

Doctrine of Presumption of Lost Grant: Critical Evaluation from Economic Perspective

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Abstract:

In the realm of law of ownership of property Doctrine of Lost Grant is a unique concept originated with the aim to end property disputes by continuing with the occupation and usage of a property whose lawfulness is not questioned since a sufficiently long time spanning several generations. However, at times the wrongful owners and forceful occupants also benefit from it. In the judgment of Hon'ble Supreme Court rejection of this argument has demonstrated the economic benefits in Indian context specifically in property disputes related with sites under inter-faith disputes. Ayodhya Temple construction has resulted in tremendous economic prosperity of the town of Ayodhya and adjoining places in eastern Uttar Pradesh which is evident from the data emerging from banks and other Government Institutions. The quality of life of citizens in these areas has also improved manifold because of tremendous infrastructure development.

Key words: *Grant, Peaceful, Long Possession, Economic Prosperity.*

Introduction:

As per the principle of the doctrine of lost grant, when a right has been exercised by a person or persons for a sufficiently long time openly, uninterruptedly and peacefully then it can be safely presumed that it had a legal origin. This doctrine in some cases can be applied to set at rest disputes regarding title of an immovable property. This doctrine is based upon the recognized and accepted general infirmity of human nature, the difficulty of preserving muniments of title, and the legal policy of supporting long and uninterrupted possessions unless proved otherwise. They are founded upon the consideration, that the facts are such as could not, according to the ordinary course of human affairs, occur, unless there was a transmutation of title to, or an admission of existing adverse title in, the party in possession.

Origin of Concept

The theory of doctrine of presumption of lost grant originated in England and is utilized since 1189 from the time of accession of Richard I in 1189. Theory of lost grant has been traced in judgment of House of Lords in the case of Regina v. Oxfordshire County Council, Ex Parte Sunningwell Parish Council. 1993 ALL ER 385. The judgment itself observes that there is no consistent theory of prescription. English law did not consider long continuous enjoyment of a property as a method of acquiring title. English jurisprudence considered that long continuous possession and enjoyment of a property either barred remedy of the former owner to claim back possession or gave rise to a presumption that he had some act which conferred lawful title upon the person in de facto possession or enjoyment.

According to Cockburn C.J. in Bryant v. Foot (1867) L.R.2Q.B.161 observed that “Juries were first told that from user, living memory or even during 20 years, they might presume a lost grant or deed; next they were recommended to make such presumption; and lastly, as the final consummation of judicial legislation, it was held that a jury should be told, not only that they might, but also that they were bound to presume the existence of such a lost grant, although neither judge nor jury, nor anyone else, had the shadow of a belief that any such instrument had ever really existed.”

About Doctrine of Presumption of Lost Grant

When a person was found to be in possession and enjoying a landed property for a considerably long period of time under an assertion of title without challenge, Courts are inclined to ascribe a legal origin to such possession, and when on the basis of facts available on record title by prescription cannot be deduced, a presumption can be raised that possession was referable to a grant by the owner entitled to the land, but that such grant had been lost. It is a presumption made for securing ancient and continued possession, which can not otherwise be reasonably accounted for. However this presumption cannot be made by a Judge if the non existence of grant is evident or there is legal impediment to making of it. Presumption of lost grant cannot be made, if there was no person competent to be the recipient of such a grant, as where the right is claimed by a fluctuating body of persons.

As per the principle of the doctrine of lost grant, when a right has been exercised by a person or persons for a sufficiently long time openly, uninterruptedly and peaceably

it can safely be resumed that it had a legal origin.

The practical distinction between prescription at common law and doctrine of lost grant is that where the claim is by prescription, the length of enjoyment constituted a title and on the other hand, if the right is claimed by lost grant, the long enjoyment afforded but a presumption of title.

The basic ingredient of the doctrine of presumption of lost grant rests on acquiescence. The House of Lords in the case of Charles Dalton v. Henery Angus and Co. (1881) UKHL 1 had ruled that “the whole law of prescription and the whole law, which governs the presumption or inference of a grant or covenant rest upon acquiescence. The Courts and Judges had recourse to various expedients for quieting the possession of property in the exercise of rights which have not been resisted by the persons against whom they are exercised, but in all cases it appears to me that acquiescence and nothing else is the principle upon which these expedients rest.”

Where possession dates to a time beyond living memories, it will be almost impossible to prove by direct evidence the state of affairs which existed several decades ago. In such cases the doctrine of lost grant has been invoked by Courts to protect long continued enjoyment so that the party in possession may not suffer any hardship or injustice of not being able to support his title when the entire evidence has disappeared. The law no doubt requires strict proof of ouster to extinguish title of the other co-owners not in possession, but, if a co-owner is not in possession makes a claim after a long interval, the Courts have presumed, under the doctrine of lost grant, the sole and exclusive possession which

originated at a time beyond living memory was only as a result of ouster .

The expediency of presuming a lost grant is only applicable to cases where the available evidence or because of some technical reasons prevents the application of the principle of prescription in common law. The doctrine of presumption of lost grant is auxiliary to the doctrine of prescription. Repeatedly in a huge number of cases, this doctrine is taken resort to by litigants, holding Government lands. Ideally continuous and peaceful occupation is normally required, legal possession has been held to continue when the intermittent acts of claimant were also in consonance with the character of land and its use.

Application in Foreign Countries

Apart from the country of origin i.e., England in United States of America this doctrine is used since about last 200 years. The first case was of Richard v. Williams. Another landmark case is of Fletcher v. Fuller. The major factors which were outlined in this case were: -

- (1) The possessor of land is probably in possession under a deed or other muniment of title which has been misplaced or lost. This conclusion is reasonable since owners of real property do not usually allow others to possess such property for a long period of time and exercise acts of ownership over it, without permission or consideration.
- (2) Actual proof of the execution is not necessary; it is sufficient if the conveyance might have been executed.
- (3) If not rebutted, the presumption of a lost grant is so strong that the jury may be inclined to presume such a conveyance.
- (4) In order for the presumption to obtain the possession must have been actual, open and exclusive for the period prescribed by

the statute of limitations to bar an action for the recovery of land.

(5) Possession of the property can occasionally be interrupted, if, in addition to possession, there were other open acts of ownership and the interruptions did not impair the uses to which the possessor subjected the property. In some cases, in United States of America, payment of taxes for a substantially long time is held to be a legally recognized ground for presuming a lost grant from the State. The Courts believed that as the property is the recorded in name of a particular person in the tax records through the action of officers of the State, it was rational to presume that the State has issued a grant of that particular property in favour of that particular person natural/legal.

Application in Indian Courts

The principle of lost grant was for the first time referred by Hon'ble Supreme Court of India in B. Satyanarayana v. Konduru Venkatapayya. The Hon'ble Supreme Court held that lost grant and presumption of title would not be made where there was sufficient evidence of the nature of grant. It was further held that the theory of lost grant itself is not unknown to India and that it is applied by our Courts in India ever since English jurisprudence was applied to Indian Courts for the historical reason of the English Rule over India.

Discussion in The Landmark Case of Shri Ramjanmbhumi: -

In this landmark case which apart from a case of religious beliefs a great deal of property law concepts was applied, argued and were discussed at length. The doctrine of presumption of lost grant was raised by the counsel appearing for Sunni Waqf Board as the mosque was constructed and dedicated in 1528 by the Mughal Emperor

Babur hence this doctrine was discussed at great length. The Hon'ble Supreme Court of India has laid down the ultimate five principles which are applicable and are the deciding parameters for invoking doctrine of presumption of lost grant. These five principles in brief were as under: -

(i) The doctrine of lost grant supplies the lack of evidence. The doctrine is applicable in the absence of evidence, due to a lapse of time, to prove the existence of a valid grant issued in antiquity. However, the court is not bound to raise the presumption where there is sufficient and convincing evidence to prove possession or a claim to a land in which case the doctrine of lost grant will have no applicability.

(ii) Where it is impossible for the court to determine the circumstances under which the grant was made, an assumption is made about the existence of a valid and positive grant by the servient owner to the possessor or user. The grant may be express or implied. Once the assumption is applied, the court shall, as far as possible, secure the possession of those who have been in quiet possession.

(iii) For a lawful presumption there must be no legal impediments. For the applicability of the doctrine it is necessary to establish that at the inception when the grant was made not only was there a valid grant but also capable grantees in whose favour the grant could have been made. In the absence of defined grantees, there will be no presumption of lost grant.

(iv) For the applicability of the doctrine of lost grant, there must be long, uninterrupted and peaceful enjoyment of an incorporeal right. Uninterrupted enjoyment includes continuous use or possession. The requisite period of use and possession is variable and to be determined from case to case.

(v) A distinction has to be made between an assertion of rights due to a prolonged custom and usage and that by doctrine of lost grant.

Ultimately Hon'ble Supreme Court rejected applicability of doctrine of presumption of lost grant for the reason of lack of pleadings in this respect.

Economic Impact of Lands/Immovable Property in India Locked in Religious Disputes:

As per the figures referred in the book written by Hon'ble Shri Narasimha Rao in his book *Ayodhya 6th December 1992* it is estimated that thousands of such sites are there in entire India. This doctrine if applied in Indian context and particularly in context of disputed sites where mosques are standing and Hindus claim that these mosques are constructed after demolishing ancient temples, then immovable property worth lacks of crore which probably should have been vested in Government/Temples but which is claimed to be owned by mosques as grant of land by Muslim rulers of India is lying idle and instead of a resource for the country's growth and welfare is fomenting disputes and conflicts, legal as well as sometimes physical like riots. As per one research it is found that the construction of temple in Ayodhya has resulted in significant economic development of Ayodhya. Further the infrastructure of Ayodhya and adjoining areas has also developed significantly and thus the rejection of application of doctrine of lost grant has resulted in significant economic growth of Ayodhya.

Economic Impact of Construction of Shri Ram Mandir in Ayodhya: -

The Confederation of All India Traders reports that consecration ceremony of Shri

Ram Mandir Ayodhya generated business worth INR 100,000 crores (approx.) across the country. Ayodhya's tourism is improving because of construction of airport, expansion of railway station and construction of green field townships. Because of above stated developments, sectors like airlines, hotels, FMCG, travel and construction work industries are growing. Stock prices of certain companies also significantly increased because of their connection with Ayodhya. These companies include: -

1. Allied Digital Services – involved in Ayodhya Smart City Project
2. Thomas Cook India – offered budget travel packages to Ayodhya
3. Easy Trip Planners- travel packages for Ayodhya
4. InterGlobe Aviation – announced commercial flights to Ayodhya

Thus construction of Shri Ram Mandir in Ayodhya is making a big positive impact on the economy of Uttar Pradesh.

As per an article in India Today, because of opening of Shri Ram temple in Ayodhya, income of businesses has increased three to four times. Approximately two lakh people visit Ayodhya daily and rates of land near temple have increased approximately ten times.

After inauguration of Shri Ram temple in Ayodhya, various hotels and real estate companies like Indian Hotels Company Ltd., ITC Ltd., OYO, etc have purchased or are in the process of acquiring hotels in Ayodhya. Air line operators like IndiGo and Air India Express have launched multiple flights connecting major cities with Ayodhya. Indian Railways is also planning to launch approximately fifteen

new trains connecting Ayodhya with different cities of India.

Various developments and infra structure projects have been initiated in Ayodhya by Centre and State Governments. These project have been catagorised into eight broad themes: -

1. *Aesthetic Ayodhya*; 2. *Clean Ayodhya*;
3. *Efficient Ayodhya*; 4. *Accessible Ayodhya*;
5. *Experiential Ayodhya*; 6. *Modern Ayodhya*;
7. *Cultural Ayodhya*; 8. *Healthy Ayodhya*

In last five years, the Ram Mandir Trust has paid approximately Rs. 400 crores in form of various taxes and funds to the Governments. The Shri Ram Temple is working as a catalyst for the economic growth of Ayodhya city and surrounding regions.

As per an article of Ministry of External Affairs, Shri Ram Mandir will be creating around two lakh jobs.

According to another article on the website of Ministry of Information and Broadcasting, Ayodhya is transforming and progressing from pilgrimage town to an economic hub in the State of Uttar Pradesh.

After opening Shri Ram Temple in Ayodhya the Banks are also reporting surge in fixed deposits and loan disbursement. Thus it can be concluded is that after construction of temple in Ayodhya the town has become more prosperous and will become a model city in a short while.

Economic growth because of tourism is so evident that Ayodhya has even surpassed Taj Mahal in the number of tourists as per available data.

Conclusion

The doctrine of the presumption of a lost grant is the result /combination of the necessity to quiet the disputes as to title pertaining to immovable property which in modern times in majority of cases, pertains to huge social/religious trusts on one side and State/another religious sect on the other side. However, this doctrine in Indian context may create hindrance in the economic prosperity of lacks of people. Thus religious tourism has a great scope in this country and can be tapped without any social and moral implications.

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