

Legal Aspects of Real Estate Valuation in India

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Abstract

Issues over real estate are not limited to transaction process associated with property buying and selling but a number of disputes can occur in other aspects of property law such as boundary disputes, trespass, nuisance, encroachment, transferring property, rent fixation, division of property, land acquisition etc. A set of rules in terms of laws and acts are drafted in any country for smooth functioning of its judicial system for issues related to real estate. Indian judicial system refers to a number of standard laws and acts specially drafted for land and buildings. A detailed study of few such acts applicable to Indian real estate sector is carried out. An effort has been made to relate each act with the Supreme Court or High Court case judgments for a better understanding.

Keywords: Real estate, property law, property acts, judgment, valuation.

1.0 Introduction

Value of a real property is its current worth in an open market. The real estate sector in India has assumed growing importance with the liberalization of the economy. The growth in residential real estate market has been largely driven by rising disposable incomes, a rapidly growing middle class, fiscal incentive on both interest and principal payments for housing loans, demanding expectations of aware customers backed up by flourishing IT sector, automobile, education, hospitality etc. (Sandbhor, S.S. et. al., 2013). The real estate sector has grown to such a monetary size that even minute variations have significant effect on the country's economic development (Dikmen S.U. et. al., 2012). Land and property are main components of real estate whose value varies due to demand and supply conditions (French N., 2004). Housing, being one of the basic needs of human, accounts to high percentages of transactions per year (Ioannides Y. M., 2003). These transactions are based on laws

and regulations laid down by the competent authorities of the particular nation. Transactions may include buying, selling, renting, leasing, dividing the property into parts etc. There are movable and immovable assets which need to be valued. A real property is a type of immovable property. Land related laws deal with the rights to use, alienate, or exclude others from land. These rights associated with a property are referred to as real estate. Land use agreements, including renting, are an important intersection of property and contract law. There are contractual limitations on ownership usually contained in deeds such as easements and leases or mortgage instruments.

2.0 Legal Aspects of Real Property Valuation

The real estate is subjected to various government taxes and as such, their valuations are critically analyzed and examined by competent authorities and courts. As a matter of fact, the valuation of real estate has proved to be the burning problem and many test cases are pending in various courts of India for the interpretation of some of the fundamental principles of valuation of real properties. Depending upon the circumstances and conditions of each individual case, various court judgments are available with respect to different aspects of valuations of real estate (Rangwala S.C., 1978). An attempt has been made to explain the legal binding related with a property.

The valuation of real estate is required to provide a quantitative measure of the benefit and liabilities accruing from the ownership of the real estate (Pagourtzi E., et al, 2003). Property valuations are often required for property tax and/or insurance estimations, sales transactions and land planning situations (Chaphalkar N.B. & Sandbhor S.S., 2013). Real estate assets come under the purview of valuers for valuation, which have to be done within the legal frameworks of constitution and legislative laws. Valuation complexities and valuation practices, determine the monetary value of assets keeping in view the factors for consideration such as, legal frame of right to own property; legal frame of right to own, retain and to dispose off the property. These legal frames account for purchase and sale of assets, marketing and mortgaging of assets, partition and disposal, leasing and probate activities and their respective valuation of assets under the existing legal frames (Vasudeva R.Y., 2013). A brief about these acts governing valuation procedures is given below.

3.0 Acts Related To Real Property Valuation

In India, there are five important acts which limit the use of land (urban land ceiling act), state procedures to be followed for transferring the property's ownership (transfer of property act), define minimum rent to be levied (rent control act), state procedure and rules for acquiring land for government purposes (land acquisition act) and registration act. These acts are discussed with relevant Indian Supreme Court and High Court landmark judgments.

3.1 The Urban Land (Ceiling and Regulation) Act, 1976 (Revised 1999)

The Urban Land (Ceiling and Regulation) Act, 1976 was enacted to impose a ceiling on vacant land in urban agglomerations for the acquisition of land in excess of the ceiling limit. The Act helps to regulate the construction of buildings on such land in excess and for matters connected therewith. The said Act prescribes the maximum ceiling to which the land can be retained by the owner and determination of the surplus land and transfer under Section 9 of the Act, 1976, and the State would acquire the vacant land in excess of the ceiling limit under Section 10 of the Act, 1976.

In case of *Sulochana Chandrakant Galande vs Pune Municipal Transport and other* [8 SCC 467 (2010)], the facts were as follows. Act came into force on 17th Feb 1976. The land under question was included in the urban area residential zone with effect from 17th May 1976, by extending the limits of the Municipal Corporation. The suit land was acquired under the Act, 1976, in the years 1978-1979 and its possession was taken. The appellant preferred a revision under Section 34 of the Act, contending that the land ought not to have been acquired under the Act, on the ground that on the date of commencement of the Act, the suit land was not within the limits of urban area.

As per the Act, once the land is acquired, it vests in the state free from all encumbrances and cannot be divested. It is not the concern of the land owner whether the land is being used for the purpose for which it was acquired or for any other purpose. He has a right to get compensation only for the same. The law is that the land in dispute could be subjected to the provisions of the Act, 1976, with effect from the date on which the suit land came within the limits of the Municipal Corporation. The Act stood repealed in 1999, but the proceedings pending in any court would stand abated provided the tenure holder was in possession of the land on the date of the commencement of the Act 1999. This made it clear that the appellant is not entitled for any relief whatsoever as per the law and the state has a right to change user. The appeal lacked merit and was accordingly dismissed by Supreme Court of India.

3.2 Transfer of property act 1882

Transfer of property act 1882 lays down the general principles of transferring property and has provisions for sale, exchange, mortgage, lease, lien and gifting a property. Transfer of property means an act by which a property is conveyed by a living person to other living persons. Every person competent to contract is competent to transfer such property either wholly or in part, and either absolutely or conditionally.

In *Burmah Shell Oil Distributing vs Khaja Midhat Noor and Others* [AIR 1988 SC 1470] case, a lease deed was executed between lessee and lessor respondent in respect of demised land for a period of 10 years, with a right for renewal for a term of five years and with permission to sublease. The lessee subleased the premises to the petitioner for running a petrol pump. Though lease period expired lessor continued to accept the rent from month to month and no fresh lease deed was executed. Lease was treated as monthly lease. A notice to lessee was given by lessor terminating the

lease and even after receipt of notice; vacant possession of lease property was not given to lessor.

A suit was filed by lessor for eviction against the lessee. Petitioner contested the proceedings and contended that no notice terminating tenancy was received by it and notice was invalid. Trial court dismissed the suit holding that the notice in this case was invalid. Patna High Court held that the right of tenancy was automatically determined on the expiry of ten years. Thereafter it was renewed from month to month which could be terminated by giving a valid notice. The lessee was directed to hand over the property, and hence it was a valid notice of termination of the lease under section 106 of the Transfer of Property Act and lessor's appeal was allowed. The sub lessee filed a special leave petition wherein Supreme Court held that in view of section 107 of the Transfer of Property Act. In absence of a registered instrument, it must be monthly lease. The petition was dismissed by the Supreme Court.

3.3 The land acquisition act 1894

The land acquisition act 1894 authorizes government to acquire land for public purposes. These may include planned development, provisions for town or rural planning, provision of residences to the poor or landless and for carrying out any scheme of the government. The historic legislation of land acquisition act 1894 would provide just and fair compensation to farmers while ensuring that no land could be acquired forcibly. It has been replaced by the New Land Acquisition, Rehabilitation and Resettlement Act, 2012. The new law stipulates mandatory consent of at least 70 per cent for acquiring land for public-private-partnership projects and 80 per cent for acquiring land for private companies. It ensures compensation upto four times the market value in rural areas and twice the market value in urban areas. Further, no land acquisition is allowed in scheduled areas without the consent of gram sabha, no dispossession until all payments are made and alternative sites for rehabilitation and resettlement are made and compensation to those who are dependent on the land for their livelihood (Rama Murthy, 2014).

In case of Union of India & Anr vs Smt.Shanti Devi Etc [AIR 1983 SC 1190], the land acquisition officer, based on previous experience of similar land, adopted rule of 20 years purchase for proper compensation for land to be acquired. With net annual profit per unit of land of the best category as INR 50, value of one unit was calculated to be INR 1,000 as per principle of capitalization. Since lands of similar quality were being sold at INR 300 per unit, the officer considered average i.e. INR 650 as the correct compensation.

The claimants referred the case to the civil court for the determination of proper compensation. The reason given by the officer for reducing the compensation from INR 1,000 to INR 650 was rejected and hence determined the compensation as INR 1,000. The High Court confirmed the rates given by district court after the remand fixed by the District Judge. The lands involved were all agricultural lands or barren lands on which no agricultural operations could be carried on and there were no potential buyers. The appeals were hence accordingly allowed in part by applying fifteen years purchase rule by the Supreme Court of India.

3.4 Registration act 1908

The purpose of registration act 1908 is the conservation of evidence, assurances, title, publication of documents related to a property and prevention of fraud through proper registration and documentation. It details the formalities for registering an instrument. All property related deals like sales, mortgages, leases, gifts and exchanges are required to be registered by virtue of the Transfer of Property Act. Registration act makes it mandatory to have all the documents in writing.

The appellant in *D.R. Rathna Murthy vs Ramappa* [(2011) 1 SCC 158] case had purchased the land in question vide registered sale deed for a consideration of INR 10,000/-. On the very next day, the appellant sold the said land vide registered sale deed to the defendant for consideration of INR 10,000/- only and delivered the possession to him. The appellant subsequently served a legal notice upon the respondent demanding the reconveyance of the suit property on the ground that registered sale deed executed in favor of respondent was a conditional sale deed and appellant had a right to repurchase the sale land for the same consideration of Rs.10,000/- within a period of ten years from the date of execution of the sale deed. The said suit was contested by the respondent contending that there was an absolute sale deed in his favor; the term of reconveyance had been fraudulently inserted by the appellant after the execution of the document. The High Court holding that it was absolute sale, upheld the trial court's order of dismissal of suit.

After examining the certified copy of the said sale deed, it was observed that the word "avadhi" had been inserted at three places in the margin of the sale deed and had not been attested by the executant. Insertion had been made to convert the absolute sale deed into a conditional sale deed without the consent and knowledge of the respondent. Hence they cannot be binding on the respondent and the terms of contract included by these additions cannot be taken note of. Hence the appeal was dismissed by Supreme Court.

3.5 Maharashtra Rent control Act 1999

Rent legislation provides clauses for payment of fair rent to landlords and protection of tenants against eviction. Tenants occupying properties since 1947 continue to pay rents fixed then, regardless of inflation and the realty boom. Standard rent means standard rent fixed by the court plus an increase of 5%; or the rent at which the premises were first let on or after 1-10-1987. Rent in excess of standard rent is illegal.

Allowable increase in rent as per the Act:

- a) 4% p.a. from the date of the commencement of the Act;
- b) 15% p.a. for improvements and alterations other than tenantable repairs which the landlord is required to carry out, provided 70% of the tenants consent in writing;
- c) 25% p.a. for special or structural repairs, exclusive of any repairs, exclusive of any repairs carried out under the MHADA Act.

In *Mukta Ashok Khankhoje vs Namdeorao Tukaram Khutaphale* [2004 (1) MhLj 941] case, the respondent had given a notice terminating the tenancy of the defendant with effect from 31st Aug 2000. In January and April 2001, the respondent accepted

the amounts from the defendant which according to him were paid towards the rent and according to respondent the same were towards the damages for use and occupation. The defendant filed an application before the Small Causes Court for dismissal of suit on the ground that the respondent had accepted the rent after the service of notice terminating the tenancy of the defendant and the acceptance of rent was a waiver of notice of termination of tenancy on his part.

The provisions of Section 16 of Maharashtra Rent Control Act incorporate various grounds on which the landlord can seek the eviction of a tenant and the eviction can be granted by the court only if the conditions laid down in those provisions are satisfied. Unless these conditions are satisfied, there can be no termination. Hence, the notice under Section 106 of the Transfer of Property Act was not necessary in the present case. The learned counsel for defendant vehemently argued that the notice was actually issued by the respondent and thereafter the rent was accepted which amounts to waiver. However, when the notice itself was redundant there was no question of any waiver. It is held by the Supreme Court that the trial court rightly rejected the application of the defendant and rejected the appeal.

4.0 Discussion

Valuation of immovable property is not merely calculation and it cannot be done in isolation. It has to be in relation with existing laws related to land and property. People perceive valuation as merely calculation of value of any property. But it has strong connection with law. There are numerous laws which govern the valuation of property. In this paper, an attempt is made to discuss the most significant laws with the help of landmark judgments. The following discussion would guide the reader about the aspect of valuation affected by a particular law.

From case of Sulochana Chandrakant Galande vs Pune Municipal Transport and other, it is observed that date of valuation plays an important role in land acquisition cases. Date of enactments and amendments in acts should be considered. For valuation of lands, applicability of urban land and ceiling act should be checked. Also, lands in fringe or outskirts areas of municipal corporation should be given due consideration since they are more prone to be included in corporation limits in near future and stand a chance of acquisition under ceiling act. In case of *Burmah Shell Oil Distributing vs Khaja Midhat Noor and Others*, of leased or subleased property, the lease deed should be checked thoroughly. Period of lease whether yearly lease or monthly lease should be confirmed as observed. Also, registered instruments stating the same should be checked before valuing such properties. From case of *Union of India & Anr vs Smt. Shanti Devi Etc*, it is seen that while valuing land, sales comparison should be applied only when the potential of the land in question and potential and characteristics of valued land are identical. Correct principle of years purchase rule should be applied to arrive at value of the land when adopting principle of capitalization to avoid dispute. Case of *D.R. Rathna Murthy vs Ramappa*, shows that any transaction related to real property has to be documented by proper registration. A duly registered document should be checked prior to valuation of property. Also, before buying and selling of property, property's title should be

confirmed from the registered document. Proper registration provides details of the original owners and also details of the property in question and forms the basis for any property related transaction as well as for legal affairs related to that property. As seen from case of Mukta Ashok Khankhoje vs Namdeorao Tukaram Khutaphale, to compute value of properties by rental method, state acts for rent control should be checked to find accurate rent from a property. Date on which property was rented, date of valuation, period of tenancy plays important role in calculating value using rental method.

5.0 Conclusion

It is understood that the dispute is always about the boundary cases. This boundary may be of time, like date of amendment to existing law or enactment of new law. It may be of area like boundary of existing city limits or may be of concept where the domain knowledge changes. In case of clear cut demarcation, interpretation of rules is easier but the interpretation of application of law to grey area which lies between white and black is a real challenge. The case laws discussed represent these grey areas which may not be representative but throws light on the research related to valuation and gives a different angle of study for looking towards valuation which is ignored by the researchers.

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Annexure:

I] Section 9 and section 34 in The Urban Land (Ceiling and Regulation) Act, 1976

Section 9: After the disposal of the objections, if any, received under sub-section (4) of section 8, the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in sub-section (3) of section 8 on the person concerned and where such vacant land is held under a lease, or a mortgage, or a hire-purchase agreement, or an irrevocable power of attorney, also on the owner of such vacant land.

Section 34: Revision by State Government.—The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred under section 12 or section 30 or section 33 for the purpose of satisfying itself as to the legality of propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit: Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.

II] Section 106 and 107 of Transfer of property act 1882

Section 106 - in absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be lease from year to year , terminable on the part of the either the lessor or lessee ,by six month's notice expiring with the end of a year of the tenancy , and a lease of

immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either the lessor or lessee, by fifteen days notice expiring with the end of the month of tenancy. Every notice under this section must be in writing, signed by or on behalf of the person giving it, either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence, or if such tender or delivery is not practicable affixed to the conspicuous part of the property.

Section 107 - A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made by registered instrument only.

All other leases of immovable property may be made either by registered instrument or by oral agreement accompanied by delivery of possession, where a lease of immovable property is made by a registered instrument, such instrument or where there are more instruments than one; each instrument shall be executed by both the lessor and lessee.

Provided that the state Government may, from time to time, by notification in the official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or by reserving yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

III] Section 23: Land acquisition act 1894

Matters to be considered in determining compensation:

1. In determining the amount of compensation to be acquired for the land or any interest therein acquired under this Act, the Arbitrating Authority shall take into consideration the following:
 - a) The market value of the land in question as laid down in section 33, subsection (2) of the Nagaland Town and Country Planning Act, 1966,
 - b) The use to which the land was put on the date of publication of the notification under section 32 of the Nagaland Town and Country Planning Act, 1966.
 - c) The damages sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time when the possession was taken from him.
 - d) The damage, if any, sustained by the person interested at the time of the possession being taken from him by reason of severing such land from his other land.
 - e) The damage, if any, sustained by the person interested at the time of the possession being taken from him of the land by reason of the acquisition injuriously affecting his other property movable or immovable in any other manner or his earnings.
 - f) If, a consequence of the acquisition of land the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

IV] Section 20 of Registration act 1908

"Documents containing interlineations, blanks, erasures or alterations.-

1. The registering officer may in his discretion refuse to accept for registration any document in which any interlineations, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineations, blank, erasure or alteration.
2. If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineations, blank, erasure or alteration."

V] Section 16 of Maharashtra Rent control act 1999**When landlord may recover possession:**

1. Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied-
 - a. that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882;
 - b. that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;
 - c. that the tenant, his agent, servant, persons inducted by tenant or claiming under the tenant or, any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighboring occupier, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes or that the tenant has in respect of the premises been convicted of an offence of contravention
 - d. that the tenant has given notice to quit and in consequence of that notice, the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession of the premises; or
 - e. that the tenant has, unlawfully sub-let or given on license, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or
 - f. that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after commencement of this Act, to be in such service or employment; or
 - g. for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or
 - h. for carrying out repairs which cannot be carried out without the premises being vacated; or
 - i. for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or

- j. that the premises let consist of a tenement or tenements on the terrace of a building such tenement or tenements being only in part of the total area of the terrace, and that the premises or any part thereof are required by the landlord for the purpose of the demolition thereof and erection or raising of a floor or floors on such terrace
- k. for the immediate purpose of demolition ordered by any municipal authority or other competent authority; or
- l. that where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building, such land is required by the landlord for the erection of a new building which a municipal authority has approved or permitted him to build thereon; or
- m. that the rent charged by the tenant for the premises or any part thereof which are sub-let is in excess of the standard rent and permitted increases in respect of such premises or part or that the tenant has received any fine, premium other like sum of consideration in respect of such premises or part; or
- n. that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

