

A DETAILED STUDY ON “MODES OF ACQUISITION OF PROPERTY” WITH SPECIAL REFERENCE TO ACQUISITION MADE BY INDIVIDUAL AND SOVEREIGN

AUTHORS – PAVITHRA S* & PREETHI R**, LL.M SCHOLAR* & . FACULTY OF LAW**, DEPARTMENT OF PROPERTY LAW, SCHOOL OF EXCELLENCE IN LAW, TNDALU,

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ABSTRACT:

This paper will explore the legal frameworks and implications of property acquisition by individuals and sovereigns, examining how these modes shape ownership rights and influence the legal landscape. The contrast between individual and sovereign acquisition highlights essential themes in property law, such as the balance of private and public interests, the role of compensation, and the mechanisms by which ownership rights are created, transferred, and extinguished. Understanding these modes clarifies the pathways to ownership and emphasizes the fundamental principles governing the rights to property in society.

Key Words: property, property acquisition, by individuals, by sovereign, private and public interests, compensation, ownership.

1. INTRODUCTION

Every human being needs some basic necessities to lead a healthy life, i.e., food, clothes, and shelter. With the modernization of society, individuals and sovereign officials require certain things to evolve in this contemporary society. Based on the circumstances, certain things may be changed, however, regarding shelter, property plays a pivotal role in this modern world.

The concept of property is foundational to the legal and economic systems worldwide. Understanding the modes of acquisition is essential in property law as it lays out the legal pathways through which individuals or governments can claim ownership or possession of property, either through original or derivative means.

2. PROPERTY

The term ‘property’ includes corporeal and incorporeal things. Generally, corporeal

property means something that can be seen, and the person who owns the property has the rights over the property.

In Jurisprudence, property is defined as the legal rights of a person or group of people over an object or thing. In the case of *R. C. Cooper vs. Union of India*,⁹⁰⁰ the Supreme Court interpreted “the term property includes both corporeal things such as land, and furniture and incorporeal things such as copyrights and patents.” The Latin maxim, “*traditionibus dominia rerum, non nudis pactis, transferuntur*” signifies that the ownership of things is transferred by delivery, not by naked promises.

In this discussion of definition and rights over the property, we have to know about in what ways the property can be acquired.

⁹⁰⁰ R. C. Cooper vs. Union of India, AIR 1970 SC 564,

3. MODES OF ACQUISITION OF PROPERTY

Acquisition of property means to acquire a property or being the owner of the property. Several ways have been discussed in Jurisprudence to acquire a property that is categorized in four modes, i.e., 1. possession, 2. Prescription, 3. Agreement, 4. Inheritance.

In property law, the acquisition of property is broadly available to individuals and to sovereigns. Generally, acquisition by individuals can be done with the voluntary transaction of the transferor whereas acquisition by the sovereign even without the voluntary transaction of the transferor can be done.

3.1 ACQUISITIONS MADE BY INDIVIDUALS

While discussing the modes of acquisition of property by individuals, typically relies on transfer, succession, prescription, or principles of occupancy, grounded in voluntary transactions and personal rights.

In my purview, modes of acquisition of property by individuals can be categorized as,

1. by the act of parties
2. by the operation of law

3.1.1 BY THE ACT OF PARTIES

When the alienation of property can be done by the act of parties should be based on the Indian Contract Act, 1872 which says every contract should be executed with the consent of parties without any flaws in consent. Voluntariness and willingness play a role when the alienation is done by the act of parties.

AGREEMENT-

The term 'agreement' generally means a mutual understanding, arrangement, or contract between two or more parties. In this context, each party agrees on certain terms, conditions, or actions.

Agreement as a title of proprietary rights *in rem* may be of two kinds, viz., (i) assignment; and (ii) grants. By assignments, existing rights

are transferred from one owner to another. By grant, new rights are created by way of encumbrance upon the existing rights of the grantor. Sale is an assignment, while the lease is a grant.

The Latin Maxim "*nemo dat qui non habet*- No man can give a better title than that which he himself has" The man who made an agreement should rely with this principle to transfer a perfect title.

*Purchase-- Based upon an agreement, a person can acquire property by purchasing it from the transferor voluntarily. When the property belongs to no one (*res nullius*), the first possessor acquires a valid title against the whole world. In Roman Law, this mode of acquisition was known as *occupatio*. The property may belong to someone. Still, possession confers a right in the possessor as against the entire world, except the true owner, or the previous possessor. Even as against the true owner, the possessor is entitled to maintain his possession until evicted in due course of law.

*Gift-- a person can acquire a property, if he (donor) wilfully gifted his property due to love and affection to the donee.

◆ *Donatio mortis causa* also called a death bed gift, if a person acquires a property by gift if the donor presents it in his death bed.

◆ *gifts in praesenti* (at present)- if a donor gifted a property in his present life.

*Testamentary Transaction—Will also plays a vital role in the mode of acquisition. A person in his desire can transfer his property through Will. After his death, that person can acquire the property under the Succession Law.

3.1.2 BY THE OPERATION OF LAW

1. PRESCRIPTION

The term 'prescription' may be defined as effect of lapse of time in the creation or

destruction of any rights. It may be of two kinds, i. Acquisitive & ii. extinctive prescription. If any right is created after the lapse of time is called a positive prescription or acquisitive prescription, whereas any right is destroyed after the lapse of time is called an extinctive prescription or negative prescription.

For example, if A uses B's private road to reach the public road for a long time without B's permission, then A acquires a certain right to use that way as an acquisitive prescription, at the same time A cannot acquire the right over that property only mere right to use the pathway. In this, if B fails to claim his right to A not to use his road before the expiration of a particular period, then B loses his right to claim not to use the way as an extinctive prescription.

The law of prescription is based on the maxim, '*vigilantibus non dormientibus jura subveniunt*', i.e., the laws give help to those who are watchful, and not to those who sleep. The presumption is, that the principle of Prescription is based upon the coincidence of possession and ownership.

2. INHERITANCE

From the ancient days to till date, we are very familiar with the term inherited property. Patrilineal primogeniture predominated in ancient times. The Laws of Manu state that the oldest son inherits all of the father's estate.⁹⁰¹ Since the Middle Ages patrilineal equal inheritance has prevailed in perhaps a majority of groups,⁹⁰² although the eldest son often received an extra share.⁹⁰³ Under this system, the estate would be shared between all sons, but these would often remain together with their respective families under the headship of the Karta or family head, who was usually the eldest son of the previous family head.⁹⁰⁴ However,

901 Buehler, Georg (1964). *The Laws of Manu*. Library of Alexandria. pp. Law 105. ISBN 9781465536952.

902 Sharma, R.S. (2003). *Early Medieval Indian Society (pb)*. Orient Blackswan. p. 181. ISBN 9788125025238.

903 . New York *The sacred laws of the Aryas: as taught in the schools of Apastamba, Gautama, Vasishtha and Baudhayana (1898)*: Christian Literature Co. 1898. Retrieved 6 June 2014.

904 Verma, Harnam Singh (1985). *Industrial Families in India*. Concept Publishing Company. p. 131.

among some South Asian peoples, such as the Western Punjabi, male primogeniture continued to prevail.⁹⁰⁵

In this background, Inheritance also plays a major role in acquiring property. Several Indian laws like Indian Succession Act 1925 and Hindu Succession Act 1956 speak about if a person dies intestate, then his property is acquired by his family members through inheritance.

3. ADVERSE POSSESSION

Adverse possession is also known as squatters' rights or homesteading. A thing owned by one person and possessed adversely by another has in truth two owners. As a general rule, the ownership of one is absolute and perfect; while that of the other is relative and imperfect. The ownership of the possessor is called possessory ownership and will be protected against all except the true owner. A plea of *jus tertii* (title of a third party) is not valid against the possessory owner. Law to preserve order and peace protects the rights of the possessor, for otherwise force and fraud will prevail.

However, the law of adverse possession in India is governed by the Limitation Act of 1963. The claim of adverse possession allows a non-owner to gain legal ownership of a property after a certain period in his continuous possession. The claimant has to prove his continuous possession for 12 years to claim adverse possession. Then a claimant can acquire a property through adverse possession. Presently to seek a declaration of title by adverse possession is held in the case of *Ravinder Kaur Grewal vs. Manjit Kaur*,⁹⁰⁶ settled the law and laid down the principle that a plaintiff can seek a declaration of title by adverse possession.

905 Lyon, Stephen M. (February 2013). "Networks and Kinship: Formal Models of Alliance, Descent and Inheritance in a Pakistani Punjabi Village" (PDF). *Social Science Computer Review*. 31 (1). Durham University. doi:10.1177/0894439312453275. Retrieved 6 June 2014.

906 *Ravinder Kaur Grewal vs. Manjit Kaur*; 2019 (8) SCC 729

3.2 ACQUISITION MADE BY SOVEREIGN AUTHORITY

In legal and political theory, sovereign or governmental authority has various modes of acquiring property. These methods reflect the power of the state to acquire land, resources, or other assets for public purposes or to assert control. Generally, sovereigns acquire property for public purposes. In India, several laws were laid down to regulate the acquisition of property by the sovereign authority for public purposes. The government acquires a property in the following modes,

1. DOCTRINE OF EMINENT DOMAIN

The Government can acquire private property by applying the doctrine of Eminent Domain. The term "eminent domain" was taken from the legal treatise *De jure belli ac pacis* (*On the Law of War and Peace*), written by the Dutch jurist Hugo Grotius in 1625,⁹⁰⁷ which used the term *dominium eminens* ("supreme ownership")

*Public Purpose-- It is typically exercised for infrastructure projects or projects that benefit the public, such as highways, parks, schools, and utilities. In the landmark US Supreme Court case⁹⁰⁸ upheld the government's ability to take private property for public use, emphasizing economic development as a valid public purpose. It sparked significant public debate about the limits of eminent domain. So long as the dominant purpose of the acquisition of land is to serve the interest of the community as against that of an individual, the acquisition shall fall within the definition of a public purpose.⁹⁰⁹ Acquisition of land by the municipality for widening a street, the reclamation of unhealthy localities, and any other measure likely to promote public safety,

health, convenience, and education is a public purpose.⁹¹⁰

*Fair Compensation-- Compensation is typically based on the market value of the property. The Court defines "just compensation" as requiring that the owner of the condemned property be put in as good a financial position as if his property had not been taken, meaning that the owner should be paid the "fair market value: the price a willing buyer would pay a willing seller in the open market."⁹¹¹ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) was enacted by the legislature to ensure transparency and fair compensation to private individuals.

2. ESCHEAT

Escheat is one of the modes of acquiring property by the Government. If a person died without leaving behind any heirs, then the properties belonged to the deceased person acquired by the Government. The doctrine of escheat is regulated by Art.296 of Indian Constitution and Sec.29 of Hindu Succession Act 1956. which reads as "Sec.29. Failure of heirs.—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir would have been subject." which clearly shows that the state can acquire the property of the deceased as heir unless deceased leaving behind his heir.

3. CONFISCATION/ FORFEITURE OF PROPERTY

Confiscation is the seizure of property by the state without compensation, often as a penalty for a crime or illegal activity. Property used in illegal activities, such as drug trafficking,

907 Nowak, John E.; Rotunda, Ronald D. (2004). *Constitutional Law* (Seventh ed.). St. Paul, MN: Thomson West. p. 263. ISBN 0-314-14452-8.

908 Kelo v. City of New London (2005)

909 Hari Chand v. State of Haryana, (2001) 2 LACC 399 P&H (DB).

910 Shastri Ram Chandra v. Ahmedabad Municipality, ILR 24 Bom 600

911 See United States v. 564.54 Acres of Land, 441 U.S. 506, 510 (1979); United States v. Miller, 317 U.S. 369, 373 (1943); Olson v. United States, 292 U.S. 246, 255 (1934) (all holding that just compensation requires that the owner be put in substantially the same position pecuniarily as if he would have been if his property had not been taken.)

or assets of individuals convicted of certain crimes, may be confiscated by the state. Confiscation must typically follow a legal process proving the property's connection to illegal activity or the owner's culpability. Like confiscation, forfeiture usually follows a legal process to confirm non-compliance or unlawful use.

4. REQUISITION

Requisition is the temporary seizure or use of private property by the government, often during emergencies, such as natural disasters or wars. Governments may requisition buildings, vehicles, or other resources needed for emergency response or defense purposes. Laws often limit the duration of requisition and may require compensation, especially if the property is damaged or not returned.

5. NATIONALISATION

Nationalization involves the transfer of privately owned assets to public ownership, usually to control key industries, resources, or services. Governments may nationalize industries like utilities, oil, and gas, or railroads to control essential services or protect national interests. Nationalization typically involves compensation, although its amount and fairness may vary based on the state's policies and resources.

4. COMPARATIVE ANALYSIS OF INDIVIDUAL AND SOVEREIGN-PROPERTY ACQUISITION

4.1 LEGAL RIGHTS OF INDIVIDUAL AND SOVEREIGN POWERS

Before the 44th Constitutional Amendment Act 1978, the Right to property of individuals was considered as fundamental right, in the landmark case *Keshavanandha Bharathi v. State of Kerala*,⁹¹² the Hon'ble Supreme Court replaced the Art.19(1)(f) to Art.300A which makes the Right to property as Constitutional right. Art.300A reads as "No person shall be deprived his right to property

save by authority of law".⁹¹³ Generally speaking, all individuals have the right to acquire property in the above-mentioned ways but at the same time, an individual's right to property is limited by the due process of law.

The law always prevails over any rights which are guaranteed under the constitution of India unless affects its Basic Structure. Art.300A is not an absolute right if any law is made that affects or violates Art.300A, even though it cannot be considered void unless contradicts the Basic Structure Doctrine. In several circumstances, the Land Acquisition Act 1894 which is protected under Schedule IX of the Constitution affects Art.300A and, not be declared void by the Hon'ble Supreme Court because this act is legislated for the public welfare.

Therefore, while discussing property rights in India, the Acquisition made by Sovereign always prevail the individual property rights when there is a need for public purposes.

*Private V. Public Law - Generally Individual property acquisition is largely governed by private law i.e., Contract, inheritance) whereas sovereign acquisition often involves public law i.e., eminent domain.

*Voluntary and Involuntary Transfer - Voluntariness plays a pivotal role in the individual's *inter vivos* transaction of property whereas in sovereign acquisition voluntariness and willingness (consent) of the transferor is immaterial.

5. CONCLUSION

From the ancient days to till date, jurisprudence plays an important role in understanding law. Likewise, for the detailed study of property law, modes of acquisition of property give us an in-depth root to grow in the field of property law. While discussing the acquisition of property, public interest always prevails over the individual's right.

⁹¹² *Keshavanandha Bharathi v. State of Kerala*, AIR 1973 SC 1461

⁹¹³ Art.300A of the Constitution of India,1950

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