



*Spreading Legal and
Economic Awareness*

A Social Initiative by
Charanjeet Chanderpal

*For private circulation only
Free of cost*

Inside this issue:

Adverse possession of property	1
Bringing down your legal costs	1
Municipal corporations violate their own rules?	2
Does your society oppose pets?	2
About the Hindu Law	3
Parking problems in society	3
WPI and CPI are not true indicators of rising prices	4

Special points of interest:

- Mediation is a cheap way to settle
- Your society cannot oppose pets
- Your builder cannot sell parking space
- What constitutes the Hindu law
- Filing returns of a dead assessee

Chanderlawpal's Knowledge Law & Economics

Volume 1, Issue 1

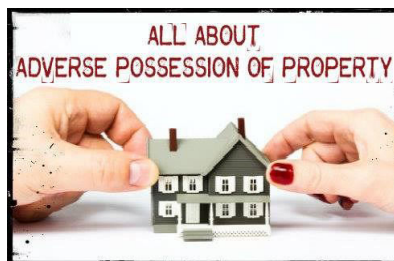
January 2015

About Adverse Possession of Property

Under the law of adverse possession, you are an owner of the property if you are in its possession for 12 years in case of a private property and 30 years in the case of a government property. The time periods of 12 and 30 years are specified in the Limitation Act 1963. This law can be used by people who are in possession of flats, premises and other immovable property where the actual owners may not be coming forward to execute the transfer deeds or release deeds in their favour or they may have expired. Of course this law can be misused in the case of land grabbers and frauds. However, for proving ownership by adverse possession it is necessary that the property must not have a tenant-landlord relation or it can be

easily proved that the relation is not existing by stoppage of the payment of rent for 12 years.

In cases where documentation is not there and the owner himself is aware that someone



is staying in the premises without any agreement, the benefit of adverse possession can be availed. Leasehold agreements are outside the purview of the law of adverse possession. Properties of HUF, where some members are in possession and are nominees for others, cannot be covered under ad-

verse possession. In adverse possession the ownership of the original owner must be determined and the possession of the person claiming ownership must be in exclusive possession which must be unobstructed. The property tax, electricity, maintenance charges and other such basic charges must be paid by the person claiming ownership. For completing the declaration of ownership by adverse possession, the registration authorities usually insist on a declaration by the district court for which one has to file a suit for declaration. There are other ways also to register documents like getting a mutation entry done in land records of the Collector by giving hearing and notice to the owner or his legal heirs.

How to Bring Down your Legal Costs

Litigation costs in all matters, but more so, in family matters, can be killing. In an attempt to encourage people to settle disputes, law has evolved a system of mediation. It is encouraged at meetings between parties and largely eliminates the role of lawyers

who may stretch litigation. Further, mediators who are sitting judges or registrars of the same court can be appointed to avoid expensive costs of retired judges, similar to arbitration. Mediation does not affect the merits of the case and talks in

mediation need not be legal-they may be on pure human values and practical aspects. The problem of expensive venues is also overcome, as the courts offer their own rooms - free of cost !! Its only that the parties should be willing to talk.

Municipal Corporation Responsible for Violation?

The Supreme Court, in the case of "MI Builders v Radhey Shyam Sahu 1999 AIR SCW2619" held that an underground construction by a municipal corporation in a public park was illegal as it was in violation of its master plan and thereby its demolition was ordered.

In the connected case the Supreme Court went on to ob-

serve that although permission was granted by the municipality, such un-



Can the municipal corporation be held responsible for violation of its own rules?

authorised construction built underground below a place reserved for a public park was held violating "public trust doctrine."

It was held that judicial discretion cannot be used to perpetuate illegality.

Further, even in other cases where permission is given to private parties in violation of law, is liable to be quashed and set aside. And such construction is liable to be demolished. Permission granted in total violation of development control regulations is illegal.

Did You Know?

Housing societies cannot object and make laws which are patently against pet owners. Legally speaking, pets are a part and parcel of a family and under the Indian Penal Code, there are provisions wherein a case can be registered not only against others but also against owners and their servants for cruelty to animals. However, as per the local municipal laws in most cities in India,

domestic animals like dogs require licenses. Under the Wildlife Protection Laws and other specified laws, one cannot keep animals or birds which may not be allowed to be kept as pets.

***Do your society members
oppose you for keeping pets?***

THEY CANNOT

Further municipal laws and police laws provide for upkeep and prohibition of animals like dogs, buffaloes, etc to maintain sanitation and law. However it is the duty of pet owners to see that their pets do not create sanitation problems and are not a source of nuisance to neighbourhood.

Filing Income Tax of a Dead Assessee?

The right to file income tax returns can continue even after a person expires. Returns in such cases, can be signed or filed by legal heir or executor or legal representative of such deceased assessee. When out of necessity, this continues, it is not illegal. This is because after the

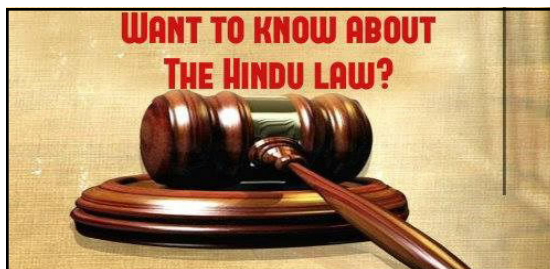
death of a deceased there may be assets which may have to be distributed or some court decision that is yet to arrive or maybe some dispute within legal heirs. When a person signs income tax return and pays tax on behalf of deceased, he can recover it from his estate because receipt

stands in name of deceased. After necessity of same is over, the permanent account number must be surrendered for cancellation or department can issue notice for non filing of return or income can be added to your income under clubbing provisions.

About the Hindu Law

Hindu Undivided Family and Hindu Law is the personal law of Hindus. A Hindu is the one who does not follow Islam, Christianity, Judaism or the Zoroastrian faith. Therefore all Sikhs, Buddhists, Jains and other communities not being a Muslim, Christian, Jew or Parsi are Hindus. Being a personal law all its customs and conventions are recognized as law to the extent not codified. After independence, some aspects of this personal law were codified into the Hindu Succession Act, Hindu Marriage Act and the Hindu Adoption and Maintenance Act. A Hindu was restrained from having more than one wife. A child from an un-official wife will have a father's name but the marriage is illegal. Such a child does not have any rights in an ancestral property. He may claim some rights in his father's property. A person who converts to a faith other than what is included in definition of Hindu loses all rights of Hindu law. The Hindu law is divided into two schools of thought- Mitakshara and Dayabhaga. Under

Mitakshara, which is most common all over India, the son has rights in the property since birth and the males are regarded as 'Co-parceners' which means a joint holder-manager and owner of the property. The 'Dayabhaga' school is prevalent in Bengal and some other states in the South. In the Mitakshara school of thought, the rights of a male exist from four degrees of the present male heir-upto great grandson. This does not exist in the Dayabhaga system. It is myth that women did not have rights in HUF Property. They always had a right to property, but they did not have rights to ask for a partition which has been given to them from 20.12.2004. They also have a right to maintenance but married daughters are excluded. Girls do not have any rights in HUF property. There is only one exception in South India, where Hindu law is reverse and follows the reverse pattern of mother's lineage known as 'Marmukayatam law'.



The manager of an HUF is the senior most person or the most efficient person and he is known as the 'Karta'. A female cannot be a Karta. the joint Hindu family pools its funds and resources and the entire set up with all the family members is recognised as an entity under law known as the Hindu Undivided Family. However property earned out of personal funds of the individual members is not HUF property. The HUF can operate bank accounts, be a partner and do all things like a separate entity. It is assessed to tax separately, if there is a will left behind by a person, the property will be distributed in terms of the will and not in terms of Hindu law. This is stated in section 30/31 Of the Hindu Succession Act.

Parking Space in Housing Societies a Problem?

Builders cannot sell car parking space-it comes with the entire project and is included as an amenity. If a builder is doing so, it is totally illegal. Further under the Maharashtra Co-operative Societies Act 1960, every flat owner / member is entitled to a compulsory allotment of one car parking space. The housing bye-laws provide that the managing committee can allot more than one car parking space also at monthly parking charges. Further, under development control regulation, visitors' space for car parking in the open space available in compound (which is very essential in commercial premises apart from residential) is compulsory to the extent of twenty per cent, provided of course if at a particular time there is parking space available. Car parking is a very big problem and the government will have to evolve a more liberal policy for the same but prevent congestion at the same time.

Chanderlawpal's

300/1&2
Rishabh Apartments
Off SK Bole Road
Dadar West

Phone: 022 2432 8949

Mobile: 9819 657 780

E-mail:

charanchander74@rediffmail.com

*A law and economics knowledge
sharing initiative*

Edited by Harjot Kaur

We're online at
www.chanderlawpal.com

Chanderlawpal.com is an online legal advisory portal, for people from all over the world, seeking legal advice on Indian or/and international laws.

This newsletter is an initiative by Advocate Charanjeet Chanderpal for making public aware about the laws that exist in India for protection of common man. Legal jargons and financial language are seldom understood by laymen and this causes public to lose faith in legal and economic (financial) systems.

-An attempt to restore this faith and to help people use the existing machinery to become self reliant.

Why WPI and CPI do not indicate real price rise that affects you?

WPI calculates the price at which wholesalers/producers sell a 'fixed basket of goods' to retailers-not the price at which you get things in the market. This data is generated on a weekly basis, thus the WPI announced today would reflect the prices one week ago. This index is developed by comparing prices one week ago to prices of the base year. Base year for latest WPI data is 2004-05 while for CPI, it is 2010. This means that if prices were high in the base year and have not been increasing highly since then, your current WPI and CPI will be low. While this would be published as very positive by the media, it actually is no reason to rejoice. First, because prices have not come down-it is only the rate at which the prices have been increasing that has come down. Second WPI

and CPI is based on a 'fixed basket of goods', which you may or may not require. What you should be looking at instead, is inflation in prices of fruits and vegetables, or in education, or increase in interest rates of loans or milk products or clothes and shoes, or fuel, whenever they appear in news.

It has often been said that CPI is better than WPI-it is a step closer to common man. But CPI data is generated monthly, which means CPI announced today reflects prices one month ago, compared to the base year. CPI is only closer, but even it does not give a true picture of the prices or inflation that you would want to know.

For compilation of CPI, industrial workers, agricultural labourers and

urban non-manual employees are three broad segments on basis of which CPI is calculated. So the basket of goods is 'fixed' depending upon their lifestyle. CPI for non-manual employees would be closer to many of us. In addition CPI is calculated for different areas separately and is then compiled to form a nation wide index. You should look at the non-manual employees index for your specific area to get a clearer picture.

Lastly, it is the demand that finalises how close CPI will be to inflation that affects you. If the demand of a certain product is high, the retailer will pass in the pressure of prices on you since he knows you require the product. And the resulting prices that you pay would be even farther than the published CPI.