

Land Use Controls in Kerala with Special Reference to Ecologically Fragile Areas

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Abstract: *Land is a prime resource- it vests ultimately in the government-but the immediate ownership of vast areas are with the private individual- lower cost of agricultural produce and unscientific and uncontrolled developmental measures exerted great pressure on land- most of agricultural lands got converted to garden lands, laterites removed from other places collected for filling this area, sand, rock and many other land resources' exhausted- water table decline, food security is effected-total ecology is tilted. wetlands, estuaries, river basins , command areas, paddy fields, coastal zones and finally the western Ghats(ecologically and environmentally fragile areas) are effected- societal revolt against all these menace can be seen-laws are many but not working and unenforceable-stage has reached that for sustenance of life effective land use controls necessary-question is how to achieve a better standard of management- the major question to be answered is " how the sustainable development can be achieved through the land use legislations".*

Keywords: Land use controls- sustainable development- ecologically fragile areas- private land use

1. Introduction

Land remains to be the prime resource gifted to man by the creator of earth. Each living thing had equal right towards everything on earth. But due to the reasoning capacity of man he dominated the whole world and remains to be the supreme creature of earth. Earlier the use of land and its resources were not restricted by any norms rather than self regulations and there was no awareness about the concept of environment until the 1950's. The call from the Rachel Carson through her 'Silent Spring' made certain changes in the whole world regarding the need for the protection of the environment. But the knowledge or the concept of protection of environment was not enough to control the degradation of environment during that time. The degradation continued unabatedly. The whole resources of earth got polluted and there remains nothing in the world with its pristine purity. The land is no exception to it. It was mainly affected by the unscientific use of it. This is mainly due to the lack of proper planning and co-ordination between the authorities.

Land is one of the scarce resource and sometimes can be said to be non renewable if it has lost its characteristics. Land comes within the sovereignty of each nation and therefore the nature and extent of land possessed by each nation determines to a certain extent the development of the nation. The policy regarding the land is determined by the political ideology followed by each nation. Here we are concerned about the land of India and especially Land of Kerala. When we consider the land of Kerala we have to consider the land of India because the policy of land ownership is laid down in the Constitution of India. The perusal of the Constitutional debates shows that the policy which India wanted to follow was a socialistic one rather than giving protection of Individual ownership considering the needs of the society as a whole. But this does not allow the state to take away the ownership rights of individual unreasonably. The concept of public purpose and eminent domain continues to be most debated while dealing with the taking away the property rights of

individuals. The real question who is the ultimate owner of land? Is it individual or the State? To what extent the state can interfere in the bundle of ownership of individual? What is the scale for determining the balancing of rights? etc. still remains in our mind without a clear answer. But who is responsible to propagate and practice the principle of sustainable development? The answer is that the responsibility lies with the state. If it is so the above questions to be answered giving more importance to the sides of the state. This is because the state is responsible for the development of the individual and the society as a whole. In such circumstance the state should be given certain prominence in taking the decisions regarding the land use. The topic is one of the most debated and arouses curiosity from the whole population including the local people.

2. Literature Survey

Legislative power on land use is vested in state governments and central government have a little power on the subject. Improper and unscientific land use has given rise to various problems like draught, floods and water shortage. Imprudent land use leads to adverse impact on the environment and ecosystem. This emphasis the need for a systematic land use. There is a general feeling that the existing Land Use Board in Kerala has not been able to work out proper schemes for scientific land use. The studies conducted by National and International agencies show that land use management in Kerala is in a dismal state. In Kerala there is large scale shifting from food crops to cash crops and conversion of agricultural land for non-agricultural purposes. Even environmentally fragile areas like wet lands, paddy fields, command areas and mangroves are also destroyed. This has led to the decrease in quality and availability of fresh water. It is believed that lack of a comprehensive land use policy is the major cause for this situation. The present study is an attempt for a critical and systematic analysis of the land use patterns followed in Kerala.

It is also proposed to examine whether the legal system has helped in formulating a comprehensive, eco-friendly and economically viable land use management in Kerala.

Study aims at identifying the Kerala laws and regulations bearing on land use controls. Various schemes and practices evolved for this purpose from time to time will be collected and examined. The problem of dichotomy of control over land use and multiplicity of authorities exercising these powers will be examined. The powers of central and state governments and municipal authorities will be evaluated. For this purpose the international obligations undertaken by India in its implementation in the National level will be studied. The practices followed by different countries of the world in this regard will be collected and analysed. The laws in other states in India and its implementation will also be the subject matter of the study.

The thrust of land use laws will be examined to find out whether it is adequate to protect environmentally fragile areas like command areas, wet lands, paddy fields and mangroves. The data on adverse impact on improper land use in these areas will be collected and analysed. Land use policies formulated in Kerala and other state of India will be collected and studied. The land development, land zoning, land conservation laws will be given special attention. Decisions of higher courts relating to land development and planning will be studied to see whether they are capable of promoting environment friendly land use pattern. Statistical data relating to land use pattern will be collected.

This work will analyze the legislations and the attitude of judiciary towards controlling the use of land by the individuals. For this purpose similar situations in other countries also will be perused. The land remains the hottest topic because of the increasing density of populations. This calls for the most proper sudden and long term action from the part of the state to put into practice the principle of sustainable development. The existing legislations to protect the ecologically fragile areas is inadequate. Society also is not aware of this situation and its long term consequences. Mass action both from the state and the society can bring adequate changes and this can be facilitated through a strong legislative policy exclusively dealing with land use and its implementation without any hesitation.

3. Research Methodology

The Researcher has proposed to adopt the socio legal method of research in this work. The primary sources are Legislations, Committee Reports, and Foreign and National case-laws. The secondary sources are Articles, Books, Web Sites, News Papers and Magazines. To assess the implementation of the legislations a field study is also to be undertaken.

4. Results

The extent to which the state can control the individual right to property. How this problem is addressed by

different legal systems. Indian constitutional scheme provides that land is a state subject and the obligation to implement the international conventions lies with the centre. There are many conflicting areas how is this resolved. Use of fragile areas deserves special attention and protection. It has high economic value and another aspect of environmental protection and assuring food security. An effective rule covering all aspects of land use and environmental protection under the umbrella legislation of Environmental Protection Act, 1986 would be the best outcome of this research.

5. Conclusion and Future Scope

Land use is becoming restricted day by day. This has raised hue and cry from all sections of community. As all components of environment is interlinked so comes the land use. In ancient days use of certain lands were prohibited. The scope of land use controls were very limited because the land was vast and the pressure of population was limited and therefore the need of restriction was only for protection of divinity or sanctity of certain areas. Another purpose of land use controls was encouraging cultivation to the best possible extent. People had enough reverence for the environment and they had a symbiotic relation with the environment. Therefore depending on the social needs those restrictions were sufficient. But the ownership of the whole land was considered to be vested in the king who gave protection of life and liberty of people. The use of land (individual ownership) was considered as a grant issued by state. For that they paid tax to the state for the produce of land and in most cases it was restricted to 1/6 of the produce of land. This concept could be observed from the writings of Manu, Jimutavahana and the four principles of Hinduism. But the individual ownership was restricted based on the use of land for cultivation and promotion of cultivation was one of the aims of every kingdom. Because they believed that the sustenance of the kingdom depended on the agriculture. The earlier wars were mainly fought for land and the resources of land. Even during the medieval dynasties also we could observe the similar pattern of limited restrictions. Certain areas of special importance and special protection were unavailable for the individual ownership. Other areas could be used by the individuals for their agricultural purpose. But the ultimate ownership of land remained with the king.

The advent of British rule changed the property relations in India to a great extent. They were not concerned with the welfare of the people. Their only aim was the augmentation of exchequer and for that they exercised all possible controls over the lands. They collected revenue in excess rates. They also introduced the permanent settlement of land revenue. The collection of revenue was entrusted with certain influential middle men, who had no actual connection with the land and they were not the owners of land but later they were turned as owners of land. This was really a reproduction of feudal system followed in Britain. The legislations concerning the acquisition and forest and planning and zoning enacted. The outlook of the Acts reflected a resource protection approach but the ultimate aim was plundering the wealth

of India without any hindrance under the pretence of ecology and development. There were restrictions on the use of land but those changes were not at all catering to the protection or up gradation of environment.

Before the independence it there was voice against the existing system of property relations. Therefore during the constitutional debates there were two sided arguments for the change in property relations. Individualistic arguments showed that property to be vested with the individual and the state shall have no control over it. But the opposite arguments were mainly for the societal protection. Therefore they argued that the property is to be ultimately vested with the state even though the ownership can be enjoyed by individuals. Their rights can be restricted for a social need. They also argued that the principle of equity while deciding the matter of compensation shall apply to the society and not to the individual. It was also decided to rearrange the property relations by introducing the concept of land reforms based on the principle of land to the tiller. But the intended aims could not be achieved as envisaged and this paved the way for constant conflict of legislature and the judiciary. The judiciary was not able to understand the noble intention of the framers of the constitution and always stood for the intention of the feudal lords. Therefore the balancing approach of the constitution of right to property as fundamental rights and the needs of the society as directive principles of state policy was tilted. It abrogated the property rights to simply a legal right.

The perusal of these periods shows that the philosophy justified the use and enjoyment and possession of land. But the absolute right to property was not recognized and protected anywhere. The right to enjoyment of land allowed to the extent that the fruits of the soil are not spoiled. Once it was proved to be against this policy it could revert back to the common pool and can be possessed or enjoyed by any one. The community ownership of land in turn gave way to individual holding of land by the industrial revolution. This brought in changes not only in the property relations but in the mental setup of man itself. He became greedier and the value of money acquired much more importance rather than it was before. Therefore the aim of man from the individual satisfaction or societal satisfaction changed to greediness. It led to amazing of wealth for generations and acquisition of landed property for near and dear ones. From there onwards the legal concept of ownership as a bundle of rights with great complexities arose. Planning, Zoning and restrictions over the use of lands were found to be necessary and the state emerged as an entity with the responsibility for the protection of individual and society arose. Therefore the conflict of individual v. society also arose as a necessary evil. This situation still continues with more intensity now also. No comprehensive studies covering the sustainable and environmental aspects of land use is undertaken in Kerala till this day. The topic has a great future because all conflicts start from the property concept and continues in the property concept and it shall remain to be so. This is to conclude with the land remains the most important element of property.

Author Profile

Mrs. Dayana M.K., Assistant Professor of Law Government law College Thrissur, having more than nine years of teaching experience. Her career as a teacher began in 2006 at M.S. Ramaiah College of Law Bangalore, thereafter continued to School of Legal Studies, CUSAT, Cochin and thereafter joined the Government service in 2011. She has got 4 national publications and various paper presentations in National Seminars across India. Shortly submitting research thesis on "LAND USE CONTROLS IN KERALA: WITH SPECIAL REFERENCE TO ECOLOGICALLY FRAGILE AREAS" under the guidance of Dr. A. M. Varkey.