amendment it is deduce to merely being a right specified which is not a guaranteed as of before which stated under Article 300A. However, this said articles’ scope been attenuated in respect to the acquisition of property by the state along with its corresponding compensation. But the Judiciary being the third organ of government and also being the guardian of the “Indian Constitution” never failed to adheres and uphold the citizens’ rights through various decisions. A detailed explanation of the concept “The Right to Property” in its pre-constitutional and post-constitutional periods is depicted in this paper. Moreover, comprehensive view of the court's decision in this scenario where property rights were repealed as a “Constitutional Right” by removing it from being one of the basic features of the constitution also been discussed. Also connected it with Schedule XI of the “Indian constitution” basically deals with land reforms and its respect acts and regulations. Now the property right is not only a constitutional right but also a human right. Since property rights includes possession, the notion of adverse possession is discussed along with the help of a decided case in this paper. The state cannot violate the property rights of citizen merely on the ground it not anymore of “Fundamental

Right”, being a socialist welfare state, it must uphold the well-being of the citizens. Hence the paper provides an overall understanding of the progression of property rights since ancient times and its dynamic nature.

Keywords: Property Right, Constitutional Right, Fundamental Right, Welfare State, Constitutional Amendment.

INTRODUCTION

The “Indian constitution” adopted on the aim of maintaining of a welfare, sovereign, socialistic state rather than of a police state which has been assured in preamble that citizens to secure justice in every possible way of “social, economic and political”. The term socialist been inserted in the preamble by 42nd constitutional amendment, which generally means the ownership of distribution and production vested with the state. And being a state of socialistic pattern, the public interest should be of paramount consideration. The term property as of bare perusal refers to ownership or vested right which may be movable or immovable. In this paper we will see the position of right to property in special reference to constitutional law and other related aspects. And the activist role played by the judges through their decisions paved way to secure the welfare of citizens at all cost to be protected even though the position of property right has been only a ‘constitutional right’ in which way it is contemplated as a human right, and its interrelation to the notion of adverse possession under Limitation Act 1963 has also been discussed below under various subtopics.

MEANING OF PROPERTY

The term property originated from the Latin word “proprius” which means one’s particular. To simply state as possession over things which may be movable or immovable, in terms of law it is referred to as the right to ownership subjected to earn money, wear and tear or destroy it; which is further being classified into public, private, collective property. In terms legislation the Sales of goods act 1930 under which section 2 of sub-clause (11) states “*property*” means the general property in goods, and not merely a special property.

Jurisprudence generally means knowledge of law or to simply put it as origin and development of particular field or concept of law. In respect to jurisprudence many authors opinioned their views in respect to property in their definitions one such given by JOHN LOCKE states “*Every man has a property in his own person. Every individual has the right to*

preserve his property, that is his wife, liberty, and estate." It is inevitable in human life to live without using tangible items that make up the property's subject matter. A brief summary of theories of property stated below in format of tabulation

Types on theories of property	Chief exponents / supporter	Brief idea of the theory
Natural law theory	Blackstone, Locke, Pufendorf and Grotius	This theory is based on that when a person acquires a property will be his own until he uses it.
Labour theory/positive theory	Spencer , Marxist	Accordance to this theory property acquires by way of occupation which is on result of his own labour.
Metaphysical theory	Hegel and Kant	According to the proponents a person has the liberty to acquire property which attracts need for protection.
Historical theory	Henry Maine, Miragila	According to this property originated from group/society later fragmented into family them evolved the notion of individual property.
Psychological theory	Bentham	This theory conceptualized humans covetous impulses lead to progression of the concept of property.
Functional theory	Lasik, Roscoe pound	This theory concentrated not merely on private rights of individual in respect to property but also

		society's interest in turn believed to an dynamic form.
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In respect to property every person who owns certain vested rights, based on the nature of property its classified into mainly two kinds

- i. Corporeal property which generally means ownership rights vested on material objects "*res corporals*" can be characterized as visible and touchable. On this basis it assorted into movable and immovable.
- ii. Incorporeal property this type refers to proprietary ship on intellectual objects like patent, trademark etc., this further classified into "*jura in re proporia*" (over immaterial things) and "*jura in re aliena*" (over material and immaterial objects).

Some of the common mode of acquisition of property are possession, perception, agreement and inheritance hence multifarious theories, kinds, rights and modes of acquisition of property has been dealt but we rely more on constitutional aspect hence will view various court decision determining the meaning of the property.

In so doing, the Supreme Court of Justice stated that "the property referred to by Article 31 must be treated with a progressive meaning and its use extended to all types of interests bearing an insignia or characteristic of ownership rights"¹. It shall include, inter alia corporeal and incorporeal rights, money, contracts, interests in property, such as interest in the allottee, licensee, mortgagee or lessee of the property². The pension is not a reward, but a deferred salary, homologous to property right hence pension which is linked to the pay of staff as at the date of retirement, and has a correlation³.

According to the Calcutta High Court, Article 300A of the Indian Constitution forbids taking someone else's property without valid authority of law. Therefore, a financier cannot physically seize automobiles that have been hypothecated. Police cannot stand idly by after receiving a complaint from the hirer alleging that the financier had taken control of his belongings forcibly. For instance, the petitioner was without a doubt the registered owner of

¹ *Commr. Hindu Religious Endowment v. Swamlar*, AIR 1954 SC 282.

² *Bombay Dyeing Co. v. State of Bombay*, AIR 1958 SC 328.

³ *U.P. Raghvendra Acharya v. State of Karnataka*, (2006) 9 SCC 630.

the questioned automobiles and the respondent regaining control of the aforementioned automobiles could not and did not arise because petitioner brought directly from the manufacturer and respondent were never in possession of them. In order to obtain financial help, the petitioner and respondent engaged into a hire-purchase agreement, but because the petitioner was the vehicle's owner, the entire transaction in this instance must be viewed as a loan transaction⁴.

CONSTITUTIONAL PERSPECTIVE

Before learning about its evolutionary concept, it is paramount to understand how the state derived its inherent right to take individual's property on the ground of public purpose which originated from the idea of "Doctrine of Eminent Domain" which based upon the maxim "*necessita public major est quam*" which means "public necessity is greater than private". Along with another popular maxim which is ought to remember is "*Salus populi est superema lex*" which means 'the welfare of the public would be paramount law'. According to this doctrine, the state has the right to acquire an individual/citizens property on the ground of public purposes like construction of post offices, custom-houses, schools, parks and so on which is inherent nature of the states sovereign act. If the person refuses to give up his property, the government can still acquire it. But such acquisition must be on the satisfaction of minimum requirements provided by the law. Such practice is subject to limitations provided under the constitution which is acknowledged in the jurisprudence of all civil countries. However, this authority to acquire property of citizen is subjected to certain conditions⁵:

1. There must be a law authorizing the taking of property.
2. The property taken must be ought of public benefit/utility.
3. Just compensation necessarily to be provided.

Hence this has been dealt under two sub-heading segregated on the basis of commencement of the paramount document of the land as headed as pre-constitutional era and post constitutional era where it was altered from being an enforceable right to constitutional

⁴ *Ashok Kumar Singh v. State of West Bengal*, (2003) 12 ILD 450 (Cal.).

⁵ DR.J.N. PANDEY, CONSTITUTION OF INDIA, 725-728 (55th ed. 2018).

right and even now courts play a vital role in upholding the citizens welfare.

PRE-CONSTITUTIONAL ERA

During pre-independence period property right where mostly vested with riches and there has been two categories of people namely landlords and Laboure's most of these Laboure's were bonded labourer's. There was an inequality prevailing in the ownership of land, property in whole of India. "Sunrise of everyone" is what Sarvodaya signifies. India attained freedom in 1947, but the essential task of achieving independence for all people had not yet been accomplished. The impoverished continued to rely on the wealthy even after gaining their independence. A non-violent movement named Sarvodaya was headed by Acharya Vinoba Bhave. He was successful in getting wealthy individuals to change their ways and give money, property, and land to the less fortunate. He said that the government owns all property and that everyone of us has an equal share of all money, real estate, and other assets. Although he was the only person to accomplish this goal through the Sarvodaya movement, the process was not particularly simple. This Sarvodaya movement was one of biggest agrarian reform in the country. This initiative persuaded individuals to contribute land so that it may be distributed to others who didn't have any. Nearly every State passed new legislation or changed existing laws with the intention of collecting and distributing the land that Bhoodan (land donation) had obtained. After some time, all Indian States passed new legislation or changed existing legislation to limit land ownership and designate agrarians as the land's legal owners as of a designated day in each State.

The foundation for the Indian constitution has been laid down by "The Government of India Act 1935" where property right stated under section 299 which satisfies the conditions specified under eminent domain. India being a signatory of the Universal Declaration of human rights (UDHR) came in force on 1948 under which Article 17 dealt with property right which is in turn recognized as a human right.

POST CONSTITUTION ERA⁶

Indian constitution is paramount fundamental document which lays down the structure,

⁶ Sushanth Salian "History of removal of the fundamental right to property" available at <http://www.freedomforallseasons.org/ConstitutionalRelatedReports/History%20of%20the%20Removal%20of%20the%20Fundamental%20Right%20to%20Property.pdf>.(last visited on 14-10-2023)

procedure, powers organizational structure of the government. During its commencement, the property right was a full-fledged recognized 'fundamental right' recognized under Article 19(1) (f), and Article 31 separately dealt with just compensation, the acquisition of private property only to be done on the ground for public purpose. Now will see the step-by-step process of the amendment and courts decision which paved way for alteration of position of property right to a constitutional right and in relation to various aspects to this concept like Arts. 31-31B & Sch. 9. As explained above there are two facet of property right mentioned below

- i. The ability to possess, obtain and dispose of property (Article 19(1)(f) and (5) now deleted, where its provided under part III as a 'Fundamental Right' with permissible limitations)
- ii. The right to keep such property that has been acquired or retained which has been dealt with under Article 31 now deleted, 31A and 31B. Under Art. 31(1) provided that "*no person shall be deprived of his property save by authority of law*". The rest dealt with the nature of the law that could deprive a persons' property acquiring right.

However, now the position of property right isn't considered as basic right anymore by the 44nd constitutional amendment 1976 been discussed below the heads:

- a. Position before 44th Amendment 1978
- b. Position after 44th Amendment 1978

a. Position before 44th Amendment 1978

Certain of the parts in Art. 31 before its deletion were as follows:

"(1) No person shall be deprived of his property save by the authority of law

(2) No property shall be compulsorily acquired or requisitiones save for a public purpose and save by authority of a law which provides, for compensation for the property so acquired or requisitiones, and either fixes the amount of the compensation or specifies the principles on which and how the compensation is to be determined and given; and no such law shall be called in in any court on the ground that the compensation provided by that law is not adequate".

The first interpretation was brought in before the court in the *State of West Bengal vs. Mrs. Bella Banerjee*⁷ stated under Article 31(1) and (2) strictly abiding the limitations provided under the doctrine of eminent domain and also that no law shall be enacted which would deprive a person's property rights, if so, only adhering with the provisions mentioned under article 31(2). However Supreme court opinioned in its decision that the word compensation means full indemnification. In other case of *State of Bihar v. Kameswar Singh*⁸ SC stated the phrase "public purpose" means is elastic which changes with altering time and societal needs. Additionally, it should be highlighted that judiciary has not come up with a suitable meaning of the phrase "public purpose." Only a judicial process of inclusion and exclusion may define the phrase. In general, two conceptions come up in legal attempts to identify the categories of things that the term covers. The second and more expansive definition makes it synonymous with public advantage and public benefit, whereas the first one restricts its meaning to public usage, occupation, or profession. The second interpretation is preferable given on complicated circumstances present in today's society.

However, under "4th Constitutional Amendment Act, 1955" amended clause (2) and clause (2-A) inserted stating that private property shall be deprived under the appropriate case. After many decisions, the judiciary uphold the public interest even after the said amendment. The inference of the court concerning compensation has been decided in the famous cases famous Bank Nationalization Case (*R.C. Cooper and Others v. The Union of India*, A.I.R. 1973 S.C. 564), in which the apex court laid down

- a. Compensation which is specified under article 31(2) must be just compensation. If it found to be inadequate or no proper method laid down for valuation, the courts shall interfere in such cases.
- b. Acquisition of property should not only satisfy the said Article 31 but also Article 19(1)(f).

To countermand the principles stated above by the courts, the parliament made the 24th constitutional amendment, which made three remarkable changes under Article 31

- First, it amended the word compensation to the amount under Article 31 (2), Thus

⁷ 1954 AIR 170.

⁸ A.I.R. 1952 S.C. 252

clarifying that amount to be paid in either cash or kind.

- Second the disassociation of Article 19(1)(f) from Article 31(2), which will not apply to Article 19(1) (f) where acquisition of property for “public purpose”,
- Third article 31C was included to remove certain difficulties

The supreme court heard a challenge to this 24th amendment in the case of *Swami Kesavananda Bharati v. State of Kerala*⁹, stated to have saved the Indian democracy and paved the way for removal of the right to property as a fundamental right. In comprehensive, the judges considered the property right not easy to characterize where one among them being Justice Khanna questioned whether the property right is a “fundamental right”. The court declared verdict that property right no longer will be the part of the basic structure of the constitution, where the full bench confirmed the amendment legality along with which the authority to determine the particular amount in respect to any property acquired by the government shall be done by the court. In a nutshell, the judicial system may inquire at whether the amount in this particular instance is arbitrary or illusory. However, it is necessary to note down the ground under which a property acquired on public cause by means of force the court acquire inherent power to investigate whether or not such forced acquisition serves the public interest or not. Following is a general summary of the key components of Article 31 (prior to the Forty-fifth Amendment):

- i. Without a court order no man’s property shall taken away from them otherwise which cannot by way of any executive order. *Subodh Gopal v. State of West Bengal*, A.I.R. 1954.
- ii. Only by legal authority may property be compelled obtained or requisitioned.
- iii. Which can be done only under a law which is legitimate.
- iv. Any purchase or requisition made must serve a “public purpose”.
- v. The legislation which authorizes need to state either to stipulate compensation provisions or the what standards compensation determined. (The term "compensation"

⁹ A.I.R. 1973 S.C. 1461

was changed to the word "amount" after the Twenty-fifth Amendment.)

- vi. The compensation amount for the property which is obtained by the government is paid in either way cash or other.
- vii. The power is vested with the judiciary on determining whether forced acquisition or payment was arbitrary or illusory. (The case of Swami Kesavananda Bharti).
- viii. If the legislation does not allow for the transfer of ownership or the right to compensation of any property to the State or a company owned or controlled by the State. The legislation will no longer be susceptible to the criticism that the compensation payable is insufficient as a result of the 4th Constitutional Amendment Act of 1955.
- ix. If a state's legislature enacted the legislation, it must be necessary to obtain prior consideration of the president and get his consent before it may go into force.

b. Position after the 44th Amendment

The Constitution (Forty-fourth) Amendment Act, 1978 brought about a significant change in the way property right was seen. This Amendment fully deleted Article 31, removing it from Part III of the Constitution's list of fundamental rights. "Part XII of the Constitution" included a new Chapter, Ch. IV and this Chapter now includes Article 300A, stated as follows

"No person shall be deprived of his property save by authority of law". In a nutshell, this amendment has the following effects:

- i. Property ownership is no longer 'a fundamental right'. Instead, it is moved to Part XII, Chapter IV of the Constitution.
- ii. The new Article, Art. 300A, and the previous Art. 31(1) are equivalent in every way. As a result, subject to the fact that the right is no longer a basic right, the remarks and judicial observations on Art. 31(1) would also apply to Art. 300A.

Article 31A dealt with "Saving of laws providing for the acquisition of the estates etc.," which stated that these articles will not apply to any legislation established by any of state

Legislature which has been reticent for the President's consideration and has not obtained his approval. Additionally, it is stated any rules formulated by any state for the purpose of acquisition of any land or estate of person whose been engaged in personal agriculture such statue of the state to obtain land of such nature and any law time being in force applies to him in relevance to ceiling limit then such property, a building, or a structure allows for compensation to be paid at a rate that is not less than the property's market worth.

Numerous cases challenged legitimacy of Art. 31A have been heard by the Supreme Court been declared it to be legitimate in the famous ruling in the *Golak Nath* case. The comment that subsequent cases made in overturning *Golak Nath's case*¹⁰ did not work against Art. 31A. In the *Kesavananda Bharat case*¹¹, a 13-member Supreme Court bench affirmed the validity of Art. 31A. Once more challenged as being unconstitutional in a writ petition, Art. 31. A was ruled as legitimate by the Supreme Court *State of U.P. & Others v. Ambica Prasad Mishra*¹². The Supreme Court again ruled in *Waman Rao v. Union of India*¹³ that the addition of Art. 31A to the Constitution does not impair or undermine the Constitution's fundamental principles and is therefore legitimate.

According to Article 31B¹⁴, certain Acts and Regulations added to Constitution's Ninth Schedule are not invalidated because they are incompatible with, violate, or infringe against the basic right specified under 'Part III of the Indian constitution'. About 284 Acts are specified under 9th Schedule to the Constitution which has been preserved under S. 31B. Here are a few examples of enactments:

- (i) The Bihar Land Reforms Act, 1950.
- (ii) The Bombay Tenancy and Agricultural Lands Act, 1948.
- (iii) The Uttar Pradesh Zamindari Abolition and Land Reforms Act,
- (iv) The Gujarat Agricultural Land Ceilings Act, 1950.

¹⁰ 1967AIR 1643

¹¹ A.I.R. 1973 S.C. 1461

¹² (1980) 3 S.C.C. 719

¹³ A.I.R. 1981 S.C. 271

¹⁴ Article 31B- Validation of certain Acts and Regulations

(v) The Orissa Land Reforms Act, 1960

(vi) The Kerala Land Tax Act, 1961.

The Constitution did not initially include Articles 31A and 31B; nevertheless, they were eventually added. They have the result of preventing any law that deals with the acquisition of estates, any rights therein, or the change of such rights from being declared invalid because it violates any of the basic rights protected by the Constitution. The Bihar Land Reform Act, of 1950, and other state legislation intended to abolish the Zamindari system were declared invalid by their respective State High Courts at the beginning of 1951 because they violated certain clauses about basic rights. The Governments believed that the amendment to the Constitution should be done in a manner which would lead to breakdown of all constitutional barriers from the way of legislation providing for measures of land reforms that were long overdue in the nation. The Governments were eager to abolish the Zamindari system and reform the entire land tenure system in a more faster manner as possible. The above-mentioned articles is the outcome of 1st constitutional amendment act 1951.

The modifications made to the Ninth Schedule before the ruling of Kesavananda Bharati case on April 24, 1973, are legitimate and Acts added to this Schedule after April 24, 1973, however, would need to necessarily pass the test of causing harm to the Constitution's fundamental principles or essential components otherwise known as "The Basic Structure of The Constitution" held in the case of *Union of India v. Waman Rao*¹⁵.

In the end, '44th Constitutional Amendment Act 1978' brought into operation which abolished the status of the "Right to Property" from being a fundamental right under Part III of the Indian constitution, which was repealed and added as a new chapter under Article 300A which is merely a constitutional right. Until the amendment, the conditions specified under the doctrine of eminent domain were incorporated directly under articles 19(1) (f) and 31, but now only the condition authority of law is expressly stated. Even though the obligation to pay compensation is not expressly stated the court held that it is inherently available under article 300-A¹⁶. The only requirement for acquiring a private property right is compliance with legislative legislation. When someone else's property is taken, the correct compensation is

¹⁵ (1980) 3 S.C.C. 587

¹⁶ *K.T. Plantation Pvt. Ltd. v State Of Karnataka* A.I.R. 2011 S.C. 3430.

given. According to the Hon'ble Calcutta High Court, Article 300A prohibits the unlawful taking of someone's property without first ensuring that they have been given a fair trial, which is exactly what this Article requires. Law must have the proper authority of an effective law¹⁷.

The result of the Amendment lead a huge impact as no citizen can claim for abridging of his property right through any writ which is available under article 32, however he will be permitted to make use of the High Court's Article 226 authority. The constitutional validity of article 300A was upheld by the supreme court held the right to property guaranteed even though it is not a basic feature of the constitution and it is only a constitutional right held in the case of *Jilubhal Khachar v. State of Gujarat*¹⁸. **Mr. H.M. Seervai** who is an eminent constitutional jurist of his opinion that abolition of right of property would destroy other fundamental right enshrined in the constitution, If the right to property is not protected as a fundamental right and the requirement to pay compensation for private property taken for public use is not established, the other fundamental right for example under Art 19 various types of freedom specified like (to speech and expression along with press ,association, movement, to engage in business, profession, or vocation throughout India) would be destroyed¹⁹. The Honorable Supreme Court noted that all civilized nations' law recognized the existence of this authority (the State's ability to compulsorily acquire land) as being subject to public need and payment of compensation²⁰.

According to **Dr P.K Tripathy**, the State will no longer be allowed to take private property without demonstrating a public need and without providing full compensation or the property's market worth. Parliament and the State Legislatures are authorized to enact laws pertaining to "acquisition or re-acquisition of the property" under Entry 42 of the Concurrent List²¹. It was decided in the instance case *Bishamber v. State of UP*²² that the "law" and procedure that were passed and prescribed for the abridgement of individual freedom had to be just, fair, and reasonable. Therefore, a legislation under Article 300A can be ruled unjust, unfair, irrational and void merely on the ground that it not provide for the seizing of a person's private property for a public interest and not for providing adequate payment of compensation. After alteration brought by the amendment the property right was not only considered a

¹⁷ *Ashok Kumar Singh v. State of West Bengal*, AIR 2004 Cal 46.

¹⁸ AIR 1995 SC 142.

¹⁹ Seerval H.M., "Constitutional law of India" (4th Ed.).

²⁰ *State of Bihar v. Kameshuer Singh*, AIR 1952 SC 252.

²¹ Tripathy P.K., "Rights of Property after 44th Amendment Better Prosecuted than ever before", AIR 1980 (J) 51.

²² AIR 1982 SC 33

constitutional right but also a human right²³, and the court decision stated that being “a constitutional right” it doesn't deprive the citizens' right to hold, dispose²⁴, and use the property in accordance to the law²⁵.

ADVERSE POSSESSION

The Limitation Act of 1963 deals with the “Principle of Adverse Possession” under provisions like Section 27, Article 65 of Schedule 1. Under which Section 27 deals with the ‘extinguishment of the property right’ its main scope to safeguard the weaker section of society in any event to avoid mischief. This principle plainly stated as a person who possess a property for a continuous period can claim/acquire ownership on such the particular period is stated as 12 years under Article 65. However, the term adverse possession is not defined under The Limitation Act. Adverse possession is a relative question of law let alone matter of fact. It is based on the maxim “*vigilantius non-dormientibus subvenit lex*” means the law favors only those citizens play active role and not those who are not concerned about their rights. There are certain essentials to satisfy the doctrine

- The person must have entered and had exclusive possession over the property which should be open and notorious possession.
- Hostile possession under a claim of right,
- Continuous, and uninterrupted possession for the statutory period.

It depends upon context and scenario nature of every case but it is subjected to certain limitations like permissive possession, deficit on rightful claim, and animus possidend.

Now will deal with the recent decision of the apex court of the court in particular to property and adverse possession aspects. One such decision stated how the doctrine of adverse possession cannot be claimed as a defense/ground by the state for individual property deprivation under Article 300A. In the case of *Vidya Devi v. State of Himachal Pradesh & Ors*²⁶ Error! Reference source not found., facts state that the petitioner being an 80 year old illiterate

²³ *Indian Handicrafts Emporium v Union Of India* A.I.R. 2003 S.C. 3240.

²⁴ *The State of Maharashtra v Kailash Shiva Rangari* A.I.R 2016 Bom. 141.

²⁵ *Dev Sharan v State Of Uttar Pradesh* (2011) 4 S.C.C. 769.

²⁶ C.A. NO. 60/61 of 2020, SUPREME COURT.

women who owned certain piece of land in Himachal Pradesh, subsequently which taken over by the respondent under the “*land acquisition act 1894*” for the construction of a district road which was completed later in 1975. The point to note is that during that period property right was a fundamental right. The High Court accepting the states contention and order to file a civil suit instead of writ along with rejected the review petition, which was later filed against before the apex court during the year 2014 which emancipated its verdict on Jan 8, 2020, stating that the respondent state claimed the defense on ground on adverse possession being possessed the land for a continuous period of 42 years. However the contention was rejected the fact the state is a welfare state it cannot claim its citizen's property which allows trespass. Under this case the SC stated various judgment relating to its decision in the present case like *Hindustan petroleum co. ltd v. Darius shapur*²⁷ where citizens private property can be acquired by the state only on ground of public necessity along with reasonable amount of compensation.

*In Jilubhal Nanbhai Khanchar v. state of Gujarat*²⁸ and *N. Padmamma v. S. Ramakrishna Reddy*²⁹ court quoted that the constitutional provision of art.300A must be strictly adhered. Along with in *Delhi Airtech Services v. State of UP*³⁰ the apex court stated “ *it is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the government*”. Hence the court directed the defendant state to award a compensation of Rs. 1, 00, 0000/- upholding the citizens’ right to property³¹ along with the court also reiterated that delay in filing suit is an judicial prudence and petitioner/appellant in this case is from rural village whom compensation has not been provide for half-century, and non-adherence to procedure of acquisition is also mentioned in this case. This above decision viewed substantial facets of both property right and adverse possession which is interlinked in this paper.

Recently in 2023 the apex court given an landmark judgment on adverse possession on august month *Government of Kerala and another v. Joseph and others*³² that long period of mere possession an immovable property(land) doesn’t translate right over it under the idea of

²⁷ (2005) 7 SCC 627

²⁸ (1995) Supp. 1 SCC 596.

²⁹ (2008) 15 SCC 517

³⁰ (2011) 9 SCC 354

³¹ Source:https://main.sci.gov.in/supremecourt/2018/36919/36919_2018_17_1501_19333_Judgement_08-Jan-2020.pdf. (last visited on 30-11-2023)

³² Civil appeal 3142 of 2010 (decided by Supreme Court of Indian on august 9, 2023) Source: <https://indiankanoon.org/doc/59843273/> (last visited on 30-12-2023)

adverse possession, also stated various guidelines in respect to adverse possession like clear proof should be existed and reliance of the decision based in the various case one such is of *State of Rajasthan v. Harphool Singh*³³ where the court made a clear view that cautioned consideration should be made in case of disputed property belong to state.

CONCLUSION

India being a democratic state as enunciated under Indian constitution, which is being governed by the utmost principle of supremacy of law which wouldn't deprive citizen's rights unless a proper procedure accustomed by the law thus upholding the conception of welfare state. This welfare state can make co-exists the principles like sovereign, democratic and socialist where the words socialist and secular included by the way of 42nd constitutional amendment. However, the courts have took a further step towards these concepts by the way of adapting social justice which is more of a widen view. Power vested upon the nation to acquire a private property in more detailed dealt under a sperate legislation named as The LARR (*"The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement act"*) 2013 prior to its '*land acquisition act 1894*' was in force. This amended legislation is more of regulating the land acquisition by government and rules relating to just and fair compensation for the land acquired. Some of important objects of this legislation is that is provide the rehabilitation and resettlement of affected persons, the need of consent of grama sabha is mandatory in case of acquisition of land of scheduled area mention in 5th schedule specified under Indian constitution etc., this being more of welfare oriented of the people affected by the way of displacement occurred on acquiring their land. By reading this paper the reader would able to get a drift on jurisprudential outlook in relation to property rights pursuant to various legislation along with the constitutional provisions and its relation to the doctrine of adverse possession. In each decision, the court proved in one or other way reaffirmed the property right either be a constitutional or fundamental right the citizens welfare was considered paramount and vice versa depending nature and circumstance of every single case.

³³ (2000) 5 SCC 652

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- [https:// main.sci.gov.in](https://main.sci.gov.in)
- [https:// indiankanoon.org](https://indiankanoon.org)