

Assessment of Statutory Impediments against Real Estate Developments in Kerala State in India - A Comparison with Philipines and Turkey

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ABSTRACT

This research paper is a study of real estate developments and challenges faced by those working in that field in India. Among the states of India, Kerala is pioneer in the field of real estate. So this study is mostly concentrated on State of Kerala. Finally a comparison is made about condition in Philipines and Turkey. Numerous legal renaissance have taken place since independence. Establishment laws and inclusive practices in conformity with existing principles is definitely a long awaited and laborious process. The Government, the legislature, judiciary, media as well as civil society need to perform respective roles. In Kerala the real estate boom was of recent origin, started only couple of decades ago, but major cities of India witnessed it earlier. Prominently, Speculation by people who hoarded lot of money, made through treacherous methods, and dilapidated lending policies by banks is contributory factor for hike in the boom. Recession cannot be a hindrance for real estate market in Kerala. Moreover the landdeal in Kerala especially in Trivandrum and Kochi is mushrooming because of their pioneer place. Similar to unsustainable nature of real estate, is the plight of real estate laws. They keep on changing, something even without giving sufficient notice to the public. State government fixes the fair value of different places time to time. But the calculation is very unscientific. This research paper try to unravel problems in this area and also make a small attempt to compare it with plight of Turkey and Philipines.

PROLOGUE

“Several legal reforms have taken place since independence in India. Establishment laws and bringing practices in conformity there to is necessarily a long drawn out process. The Government, the legislature, judiciary, media and civil society has to perform their roles.”¹

Real estate laws are not a concrete single statute. It is compilation related statutes. Majority of real estate laws are state Acts, because law promulgate when a cry for such law emanates from society.

In Kerala the real estate boom started only a decade ago, but major cities of India witnessed it earlier.² Predominantly Speculation by people with lot of money, made through illegitimate means, and relaxed lending policies by banks is fuelling the boom. Recession cannot be a barrier for real estate market in Kerala. Moreover the land in Kerala especially in Trivandrum and Kochi is rocketing because of their strategic importance. But the boom is un

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¹Ezine articles.com as on 02-02-2021

² Kerala is the real estate hub of India.

sustainable, because land appreciation is based on speculation, not on economical fundamentals.

Smart City³ and Vizhinjam port⁴ are trump cards that the real estate mafia is flashing to justify high prices in Kerala. If we look back, to couple of years, vallarpadam,⁵ projects are treated as supposed to change the face of Kerala. But now that project has taken off. It is evident it is a failure. Vizhinjamport is a pipe dream. In eastern and western parts of India, there are established ports like ports of Gujarat, Goa and Maharashtra. So customers will prefer established port and no one Containers unloaded in Trivandrum will have to take the road to reach industrial belt, road means dilapidated roads of Kerala.

What about smart city project? Has it placed its mettle under the bushel? It was the main reason for the real estate boom in Ernakulam. How smart city project can generate lakhs of job opportunity here? Any companies are going to invest their huge capitals here? Is there any rationale reason for them to invest in this particular state? These questions remains unanswered.

Similar to unsustainable nature of real estate, is the plight of real estate laws. They keep on changing, something even without giving sufficient notice to the public. State government fixes the fair value of different places time to time. But the calculation is very unscientific. In some places, the fair value fixed by the government is 50 lakhs per cent. But actual value is not more than 42 lakhs per cent. This causes a lot of hardships to the prospective buyers.

Now there is some inertia in real estate field. Many people invest in land in order avail tax benefit. They buy land, take housing loans and construct houses. This may be rented out or sold within short span. But now interest rates on bank loans are increased with an increase in interest rate of fixed deposit. This will act as double edged sword and people invest in bank instead of entering into real estate.(As safer mode of investment).

Many people are running after waterfront apartment and waterfront sites. Now coastal regulations are very strict. In line with that the Kerala Municipal Building Rules 1999 was enacted.⁶ It demands construction should be made 100 meters apart from sea (proposal distance was 200 meters) and 50 meters from major rivers. In Kerala, lots of water bodies are lying here and there. Law's strict adherence to construction apart from water bodies will prove impractical. The Act prohibits the construction of permanent structures. This does not prohibit construction of huts or tree houses using wood. A rich man may construct huts nearer to the water bodies and lend out tourists and richer. But poor men are deprived of the right to construct a small, house for him. In *Maradu*, Kochi multistoried buildings were demolished after a verdict from Supreme Court.⁷

³It is a collection of IT companies.

⁴Vizhinjam International deepwater multipurpose sea port is known as Vizhinjam port.

⁵Vallarpadam is a container terminal in Kerala.

⁶ Kerala Municipal Building Rules were enacted to give a comprehensive law in this area.

⁷4 multi storied flats were demolished as per the order of Supreme Court saying that it has violated Coastal Regulations.

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There is no central acts which protect the rights of apartment owners. There are State Acts in each state. In Kerala, there is Apartment owners Act 1983⁸. Even after lapse of 29 years no action was taken to implement the said act in its letter and spirit. Later Kerala Apartment ownership rules were enacted in 1994. No instruction were given to Registration department for registration under sec.11 of Kerala Apartment Ownership Act 1983.(*JK Pearl apartment owners v. State of Kerala*⁹). Municipality building rules-1999, rule 61 says in small plots construction of a maximum of 3 floors can be permitted and total plinth area shall not exceed 150sq.meters.¹⁰ Still many builders are constructing upto 4 floor, additional safety measures, lift etc should be provided. But majority of 4 floor apartments are lacking this facility. Hidden charges in the name of monthly payments are another problem.

After the in famous investor scams by promoters, investors are running after ready to occupy apartments. People are afraid to entrust hard earned money with promoters, so they prefer ready to occupy apartments. Usually there are 5 to 11 apartments in a unit. It may be considered as single unit at the time of approval by municipality or corporation. After completion, each one may be sold to different individuals, and got registered in their name. even after registration in different names, corporation will consider it as single unit and luxury tax has to be paid by the buyer, even though individual apartment is 900 sqft. (As the total plinth area will be 2800 sq.ft)

Another problem is regarding water connection to the apartments. Usually a single water connection will be there and total water bill is divided among apartment owners on the basis of sq.ft they owned. Sometimes usage of water by 900sq.ft flat may be higher than 1100 sq.ft flat. Usually this discussion will end unresolved in residential association meetings.

RELATION BETWEEN PURCHASER AND BUILDER

Now this type of cases can be brought before consumer redressal forum. In *Luknow Development authority v. M.K.Gupta*¹¹. It was declared that if "possession of property is not delivered within stipulated period the delay so caused a denial of service"¹². The builder has a duty to convey all material alteration in the plan to the purchaser.

PROBLEM RELATING TO NRI REGISTRATION

Usually NRIs buy land through close relatives who is the power of attorney holder. Therefore he need not come at the time of registration. But recently a new rule was introduced by this thumb impression of NRI purchaser must be there in the stamp paper. There is a risk involved in sending a blank stamp paper with finger printer. (The details are written at the time of registration. This is another problem that is how this sub registrar could belief the thumb impression belongs to the particular person.)

Another area of importance is excess land and slum development. In Ernakulam town area itself there are some lands which measure up to 50 cents with an excess land over to it

⁸This Act was enacted to protect rights of Apartment Owners.

⁹ LQ/KerHC/2014/2502.

¹⁰*Premarajan v. Kozhikode corporation*,2012(1)KHC 684

¹¹AIR 1994SC787.

¹²Ibid.

which may sometimes extend up to 10 to 15 cents. The person who buys the prior priority automatically gets the right to use the later property. The real estate brokers collude with revenue officials to grab the 'pattayam'¹³ to this excess land near to the property.

SLUM DEVELOPMENT AND TOWN PLANNING

Then comes slum development based on seminar paper by Kirt N. Demnia, solicitor and advocate. There is proliferation of slums in major cities and they become breeding ground of anti social elements and anti social activities. They are vote banks to politicians. The presence of slums will impede the growth of city and will eventually influence the value of the land nearby. Government has no adequate mechanism to rehabilitate the slum dwellers. In Maharastra, The government has taken assistance from private developers and builders to transform the face of the entire city. Those slum dwellers are rehabilitated to flats made for community living. Each one will get tenement of 225-250 sq.ft. in the rehabilitation area, thus slum rehabilitation schemes if sincerely carried out (like the one executed by Trichur corporation with the help of NRI businessmen *Mr. C.K. Menon* to rehabilitate railway *purampoku* dweller¹⁴s of Trissur to *Mattampuram* flats constructed for this purpose), will reduce the congestion in the city suburbs, enhance the quality of living of the slum dwellers thereby improving their behavioural outlook , attitude, character and transforming them to better citizens who will positively contribute to the total development of the society. But slum dwellers right to livelihood of their choice is a constitutional question.¹⁵

INTRODUCTION OF REAL ESTATE (REGULATION AND DEVELOPMENT)ACT

Real estate introduced in India is an establishment which hoards money as in share market. They cater to the needs of people who are in search of land and living ahead whether it is for rent or for buying. In 2013, congress lead Central Government proposed a Bill called Real Estate (Regulation and Development) Bill¹⁶. It got approval by RajyaSabha on 18th March 2016 and by LokSabha on 15th March 2016¹⁷. In this research article, a humble attempt is made to point out existing loop holes and also trying to suggest some positive measures to increase its office.

REAL ESTATE (REGULATION AND DEVELOPMENT ACT) 2016

The Act, known as Real Estate (Regulation and Development Act, 2016 (herein after referred as 'the Act') came into being on 1st May 2016. As per this Act, every project managers should disclose total square feet, carpet area, plinth area, amount collected from investor sets should be disclosed. Seventy percentage of among thus collected from buyers should be

¹³Deed given by Government.

¹⁴People who live in property of Railway without proper Authority.

¹⁵In *Olgatelliv.BombayMunicipalCorporation*, Supreme Court in this case, categorically stated that right to livelihood is concomitant aspect of right to life.

¹⁶Be B Associates, " critical analysis of REKA ACT, 2016, [www.http://bn.legal.com/analysis-of-resa-act-2016/](http://bn.legal.com/analysis-of-resa-act-2016/)-as on 10/1/2021.

¹⁷Ibid

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deposited in authorised Banks. All Projects which is having more than Five hundred square meters should be registered.¹⁸

The need for controlling real estate regime through a strong Act is due to the researching of mafia in real estate world. The Act envisaged an authority to deal with such issue. A control mechanism was badly in need in real estate world, which was controlled by few people.

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The need for controlling real estate regime though a strong Act is due to the ransacking of mafia in real estate world. The Act envisaged an authority to deal with such issue. A control mechanism was badly in need in real estate world, which was controlled by few people. Every Law may have positive and negative aspects. This real estate regulatory Bill help consumers for getting more accountable service from real estate sector, at the same hand it may also create future problems like over pricing inordinate delay etc.²²after Demonetization policy was introduced in India, structural and functional changes happened in the field of real estate regime in India. Before that black money and real estate had some unholy nexus and real estate regime in India. Before that black money and real estate had some unholi nexus and real estate mafia flourished with black and vice versa. In Indian scenario, after demonetization, real estate regime has succumbed to unprecedented down fall. Now transactions are very little, property get devaluated, the positive aspects are unbridled real estate sector got harassed and even poor people can get small plots for residential

¹⁸Ibid.

¹⁹BeB Associates, “ Critical analysis of REKA Act, 2016www.http://bn legal.com/article/critical-analysis-of-rera-act-2016/-as on 10/1/2021/

²⁰Ibid

²¹Ibid

²²“ Pros and cons of the real estate regulation Bill Latest New India-Hindustan Times <http://www.hindustan times.com / India/the pros-and -cons of real estate -regualtion -bill/story-gloverfkfrJazr TV12642fk.html>

purpose, at comparatively lower price. If there is no authority to control real estate regime, middle class and lower income groups will never get a chance to own a property for building constructing house.

Real estate regulatory authority has power to dominate real estate world and it's officials. Model tenancy Bill²³ passed by central Government has repelling effect on real estate world.²⁴ Both these legislations can attract investment from foreigner.²⁵ Real estate sector is badly affecting environment and in addition triggering pollution also. Usually real estate people neglect natural eco system of proposed construction area. But as per the Bill they have to make sure it before construction work starts. Hindustan times says,

*“Under the new really Bill, as escrow account (a common parking place for funds) will be used to make sure that builders do not rob consumer peter to pay paul-or liberally use funds for speculation. While this will aid consumers single window clearness for projects, digitisation of records and grading of developers may help create a culture of quality in the sector”.*²⁶

This researcher feels that in future major problem for real estate world will be for getting environmental clearance. *Kasthurirangan* report²⁷ will also pause some riders in future to real estate regime. One positive aspects of the Act is that it will attract transparency in the world of buyers and sellers of properly this Act materialised in 2017 and from that period a lot of changes occurred in real estate field. one reason behind implementation of the Act in that governmental agencies are handled with complaints from customers regarding delay in timely completion of construction work, using of substandard quality material, hike in prices etc.

Major problem before the arrival of the Act was that there was no data available about construction works undergoing in the country. Now real estate regulatory Authority will register and publish statistical assessments of all undergoing projects so that buyers and sellers can easily access their website and can save money and time; more than that they can be saved from some treacherous people working in this field.

HIGHLIGHTS OF THE ACT

Following are the salient features ;

1. All projects which is above five hundred square feet is to be compulsorily regulated with authority²⁸
2. There is a provision to provision to deposit 70% of the amount collected from prospective buyers²⁹
3. Registration is made compulsory³⁰

²³ Model Tenancy Bill was passed by Central Government of India and now it is an Act .Central Government has demanded all States to make State Acts accordingly.

²⁴ They plan to eradicate poverty and to provide means for housing to poor and needy people.

²⁵ Supra n.5

²⁶ Ibid at p.4;www.hindustantimes.com as on 01-01-2021

²⁷ Brief note on report

²⁸ A adyaDipti, Critical analysis of the Real Estate (Regulation and Development) Act , 2016, <http://www.brillopedia. Net/post/critical- analysis-of -the real estate regulations-and-development-act-2016> as on. 2-02-2021

²⁹ Ibid

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4. There should be an applet tribunal to redress decision of regulatory authority ³¹
5. Buyers will be charged only for carpet area³²
6. Not more than 20% of project will be demanded as advance amount³³
7. In case of violation of orders of appellate tribunal and regulatory authority, that person will be liable for imprisonment up to three years in case of developers up to one year in the case of agents ³⁴

MAIN DRAW BACKS OF THE ACT

There are some drawbacks of the Act which are listed below.

1. Requirements of prior approval from regulatory authority will cause inordinate delay in transactions³⁵
2. Funds which are sanctions for one project cannot be used for another project. It has both positive and negative aspects.³⁶
3. Some states still do not have real estate regulatory authority³⁷

In Indian scenario, house is a basic dream for every citizens. In urban areas it is very difficult to get one cent of land because of real estate boom. If the Act is properly executed, lower income people will get a ray of hope.

COMPARISON OF INDIAN SCENARIO WITH PHILIPPINES

India and Philippines both developing Countries. Both are generating income from tourism. India is not fully utilising from tourism. India is not fully utilising it's probabilities in the field of tourism. But Revenue of Philippines is mot depended on tourism. As Per" Ramen F.D. Rufimo, executive vice president of Philippines Green Building Council". Suggests that Philippines become far behind other countries due to failure in environmental impact assessment³⁸ more priority should be given to green building. Nowadays big projects are there in Philippines. As per cyndy Tan Jarabata," the real estate people should look at innovation and they look at design carefully³⁹Now many of projects are becoming smart projects and more prominence is given to those projects which are green certified. Comparing to India, Philip pence is far more advanced in terms of green certification cities like Cebu and Iloilo became hub of new real estate inventors.⁴⁰.low cost having is a new trend in Philippines. Many of the houses of Philippines are run by women and they are mainly earning

³⁰Ibid

³¹Ibid

³²Ibid

³³Ibid

³⁴Ibid; Yolanda T. Chekera, Vincent O. Nmehielle. "The International Law Principle of Permanent Sovereignty over Natural Resources as an instrument for Development: The Case of Zimbabwean Diamonds", African Journal of Legal Studies, 2013.

³⁵Supra n.30 at p.2

³⁶Ibid

³⁷Ibid

³⁸Lamudi, " six issues Affecting the Philippines" real Estate sector", <http://www.lamudi.com/journal> –in-2016.

As on. 2-02-2021

³⁹Ibid at p.2

⁴⁰Id. At P.3

members. Men like to work outside the country. So they are not concerned with buying own house they prefer rented house. These are the short comings of Philippines real estate sector.

COMPARISON OF INDIAN SCENARIO WITH TURKEY

In Turkey, even foreigners can buy property there unlike India. But that is limited to residential property only. Foreigners should submit an application two years priority to starting date of projects. It must get concurrence from Turkish ministry. There are law firms which give assistance to foreign citizens before going into these ventures. Foreigners can also purchase land by giving power of attorney to Turkish Lawyers⁴¹These is an upper limit for purchase capacity of foreigners. It is up to 30 hectors of land. “ Real estate business in Turkey commands high profile because of the position it holds in economy in Europe”⁴²Registration process in India and Turkey are similar property purchase in military areas are prohibited.⁴³Real estate sector in Turkey is really a lucrative business. So many changes happened after 2016.

CONCLUDING REMARKS

Real Estate world in every country is a lucrative business. But these who are earning profit is the middle men. Demonstration in India has struck at the root of real estate industry. Through India, Philippines and Turkey occupy these different geographical terrains, the challenges on economic aspects of real estate regime may be different, but the legal issues are more or less similar in character.

For every boom there must be a downfall. Like money chain, scam, manchiyam scam, lottery scam, etc in future there will be real estate bubble bursting. Law is only an instrument. It must be effectively used and this effective use depends as much on a supportive judiciary. Hon.justiceSujathaManohar rightly said,” an active social reform movement, if accompanied by legal reform properly enforced, can transform the society”.

SUGGESTIONS

- [1].Kerala Apartment Ownership Act must be amended in the light of present scenario.
- [2].Costal regulations may be diluted in Kerala considering the presence of larger number of water bodies.
- [3].Land prices can be connected by Law. (otherwise poor people cannot afford one cent of land.
- [4].Urban, ceiling area must be introduced (For e.g. A person not be permitted to hold more than one acres of land in town area.
- [5].Registration Act, Stamp Act, Transfer Act etc. must amended in pace and change in real estate demands.

⁴¹Ibid

⁴²Id.at P.3:www.lawyer-turkey.com as on 02-01-2021.

⁴³Ibid