

4. INSTRUCTION ON ADVERSE POSSESSION

CIRCULAR

Uninterrupted continuous possession of a person for 12 years prescribes acquisition of lawful title in the land of a rightful owner. This proposition has been totally misunderstood and indiscriminately made use of, while recording "Adverse" (forcible) possession -----Bengali----- In view of unviserecording of -----Bengali----- in khas land of the raiyats merely for possession over 12 years or more, application of the ceiling laws of Chapter IIB of the L.R. Act suffers a set back. While recording such adverse possession, the following points should be kept in mind.

1. Adverse possession must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the lawful owner, or in other words immediate evidence will be available to the effect that the person is adversely possessing the land of the rightful owner. The possession must be actual and not constructive.
2. Ouster of the non-possessing owner by the person in possession should be made by some overt and notorious acts.
3. There must be evidence of open assertion of hostile title by overt hostile acts, coupled with exclusive possession and enjoyment by one within the explicit knowledge and without the permission of the owner, so as to constitute a case of ouster.
4. Before a "right" could be said to be acquired or lost by "adverse" possession, it must have been subject of possession by a man without title as against the person with a rightful title.
5. Burden of ouster is on the person claiming to displace the lawful title of the owner by "adverse" possession. By merely cherishing a hostile title such possession cannot be "adverse".
6. If any person enters upon the land of a rightful owner surreptitiously and stealthily and begins to possess or cultivate it and enjoys the profits arising therefrom taking advantage of the owner's staying away at a remote place, such possession is not "adverse" to the real owner.

Such condition having been fulfilled and requirement having been sufficiently met adverse possession should be recorded. Owner's right to such adverse possessor in the Court for recovery of possession will continue upto 12 years in case of private land.

P. Bandyopadhyay
Settlement Officer,
Malda-West Dinajpur, Malda.

Memorandum No. XV/20(C) 8283(4)/'80

dated, Malda, the 11th Nov. 1980

Copy forwarded to the Settlement Officer, Koch Bihar

P. Bandyopadhyay
Settlement Officer,
Malda-West Dinajpur, Malda

**Government of West Bengal
Office of the Director of Land Records & Surveys &
Jt. Land Reforms Commissioner, W.B.
35, Gopalnagar Road, Alipur, Calcutta-27.**

Memo No.26/4794/C/94

dated, Alipur the 19th Sept. '94.

**The District Land & Land Reforms Officer,
Uttar Dinajpur.**

Sub : Process of recording the names of adverse possessors in L.R. Khatian.

A reference is invited to the memo. No.478/94 dt.17.6.94 of the Block Land & Land Reforms Officer, Islampur, Uttar Dinajpur on the above mentioned subject.

This is related to some serious problems as recorded by the B.L.&L.R.O Islampur in the matter of recording the names of the adverse possessors of lands and some illegal occupation of lands by some persons in Islampur Block under Islampur Sub-division.

It appears that in R.S. record of rights prepared under the provision of W.B.E.A. Act the names of the then forcibly occupiers of the land were recorded in Col.23 of R.S. Khatian.

But while recording the same in L.R. Khatian a lot of problems have been encountered. The problems have been examined in details and are explained below with solution.

	Problem		Solution
1.	Some adverse possessors recorded in the then Col-23 or 16 of R.S. record of rights are still occupying the land. Whether their names should come in the front page of L.R. Records with title and share.	1.	As per article 64 of Limitation Act, we may record the adverse possessor's names in front page of L.R. Khatian, if they are in adverse possession for more than 12 years without any interruption since recording their names in Col-23 or 16 of R.S. record of rights.
2.	Some of the plots have been sold out by the then adverse possessors and the new purchasers are in possession of the lands concerned. Whether the names of such purchaser should be recorded in L.R. Khatian.	2.	<p>The incidence of such illegal transfer of land should be governed by article 65 of the Limitation Act, (read with Article 64 ibid).</p> <p>When the present petitioner i.e. the present purchaser claims title and alleges previous possession of his predecessor and subsequent dispossession of the recorded owner, it is for him to show that his predecessor had been in possession of the properties for more than 12 years since the date of recording the name of this predecessor as adverse possessor and his predecessor gained a good title by an uninterrupted adverse possession over 12 years.</p> <p>However this is further explained that if the exclusion was done by different trespassors it will not help the present purchaser, provided there was a continuity in the period of exclusion for more than 12 years, when the purchaser claims relief both on proprietary and possessory title.</p> <p>The onus is on the purchaser to prove the proprietary title. It is better that Civil Court should decide the title of the purchaser from the adverse possessors.</p>
3.	What will be the legal status of the existing muslim raiyats whose ancestor or their names are recorded in Col-16 or 23 though they are not in physical possession of the land for more than 12 years.	3.	Mere dispossession does not mean that the present possessors are in adverse possession. Adverse possession postulates a hostile possession which carries a notorious disavowal of the then owners title and constitutes on invasion of that title.

Mere possession of 12 years or more constitute no adverse possession. Hence the names of recorded muslim raiyat should not be cancelled and R.S. record should stand.

4. Whether the names of the new refugees who have infiltrated subsequently from any other places and have been occupying the land for more than 12 years without the knowledge of muslim raiyats will be recorded in Col-13.
5. Some muslim raiyats moved in the Munsiff Court, Islampur got an interim order of injunction for maintaining status without making state a party.

Whether this has any impact upon the land authority to take any future action.

4. No, reasons have already been stated in earlier paragraph.

5. If state was not made a party in a title suit or any civil case, state has no liability to abide by the Court's Order. Apart from this, even in any case, where the state has made a party relating to preparation, no revision of record of rights, u/s 51C of WBLR Act. should be made. There is bar to Jurisdiction of Civil Court as follows:

1. When an order has been made under sub-section(1) of section 51 of WBLR Act directing preparation and revision of record of rights no Civil Court shall entertain any suit or application for the determination of revenue or the incidence of any Tenancy to which the record of rights relates. If any suit or application in which, any of the aforesaid matter is in issue, is pending before a Civil Court on the date of such order, it shall be stayed and it shall, on expiry of the period prescribed for an appeal under sub-sec.(5) of Sec. 51A of W.B.L.R.Act or when such an appeal has been filed under that sub-sec. as the case may be, on the disposal of such appeal, abate so far as it relates to any of the aforesaid matters.

2. No civil court shall entertain any suit or application concerning any land, if it relates to alteration of any entry in the record of rights finally published, revised, corrected or modified under any provision of chapter-VIIA of W.B.L.R. Act. The State lawyer should also be briefed properly to mention this legal position before the Court.

6. Some of small intermediaries land was vested by operation of law which were subsequently divested in favour of the muslim raiyats without looking into physical possession. Whether divesting can be recorded.
6. This is a biased opinion. There is no scope to vest the divested land which were divested u/s 6(5.) by the order of the Settlement Officer after observing of all formalities. It may only be taken for re-vesting if it comes out that the R.S. recorded tenant possessed excess land on the date of vesting than the prescribed limits as retained u/s 6 of W.B.E.A. Act.

He is therefore, requested to kindly look into this and take necessary action accordingly. Action taken by him in the matter may be intimated to this Directorate in due course.

P. Bandyopadhyay
Director of Land Records & Surveys
& Jt. Land Reforms Commissioner, W.B.

Memo No.26/4795-4826/C/94

dated, Alipur, the 19th Sept.94.

Copy forwarded for information and necessary action to:-

1. D.L.&L.R.O.,
2. Sri.
3. The S.D.L.& L.R.O. Islampur

A. Bhattacharjee
For Director of Land Records & Surveys, &
Jt. Land Reforms Commissioner, W.B.

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**GOVERNMENT OF WEST BENGAL
OFFICE OF THE DIRECTOR OF LAND RECORDS &
SURVEYS & JOINT REFORMS COMMISSIONER
WEST BENGAL**

35, GOPALNAGAR ROAD, ALIPORE, KOLKATA-700027

No.10/5189/C/05 (B/S)

Dated Alipore, the 30th June, 2005

**To
The ADM & District Land & Land Reforms Officer,
North 24-Parganas**

Sub: Soliciting instruction regarding lands occupied by Local Clubs/Voluntary organisation/Religious Institutions etc.

Ref : His Memo. No.S/XXIV/IV/1907/L& LR (N) dated 10.04.05.

With reference to the above, this is to state that the lands occupied by local people/voluntary organisation/Religious Institutions are the cases of adverse possession. All such adverse possessions or unauthorised possessions by the local people should not be featured in the record of rights. The law and order problem created or to be created by such adverse possession cannot be solved with the possession recording of disputed land in the R.O.Rs. The matter may be left among the parties involved for settlement. He is requested to take action accordingly.

D.K. Chaudhuri
Director of land Records and Surveys
& Jt. Land Reforms Commissioner, West Bengal