

STATE OF HARYANA

v.

MUKESH KUMAR & ORS.

(Special Leave Petition (Civil) No. 28034 of 2011)

SEPTEMBER 30, 2011

[DALVEER BHANDARI AND DEEPAK VERMA, JJ.]

Adverse possession:

Property rights – Claim for, by way of adverse possession – Whether the State/Police Department, which is in charge of protection of life, liberty and property of people can be permitted to grab the land and property of its own citizens under the banner of the plea of adverse possession – Held: If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be total anarchy in the entire country – It is indeed a very disturbing and dangerous trend and must be arrested without further loss of time in the larger public interest – No Government Department, Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner – There is an urgent need for a fresh look on the entire law of adverse possession – In the instant case, the suit was filed by State of Haryana through the Superintendent of Police seeking right of ownership by adverse possession – Suit was dismissed by courts below – Revenue records of the State revealed that the disputed property stood in the name of the defendants – It is unfortunate that the Superintendent of Police, a senior official of the Indian Police Service, made repeated attempts to grab the property of the true owner by filing repeated appeals before different forums claiming right of ownership by way of adverse possession – Special Leave Petition dismissed with costs of

- A *Rs.50,000/- to be paid by the State of Haryana for filing frivolous petition and unnecessarily wasting the time of the Court and demonstrating its evil design of grabbing the properties of lawful owners in a clandestine manner – Recommendation to Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in law of adverse possession – Need for legislation – Costs.*
- B

- C *Historical background of adverse possession – Discussed.*

- D *Burden of proof – Held: A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner – It is for him to clearly plead and establish all facts necessary to establish adverse possession – Equity.*

- E *Right to property – Held: Is not only constitutional or statutory right but also a human right – Therefore, even claim of adverse possession has to be read in that context – Constitution of India, 1950.*

- F *Protection of property rights – Fifth Amendment of the U.S. Constitution - a principle of a civilized society – Discussed.*

- G **The State of Haryana filed a civil suit through the Superintendent of Police, Gurgaon, seeking a relief of declaration to the effect that it has acquired the rights of ownership by way of adverse possession over land measuring 8 biswas comprising khewat no. 34, khata no. 56, khasra no. 3673/452 situated in the revenue estate of Hidayatpur Chhavni, Haryana.**

- H **The trial court dismissed the suit. The first appellate court dismissed the appeal with exemplary cost of Rs.25000/- on the ground that the Police department is**

for the protection of the people and property of the citizens and the police department had unnecessarily dragged the defendants in unnecessary litigation. The High Court dismissed the appeal. A

The question which arose for consideration in the instant special leave petition was whether the State, which is in charge of protection of life, liberty and property of the people can be permitted to grab the land and property of its own citizens under the banner of the plea of adverse possession. B

Dismissing the special leave petition, the Court C

HELD: 1. In a democracy, governed by rule of law, the task of protecting life and property of the citizens is entrusted to the police department of the government. In the instant case, the suit was filed through the Superintendent of Police, Gurgaon, seeking right of ownership by adverse possession. The revenue records of the State revealed that the disputed property stood in the name of the defendants. It is unfortunate that the Superintendent of Police, a senior official of the Indian Police Service, made repeated attempts to grab the property of the true owner by filing repeated appeals before different forums claiming right of ownership by way of adverse possession. Such incidents would result in citizens losing faith in the entire police administration of the country and those responsible for the safety and security of their life and property are on a spree of grabbing the properties from the true owners in a clandestine manner. [Paras 26-28] [226-F-H; 227-A-B] D E F

2.1. Adverse possession – Historical background: The concept of adverse possession was born in England around 1275 and was initially created to allow a person to claim right of “seisin” from his ancestry. Many felt that the original law that relied on “seisin” was difficult to G H

- A establish, and around 1623 a statute of limitations was put into place that allowed for a person in possession of property for twenty years or more to acquire title to that property. This early English doctrine was designed to prevent legal disputes over property rights that were time consuming and costly. The doctrine was also created to prevent the waste of land by forcing owners to monitor their property or suffer the consequence of losing title. The concept of adverse possession was subsequently adopted in the United States. The doctrine was especially
- C important in early American periods to cure the growing number of title disputes. The American version mirrored the English law, which is illustrated by most States adopting a twenty-year statute of limitations for adverse possession claims. As America has developed to the present date, property rights have become increasingly
- D more important and land has become limited. As a result, the time period to acquire land by adverse possession has been reduced in some States to as little as five years, while in others, it has remained as long as forty years. The United States has also changed the traditional doctrine
- E by preventing the use of adverse possession against property held by a governmental entity. During the colonial period, prior to the enactment of the Bill of Rights, property was frequently taken by States from private land owners without compensation. Initially,
- F undeveloped tracts of land were the most common type of property acquired by the government, as they were sought for the installation of public road. Under the colonial system it was thought that benefits from the road would, in a newly opened country, always exceed the value of unimproved land. The doctrine of adverse
- G possession arose in an era where lands were vast particularly in the United States of America and documentation sparse in order to give quietus to the title of the possessor and prevent fanciful claims from
- H

erupting. The concept of adverse possession exists to A
 cure potential or actual defects in real estate titles by
 putting a statute of limitation on possible litigation over
 ownership and possession. A landowner could be
 secure in title to his land; otherwise, long-lost heirs of any B
 former owner, possessor or lien holder of centuries past
 could come forward with a legal claim on the property.
 Since independence our country have witnessed
 registered documents of title and more proper, if not
 perfect, entries of title in the government records. The
 situation having changed, the statute calls for a change. C
 [Paras 30-33] [227-D-H; 228-A-F]

*Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan
 and Others* (2009) 16 SCC 517 – relied on.

S.M. Karim v. Mst. Bibi Sakina AIR 1964 SC 1254; *Bhim D
 Singh & Ors. v. Zile Singh & Ors.*, AIR 2006 P & H 195; *Food
 Corporation of India and Another v. Dayal Singh* 1991 PLJ
 425; *Kanak Ram & Ors. v. Chanan Singh & Ors.* (2007) 146
 PLR 498 – referred to.

2.2. A person pleading adverse possession has no E
 equities in his favour since he is trying to defeat the rights
 of the true owner. It is for him to clearly plead and
 establish all facts necessary to establish adverse
 possession. Though we got this law of adverse F
 possession from the British, it is important to note that
 these days English Courts are taking a very negative view
 towards the law of adverse possession. The English law
 was amended and changed substantially to reflect these
 changes, particularly in light of the view that property is G
 a human right adopted by the European Commission.
 The right to property is now considered to be not only
 constitutional or statutory right but also a human right.
 Human rights have already been considered in realm of
 individual rights such as right to health, right to H

- A livelihood, right to shelter and employment etc. But now human rights are gaining a multi faceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. [Paras 35, 36]
- B [230-D-H; 231-A-D]

Fairweather v. St. Marylebone Property Co [1962] 2 WLR 1020; [1962] 2 All ER 288; *Taylor v. Twinberrow* [1930] 2 K.B. 16; *Beaulane Properties Ltd. v. Palmer* (2005) 3 WLR 554 – referred to.

C

Fifth Amendment of the U.S. Constitution – a principle of a civilized society:

3. Another important development in the protection of property rights was the Fifth Amendment. James Madison was the drafter and key supporter for the Fifth Amendment. The Fifth Amendment states: “nor shall private property be taken for public use, without just compensation”. The main issue is to pay just compensation for acquiring the property. There are primarily two situations when a landowner may obtain compensation for land officially transferred to or depreciated by the government. First, an owner may be entitled to compensation when a governmental entity intentionally acquires private property through a formal condemnation proceeding and without the owner’s consent. The State’s power to take property is considered inherent through its eminent domain powers as a sovereign. Through the condemnation proceedings, the government obtains the necessary interest in the land, and the Fifth Amendment requires that the property owner be compensated for this loss. The second situation requiring compensation under Fifth Amendment occurs when the government has not officially acquired private property through a formal condemnation proceeding, but “nonetheless takes property by
- D
- E
- F
- G
- H

physically invading or appropriating it". Under this scenario, the property owner, at the point in which a "taking" has occurred, has the option of filing a claim against the government actor to recover just compensation for the loss. When the landowner sues the government seeking compensation for a taking, it is considered an inverse condemnation proceeding, because the landowner and not the government is bringing the cause of action. This law of adverse possession was inherited from the British. The Parliament may consider abolishing the law of adverse possession or at least amending and making substantial changes in law in the larger public interest. The Government instrumentalities – including the police – in the instant case have attempted to possess land adversely. This is a testament to the absurdity of the law and a black mark upon the justice system's legitimacy. The Government should protect the property of a citizen – not steal it. And yet, as the law currently stands, they may do just that. If this law is to be retained, according to the wisdom of the Parliament, then at least the law must require those who adversely possess land to compensate title owners according to the prevalent market rate of the land or property in question. This alternative would provide some semblance of justice to those who have done nothing other than sitting on their rights for the statutory period, while allowing the adverse possessor to remain on property. While it may be indefensible to require all adverse possessors – some of whom may be poor – to pay market rates for the land they possess, perhaps some lesser amount would be realistic in most of the cases. The Parliament may either fix a set range of rates or to leave it to the judiciary with the option of choosing from within a set range of rates so as to tailor the compensation to the equities of a given case. The Parliament must seriously consider at least to abolish "bad faith" adverse possession, i.e., adverse possession

A

B

C

D

E

F

G

H

- A achieved through intentional trespassing. Actually believing it to be their own could receive title through adverse possession sends a wrong signal to the society at large. Such a change would ensure that only those who had established attachments to the land through
- B honest means would be entitled to legal relief. In case, the Parliament decides to retain the law of adverse possession, the Parliament might simply require adverse possession claimants to possess the property in question for a period of 30 to 50 years, rather than a mere
- C 12. Such an extension would help to ensure that successful claimants have lived on the land for generations, and are therefore less likely to be individually culpable for the trespass (although their forebears might). A longer statutory period would also
- D decrease the frequency of adverse possession suits and ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotective owners lose title. Reverting to the facts of this case, if the Police department of the State with all its might is bent upon taking possession of any
- E land or building in a clandestine manner, then, perhaps no one would be able to effectively prevent them. It is our bounden duty and obligation to ascertain the intention of the Parliament while interpreting the law. Law and Justice, more often than not, happily coincide only rarely
- F we find serious conflict. The archaic law of adverse possession is one such. A serious re-look is absolutely imperative in the larger interest of the people. Adverse possession allows a trespasser – a person guilty of a tort, or even a crime, in the eyes of law - to gain legal title to
- G land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian
- H

citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. Time has come for change. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country. It is indeed a very disturbing and dangerous trend. It must be arrested without further loss of time in the larger public interest. No Government Department, Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case. There is an urgent need for a fresh look of the entire law on adverse possession. The Union of India is recommended to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law. [Paras 40-51] [235-E-H; 236-A-H; 237-A-H; 238-A-F]

4. This Special Leave Petition is dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand only) to be paid by the State of Haryana for filing a totally frivolous petition and unnecessarily wasting the time of the Court and demonstrating its evil design of grabbing the properties of lawful owners in a clandestine manner. The costs should be deposited within four weeks from the date of pronouncement of this judgment. In this petition, notice was not issued to the defendants, therefore, the costs is directed to be deposited with the National Legal Services Authority for utilizing the same to enable the poor litigants to contest their cases. [Para 52] [238-G-H; 239-A-B]

A Case Law Reference:

	AIR 1964 SC 1254	referred to	Para 12
	AIR 2006 P and H 195	referred to	Para 13
B	1991 PLJ 425	referred to	Para 20
	(2007) 146 PLR 498	referred to	Para 21
	(2009) 16 SCC 517	relied on	Para 34, 38
	[1962] 2 WLR 1020	referred on	Para 35
C	(1930) 2 K.B. 16	referred to	Para 35
	(2005) 3 WLR 554	referred to	Para 37

D CIVIL APPELLATE JURISDICTION : Special Leave
Petition (Civil) No. 28034 of 2011.

From the Judgment and Order dated 17.03.2009 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 3909 of 2008.

E Manjit Singh, AAG and Karnal Mohan Gupta for the Petitioner.

The Judgment of the Court was delivered by

F **DALVEER BHANDARI, J.** 1. People are often astonished to learn that a trespasser may take the title of a building or land from the true owner in certain conditions and such theft is even authorized by law.

G 2. The theory of adverse possession is also perceived by the general public as a dishonest way to obtain title to property. Property right advocates argue that mistakes by landowners or negligence on their part should never transfer their property rights to a wrongdoer, who never paid valuable consideration for such an interest.

H

3. The government itself may acquire land by adverse possession. Fairness dictates and commands that if the government can acquire title to private land through adverse possession, it should be able to lose title under the same circumstances. A

4. We have heard the learned counsel for the State of Haryana. We do not deem it appropriate to financially burden the respondents by issuing notice in this Special Leave Petition. A very vital question which arises for consideration in this petition is whether the State, which is in charge of protection of life, liberty and property of the people can be permitted to grab the land and property of its own citizens under the banner of the plea of adverse possession? B C

5. Brief facts, relevant to dispose of this Special Leave Petition are recapitulated as under: D

6. The State of Haryana had filed a Civil Suit through the Superintendent of Police, Gurgaon, seeking a relief of declaration to the effect that it has acquired the rights of ownership by way of adverse possession over land measuring 8 biswas comprising khewat no. 34, khata no. 56, khasra no. 3673/452 situated in the revenue estate of Hidayatpur Chhavni, Haryana. E

7. The other prayer in the suit was that the sale deed dated 26th March, 1990, mutation no. 3690 dated 22nd November, 1990 as well as judgment and decree dated 19th May, 1992, passed in Civil Suit No. 368 dated 9th March, 1991 are liable to be set aside. As a consequential relief, it was also prayed that the defendants be perpetually restrained from interfering with the peaceful possession of the plaintiff (petitioner herein) over the suit land. For the sake of convenience we are referring the petitioner as the plaintiff and the respondents as defendants. F G

8. In the written statement, the defendants raised a number H

- A of preliminary objections pertaining to estoppel, cause of action and mis-joinder of necessary parties. It was specifically denied that the plaintiff ever remained in possession of the suit property for the last 55 years. It was submitted that the disputed property was still lying vacant. However, the plaintiff recently occupied it by using force and thereafter have also raised a boundary wall of police line. It was denied in the written statement that the plaintiff acquired right of ownership by way of adverse possession qua property in question. The defendants prayed for dismissal of suit and by way of a counter claim also prayed for a decree for possession qua suit property be passed.

9. The Trial Court framed the following Issues in the suit.

1. Whether plaintiffs have become owner of disputed property by way of adverse possession? OPP
2. Whether sale deed 26.3.1990 and mutation no. 3690 dated 22.11.90 are null and void as alleged? OPP
3. Whether judgment and decree dated 19.05.92 passed in civil suit no. 368 dated 9.3.91 is liable to be set aside alleged? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form? OPP
5. Whether the plaintiff has no locus-standi to file the present suit? OPP
6. Whether the plaintiff has no cause of action to file the present suit? OPP
7. Whether the suit of the plaintiff is bad for misjoinder of necessary parties? OPP
8. Whether defendants no. 1 to 4 are rightful owners of disputed property on the basis of impugned sale

STATE OF HARYANA v. MUKESH KUMAR & ORS. 223
[DALVEER BHANDARI, J.]

deed dated 23.6.1990 registered on 3.7.1990? A
OPP

9. Whether defendants are entitled for possession of
disputed property? OPP

10. Relief. B

10. Issue No. 1 which relates to adverse possession and
issue No. 4 pertaining to maintainability were decided together.
According to the Trial Court, the plaintiff has failed to prove the
possession over the disputed property because the plaintiff C
could not produce any documentary evidence to prove this. On
the contrary, revenue records placed on the file shows that the
defendants are the owners in possession of disputed property.
The Trial Court observed that possession of State, as claimed
in the plaint for a continuous period of 55 years, stood falsified D
by the documents issued by the officials of the State.

11. The Trial Court also observed that despite claiming
adverse possession, there was no pleading qua denial of title
of the defendants by the plaintiff, so much so that the specific
day when the alleged possession of State allegedly became E
adverse against the defendants has not been mentioned in
order to establish the starting point of limitation could be
ascertained.

12. The Trial Court relied on the judgment of this Court in F
S.M. Karim v. Mst. Bibi Sakina AIR 1964 SC 1254 wherein this
Court has laid down that the adverse possession must be
adequate in continuity, in publicity and extent and a plea is
required at the least to show when possession becomes
adverse. The Court also held that long possession is not G
necessarily adverse possession.

13. The Trial Court also relied on a decision of the High
Court of Punjab and Haryana in the case of *Bhim Singh & Ors.*
v. Zile Singh & Ors., AIR 2006 P and H 195, wherein it was H
stated that no declaration can be sought by a plaintiff with

A regard to the ownership on the basis of adverse possession.

B 14. The Trial Court came to specific conclusion that despite the fact that the possession of the plaintiff over the disputed land is admitted on behalf of defendants, Issue No. 1 stand decided against the plaintiff. It was held that the suit of the plaintiff claiming ownership by way of adverse possession is not maintainable. Consequently, Issue No. 1 was decided against the plaintiff and Trial No. 4 was decided in favour of the defendants.

C 15. The Trial Court decided Issue Nos. 2, 3, 5 and 6 together and came to the definite conclusion that the plaintiff failed to prove its possession over the property in question. It was also held that the plaintiff had no *locus standi* to challenge the validity of the impugned sale deed, mutation as well as the judgment and decree because the plaintiff was neither the owner nor in possession of the property in dispute. Consequently, the plaintiff had no right to say that the impugned sale deed dated 26th March, 1990 was a sham transaction and the suit of mutation dated 22nd November, 1990 and, thereafter, D the judgment and decree dated 19th May, 1992 passed in Civil E Suit No. 386 dated 9th March, 1991 are liable to be set aside.

F 16. The Trial Court came to the conclusion that the plaintiff having no right or title in the suit property has neither *locus standi* nor cause of action to file the present suit. Issue Nos. 2 and 3 were decided against the plaintiff, whereas, Issue Nos. 5 and 6 were decided in favour of the defendants.

G 17. Regarding Issue Nos. 8 and 9, the Trial Court observed that once it is held that defendant Nos. 1 to 4 are owners of the disputed property, which is presently in possession of the plaintiff without any right, they (defendants) are entitled to its possession. Hence, Issue Nos. 8 and 9 were also decided in favour of the defendants.

H

STATE OF HARYANA v. MUKESH KUMAR & ORS. 225
[DALVEER BHANDARI, J.]

18. Issue No. 7 was not pressed and decided against the defendants. A

19. Regarding Issue No. 10 (relief) the Trial Court observed as under:

“As a sequel to the findings of this court on the issues mentioned above, the suit of the plaintiff stands dismissed, however, counter claim filed by defendants is decreed with costs to the effect that they are entitled to possession of land measuring 8 biswas comprising of khewat no. 34 khata no. 56 khasa no. 3673/452 situated in revenue estate of Hidayatpur Chhavni village now the part of known as Patel Nagar, Gurgaon. Decree sheet be drawn accordingly. File be consigned to the record room after due compliance.” B C

20. The plaintiff, aggrieved by the judgment of the Trial Court filed an appeal (Civil Appeal No. 33) before the learned Additional District Judge, Gurgaon. Learned Additional District Judge while deciding the appeal, relied on the judgment of the Punjab & Haryana High Court delivered in the case of *Food Corporation of India and Another v. Dayal Singh* 1991 PLJ 425, wherein it was observed that it does not behove the Government to take the plea of adverse possession against the citizens. D E

21. Learned Additional District Judge also relied on other judgments of Punjab & Haryana High Court in the cases of *Bhim Singh & Ors.* (supra) and *Kanak Ram & Ors. v. Chanan Singh & Ors.* (2007) 146 PLR 498 wherein it was held that a person in adverse possession of immovable property cannot file a suit for declaration claiming ownership and such a suit was not maintainable. F G

22. Before parting with the judgment the learned Additional District Judge observed regarding conduct of the plaintiff that the present suit was filed by State of Haryana by the then H

- A Superintendent of Police, Gurgaon on 11th May, 1996. It was also observed by the learned Additional District Judge that the Police department is for the protection of the people and property of the citizens and the police department had unnecessarily dragged the defendants in unnecessary litigation.
- B The appeal was dismissed with exemplary cost of Rs.25,000/

C 23. Unfortunately, despite serious strictures passed by the Court, the State of Haryana did not learn a lesson and preferred a Second Appeal (RSA No. 3909 of 2008) before the High Court of Punjab and Haryana, Chandigarh against the judgments and decrees of the two courts below.

D 24. The High Court, relying on the earlier judgments, observed that the welfare State which was responsible for the protection of life and property of its citizens, was in the present case, itself trying to grab the land/property of the defendants under the garb of plea of adverse possession and hence the action of the plaintiff is deplorable and disgraceful.

E 25. Unfortunately, the State of Haryana, is still not satisfied with the three strong judgments by three different forums given against the State and is still quite anxious and keen to grab the property of the defendants in a clandestine manner on the plea of adverse possession.

F 26. In a democracy, governed by rule of law, the task of protecting life and property of the citizens is entrusted to the police department of the government. In the instant case, the suit has been filed through the Superintendent of Police, Gurgaon, seeking right of ownership by adverse possession.

G 27. The revenue records of the State revealed that the disputed property stood in the name of the defendants. It is unfortunate that the Superintendent of Police, a senior official of the Indian Police Service, made repeated attempts to grab the property of the true owner by filing repeated appeals before

H

different forums claiming right of ownership by way of adverse possession. A

28. The citizens may lose faith in the entire police administration of the country that those responsible for the safety and security of their life and property are on a spree of grabbing the properties from the true owners in a clandestine manner. B

29. A very informative and erudite Article was published in Nevada Law Journal Spring 2007 with the title '*Making Sense Out of Nonsense: A Response to Adverse Possession by Governmental Entities*'. The Article was written by Andrew Dickal. Historical background of adverse possession was discussed in that article. C

Historical background D

30. The concept of adverse possession was born in England around 1275 and was initially created to allow a person to claim right of "seisin" from his ancestry. Many felt that the original law that relied on "seisin" was difficult to establish, and around 1623 a statute of limitations was put into place that allowed for a person in possession of property for twenty years or more to acquire title to that property. This early English doctrine was designed to prevent legal disputes over property rights that were time consuming and costly. The doctrine was also created to prevent the waste of land by forcing owners to monitor their property or suffer the consequence of losing title. E F

31. The concept of adverse possession was subsequently adopted in the United States. The doctrine was especially important in early American periods to cure the growing number of title disputes. The American version mirrored the English law, which is illustrated by most States adopting a twenty-year statute of limitations for adverse possession claims. As America has developed to the present date, property rights have become G H

- A increasingly more important and land has become limited. As a result, the time period to acquire land by adverse possession has been reduced in some States to as little as five years, while in others, it has remained as long as forty years. The United States has also changed the traditional doctrine by preventing the use of adverse possession against property held by a governmental entity.

32. During the colonial period, prior to the enactment of the Bill of Rights, property was frequently taken by states from private land owners without compensation. Initially, undeveloped tracts of land were the most common type of property acquired by the government, as they were sought for the installation of public road. Under the colonial system it was thought that benefits from the road would, in a newly opened country, always exceed the value of unimproved land.

33. The doctrine of adverse possession arose in an era where lands were vast particularly in the United States of America and documentation sparse in order to give quietus to the title of the possessor and prevent fanciful claims from erupting. The concept of adverse possession exists to cure potential or actual defects in real estate titles by putting a statute of limitation on possible litigation over ownership and possession. A landowner could be secure in title to his land; otherwise, long-lost heirs of any former owner, possessor or lien holder of centuries past could come forward with a legal claim on the property. Since independence of our country we have witnessed registered documents of title and more proper, if not perfect, entries of title in the government records. The situation having changed, the statute calls for a change.

34. In *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others* (2009) 16 SCC 517 (one of us Bhandari, J.), this Court had an occasion to examine the English and American law on "adverse possession". The relevant paras of that judgment (Paras 24 and 26 to 29) are reproduced as under:

STATE OF HARYANA v. MUKESH KUMAR & ORS. 229
[DALVEER BHANDARI, J.]

"24. In a relatively recent case in *P.T. Munichikkanna Reddy v. Revamma* (2007) 6 SCC 59, this Court again had an occasion to deal with the concept of adverse possession in detail. The Court also examined the legal position in various countries particularly in English and American systems. We deem it appropriate to reproduce relevant passages in extenso. The Court dealing with adverse possession in paras 5 and 6 observed as under: (SCC pp. 66-67)

"5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. (See *Downing v. Bird* 100 So 2d 57 (Fla 1958), *Arkansas Commemorative Commission v. City of Little Rock* 227, Ark 1085 : 303 SW 2d 569 (1957); *Monnot v. Murphy* 207 NY 240 : 100 NE 742 (1913); *City of Rock Springs v. Sturm* 39 Wyo 494 : 273 P 908 : 97 ALR 1 (1929).)

6. Efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which right to access the court expires through efflux of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a

- A specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or colour of title. (See *American Jurisprudence*, Vol. 3, 2d, p. 81. *It is important to keep in mind while studying the American notion of adverse possession, especially in the backdrop of limitation statutes, that the intention to dispossess cannot be given a complete go-by.*
- B *Simple application of limitation shall not be enough by itself for the success of an adverse possession claim."*
- C

35. A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. Though we got this law of adverse possession from the British, it is important to note that these days English Courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right adopted by the European Commission. This Court in *Revamma* (supra) observed that to understand the true nature of adverse possession, *Fairweather v. St Marylebone Property Co* [1962] 2 WLR 1020 : [1962] 2 All ER 288 can be considered where House of Lords referring to *Taylor v. Twinberrow* [1930] 2 K.B. 16 termed adverse possession as a negative and consequential right effected only because somebody else's positive right to access the court is barred by operation of law. As against the rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property.
- D
- E
- F
- G
- H

STATE OF HARYANA v. MUKESH KUMAR & ORS. 231
[DALVEER BHANDARI, J.]

36. The right to property is now considered to be not only constitutional or statutory right but also a human right. Human rights have already been considered in realm of individual rights such as right to health, right to livelihood, right to shelter and employment etc. But now human rights are gaining a multi faceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context.

37. The changing attitude of the English Courts is quite visible from the judgment of *Beaulane Properties Ltd. v. Palmer* (2005) 3 WLR 554. The Court here tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimension of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights. With the expanding jurisprudence of the European Courts of Human Rights, the Court has taken an unkind view to the concept of adverse possession.

38. Paragraphs from 26 to 29 of *Hemaji Waghaji Jat* (supra) are set out as under:-

26. With the expanding jurisprudence of the European Court of Human Rights, the Court has taken an unkind view to the concept of adverse possession in the recent judgment of *JA Pye (Oxford) Ltd. v. United Kingdom* (2005) 49 ERG 90 which concerned the loss of ownership of land by virtue of adverse possession. In the said case, "the applicant company was the registered owner of a plot of 23 hectares of agricultural land. The owners of a property adjacent to the land, Mr and Mrs Graham (the Grahams) occupied the land under a grazing agreement. After a brief exchange of documents in December 1983 a chartered surveyor acting for the applicants wrote to the Grahams noting that the grazing agreement was about to expire and requiring them to vacate the land." The Grahams continued to use the whole

A of the disputed land for farming without the permission of
the applicants from September 1998 till 1999. In 1997, Mr
Graham moved the Local Land Registry against the
applicant on the ground that he had obtained title by
adverse possession. The Grahams challenged the
B applicant company's claims under the Limitation Act, 1980
(the 1980 Act) which provides that a person cannot bring
an action to recover any land after the expiration of 12
years of adverse possession by another.

C 27. The judgment was pronounced in *JA Pye*
(*Oxford*) *Ltd. v. Graham* (2000) 3 WLR 242 : 2000 Ch 676.
The Court held in favour of the Grahams but went on to
observe the irony in law of adverse possession. The court
observed that the law which provides to oust an owner on
the basis of inaction of 12 years is "illogical and
D disproportionate". The effect of such law would "seem
draconian to the owner" and "a windfall for the squatter".
The court expressed its astonishment on the prevalent law
that ousting an owner for not taking action within limitation
is illogical. The applicant company aggrieved by the said
E judgment filed an appeal and the Court of Appeal reversed
the High Court decision. The Grahams then appealed to
the House of Lords, which, allowed their appeal and
restored the order of the High Court.

F 28. The House of Lords in *JA Pye (Oxford) Ltd. v.*
Graham (2003) 1 AC 419 : (2002) 3 WLR 221 : (2002) 3
All ER 865 (HL), observed that the Grahams had
possession of the land in the ordinary sense of the word,
and, therefore, the applicant company had been
dispossessed of it within the meaning of the Limitation Act
G of 1980.

29. We deem it proper to reproduce the relevant
portion of the judgment in *P.T. Munichikkanna Reddy v.*
Revamma (2007) 6 SCC 59: (SCC p. 79, paras 51-52)
H

"51. Thereafter the applicants moved the European Commission of Human Rights (ECHR) alleging that the United Kingdom law on adverse possession, by which they lost land to a neighbour, operated in violation of Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention').

52. It was contended by the applicants that they had been deprived of their land by the operation of the domestic law on adverse possession which is in contravention with Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention'), which reads as under:

'Every natural or legal person is entitled to the peaceful enjoyment of his possession. No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

This Court in *Revamma case* also mentioned that the European Council of Human Rights importantly laid down three-pronged test to judge the interference of the Government with the right of "peaceful enjoyment of property": (SCC p. 79, para 53)

"53. ... [In] *Beyeler v. Italy* [GC] No. 33202 of 1996 §§ 108-14 ECHR 2000-I, it was held that the 'interference' should comply with the principle of lawfulness and pursue

A a legitimate aim (public interest) by means reasonably proportionate to the aim sought to be realised.”

The Court observed: (*Revamma case* 79-80, paras 54-56)

B “54. ... ‘The question nevertheless remains whether, even having regard to the lack of care and inadvertence on the part of the applicants and their advisers, the deprivation of their title to the registered land and the transfer of beneficial ownership to those in unauthorized possession struck a fair balance with any legitimate public interest served.

D In these circumstances, the Court concludes that the application of the provisions of the 1925 and 1980 Acts to deprive the applicant companies of their title to the registered land imposed on them an individual and excessive burden and upset the fair balance between the demands of the public interest on the one hand and the applicants’ right to the peaceful enjoyment of their possessions on the other.

E There has therefore been a violation of Article 1 of Protocol 1.’

F 55. The question of the application of Article 41 was referred for the Grand Chamber Hearing of the ECHR. This case sets the field of adverse possession and its interface with the right to peaceful enjoyment in all its complexity.

G 56. Therefore it will have to be kept in mind the courts around the world are taking an unkind view towards statutes of limitation overriding property rights.”

39. In *Hemaji Waghaji Jat case*, this Court ultimately observed as under:

H “32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession

STATE OF HARYANA v. MUKESH KUMAR & ORS. 235
[DALVEER BHANDARI, J.]

which ousts an owner on the basis of inaction within limitation 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 had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation."

Fifth Amendment of the U.S. Constitution – a principle of a civilized society

40. Another important development in the protection of property rights was the Fifth Amendment. James Madison was the drafter and key supporter for the Fifth Amendment. The Fifth Amendment states: "nor shall private property be taken for public use, without just compensation". The main issue is to pay just compensation for acquiring the property. There are primarily two situations when a landowner may obtain compensation for land officially transferred to or depreciated by the government. First, an owner may be entitled to compensation when a governmental entity intentionally acquires private property through a formal condemnation proceeding and without the owner's consent. The State's power to take property is considered inherent through its eminent domain powers as a sovereign. Through the condemnation proceedings, the government obtains the necessary interest in the land, and the Fifth Amendment requires that the property owner be compensated for this loss.

- A 41. The second situation requiring compensation under Fifth Amendment occurs when the government has not officially acquired private property through a formal condemnation proceeding, but “nonetheless takes property by physically invading or appropriating it”. Under this scenario, the property owner, at the point in which a “taking” has occurred, has the option of filing a claim against the government actor to recover just compensation for the loss. When the landowner sues the government seeking compensation for a taking, it is considered an inverse condemnation proceeding, because the landowner and not the government is bringing the cause of action.

- C 42. We inherited this law of adverse possession from the British. The Parliament may consider abolishing the law of adverse possession or at least amending and making substantial changes in law in the larger public interest. The Government instrumentalities – including the police – in the instant case have attempted to possess land adversely. This, in our opinion, is a testament to the absurdity of the law and a black mark upon the justice system's legitimacy. The Government should protect the property of a citizen – not steal it. And yet, as the law currently stands, they may do just that. If this law is to be retained, according to the wisdom of the Parliament, then at least the law must require those who adversely possess land to compensate title owners according to the prevalent market rate of the land or property in question.
- E This alternative would provide some semblance of justice to those who have done nothing other than sitting on their rights for the statutory period, while allowing the adverse possessor to remain on property. While it may be indefensible to require all adverse possessors – some of whom may be poor – to pay market rates for the land they possess, perhaps some lesser amount would be realistic in most of the cases. The Parliament may either fix a set range of rates or to leave it to the judiciary with the option of choosing from within a set range of rates so as to tailor the compensation to the equities of a given case.

- G 43. The Parliament must seriously consider at least to

abolish "bad faith" adverse possession, i.e., adverse possession achieved through intentional trespassing. Actually believing it to be their own could receive title through adverse possession sends a wrong signal to the society at large. Such a change would ensure that only those who had established attachments to the land through honest means would be entitled to legal relief.

44. In case, the Parliament decides to retain the law of adverse possession, the Parliament might simply require adverse possession claimants to possess the property in question for a period of 30 to 50 years, rather than a mere

12. Such an extension would help to ensure that successful claimants have lived on the land for generations, and are therefore less likely to be individually culpable for the trespass (although their forebears might). A longer statutory period would also decrease the frequency of adverse possession suits and ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotective owners lose title.

45. Reverting to the facts of this case, if the Police department of the State with all its might is bent upon taking possession of any land or building in a clandestine manner, then, perhaps no one would be able to effectively prevent them.

46. It is our bounden duty and obligation to ascertain the intention of the Parliament while interpreting the law. Law and Justice, more often than not, happily coincide only rarely we find serious conflict. The archaic law of adverse possession is one such. A serious re-look is absolutely imperative in the larger interest of the people.

47. Adverse possession allows a trespasser – a person guilty of a tort, or even a crime, in the eyes of law - to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is,

A logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible.

B 48. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.

C 49. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country.

D 50. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No Government Department, Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.

E 51. In our considered view, there is an urgent need for a fresh look of the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.

G 52. This Special Leave Petition is dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand only) to be paid by the State of Haryana for filing a totally frivolous petition and unnecessarily wasting the time of the Court and demonstrating its evil design of grabbing the properties of lawful owners in a

H

STATE OF HARYANA v. MUKESH KUMAR & ORS. 239
[DALVEER BHANDARI, J.]

clandestine manner. The costs be deposited within four weeks from the date of pronouncement of this judgment. In this petition, we did not issue notice to the defendants, therefore, we direct that the costs be deposited with the National Legal Services Authority for utilizing the same to enable the poor litigants to contest their cases.

A

B

53. This Special Leave Petition being devoid of any merit is accordingly dismissed.

D.G. Special Leave Petition dismissed.