

SC: right to property now a human right

New Delhi, September 24 2008: Taking a cue from courts in the US and UK, the Supreme Court has taken a view that the right to property is now a human right.

Referring to several landmark decisions passed on the law of adverse possession of property, the Bench comprising Justices Dalveer Bhandari and H S Bedi noted, "The right of property is now considered to be not only a constitutional or statutory right but also a human right." Quoting from a decision passed by an English court, the Bench said, "Human rights have been historically considered in the realm of individual rights such as right to health, right to livelihood, right to shelter and employment, etc. But now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension."

"Therefore, even claim of adverse possession has to be read in that context," the apex court remarked taking an 'activist approach' similar to the English courts. "But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights," Justice Bhandari, writing the judgement, said.

The bench said the Central Government should "seriously consider" a change in law to prevent squatters from dishonestly enjoying property. "There is an urgent need of a fresh look regarding the law on adverse possession. We recommend the Centre seriously consider and make suitable changes in the law of adverse possession," it ruled while dealing with a provision of law which requires that the burden of proof lies on owners to show that they have the title to and have been in possession of the property and were dispossessed within a period of 12 years from the date of filing the suit.

Observing that the law of adverse possession "which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate," the Bench dismissed an appeal filed by a person who had illegally taken possession of a land from its original owner. "The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner," the court said, trying to comprehend as to why such a law "should place a premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation."

Courtesy: <http://www.indianexpress.com/news/SC--right-to-property-now-a-human-right/365463>