

REAL ESTATE LAWS - GOA

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Goa Portuguesa – Real Estate Laws in Goa

Introduction

The Portuguese influence in the smallest state of India, Goa, is palpable even today. The long era of Portuguese rule has surely left behind an enduring mark in the state of Goa. It is not only the culture and tradition in the city that are infused with Portuguese influence; there are also certain laws prevalent even today that are reminiscent of the Portuguese regime in Goa.

Such three distinct laws prevailing in Goa since the Portuguese era and, which have an impact on the current real estate sector in Goa were dealt with extensively by our Goa Partner, **Ms. Sujai Joshi** in her articles published in the Times of India, Goa edition on 1 April 2011, 15 April 2011 and 29 April 2011. These three essential laws and its impact on the sale and purchase of property in Goa have been summarized by us.

Code of Comunidade:

In recent times, many incidents have come to light of 'Comunidade' land being illegally sold to private persons for commercial use. 'Comunidade' is a Portuguese appellation for 'Gaunkary'. Gaunkaries are ancient Indian socio-agro-economic institutions established by the original inhabitants. The Gaunkaries were in existence much before constitution of the State of Goa itself. The collective use of land resources was evolved by the institution of Gaunkaries who owned lands as village commons and managed the same as communal property. The Gaunkars were renamed as Comunidades during the Portuguese regime in Goa.

The present '**Codigo das Comunidades**' or the 'Code of Comunidades' in force, provides the Rules and Regulations pertaining to the administration of the affairs of the Comunidades. The Code of Comunidades is a law of the Gaunkars by the Gaunkars and for the Gaunkars and is not enacted by the State Legislature.

According to the Code of Comunidades the Comunidade land may be given on long lease (aforamentos) or transferred in the form established in the Code. Restrictions have been imposed by the Code on transfer or lease of Comunidade land. The provisions of the Code prohibit alienation of the lands belonging to the Comunidade Villages in favour of any person or authority.

Recently, the Apex Court in the case of **Jagpal Singh & Ors V/s State of Punjab 2011 AIR(SCW) 990**, has pointed out that, many State Government orders have been issued, permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. It has been

held that all such Government orders are illegal and should be ignored. The Apex Court has also noted that in large parts of the Country, common land have been grabbed by unscrupulous persons using muscle power, money power or political clout and hence in many States not even an inch of the land is left for common use of the people of the village though it may exist on paper.

On assessment of the provisions of the Code, it is clear that the land belonging to the Comunidades is not free-hold land which could be sold in the open market to private parties and its transfer is only permissible by way of lease/perpetual lease as the case may be in certain circumstances.

Mundkarial system:

Mundkarial system is a widely rampant system prevailing in the state of Goa from times immemorial. The term '*Mundkar*' refers to a person who works in the property of another called the '*Bhatkar*' (landlord), plants trees, raises plantations and protects it. In return, he gets a dwelling house to live and remuneration in kind or cash or both for the work done in the property. The relationship between the Bhatkar and Mundkar is called Mundkarship.

The Mundkars, for the first time, were provided with legal protection against illegal eviction by the Bhatkar under the law called "lei do Mundcarato –legislative diploma no. 1952" which was enacted by the Portuguese. This law was replaced by the Goa, Daman and Diu Mundkar (Protection from Eviction) Act 1975 ('**said Act**'), which is social welfare legislation that provides for better protection to Mundkars against eviction from their dwelling houses and for granting them the right to purchase the same.

The said Act deals with the procedure for declaration of *Mundkar* and on being declared one, a Mundkar gets a right to purchase the dwelling house in respect of which he is declared a Mundkar. Under Section 7(A) the Mundkars also have a right to reconstruct, rebuild his dwelling house, without producing an N.O.C. from the Bhatkar provided he uses the same existing plinth area of his old demolished house.

The said Act further provides that a Mundkar shall not be entitled to alienate, for a period of three years from the date of issue of certificate of purchase, the dwelling house purchased by him.

The said Act also provides the grounds and procedure for the eviction of the Mundkar from his dwelling house.

Comunhao Dos Bens

Another interesting legal concept, which was introduced during the Portuguese rule and prevailing till date in the state of Goa is the 'Comunhao Dos Bens' i.e. communion of assets. The concept of 'Comunhao Dos Bens' is contained in the Portuguese Civil Code ('**Civil Code**') that was enacted in the year 1867. It is pertinent to note that the provisions of the Civil Code pertaining to family laws, which relate to marriage, divorce, children and succession, are still in force in the state of Goa.

By default every Goan marries under a system called Communion of Assets, whereby, from the time of his marriage, his spouse acquires half undivided right in the assets of the other. Unlike the rest of India, a wife in Goa does not inherit rights to her husband's property upon his death but is a co-owner of the property during his life time itself. Consequent to the rule of communion of assets, neither the husband nor the wife can sell or dispose off in any manner any property or part thereof without the consent of the other. The husband cannot sell any part of the property unless the wife joins in the transfer. Unless there is a pre-nuptial contract signed by the couple prior to the solemnization of marriage, the doctrine of communion of assets will apply to their marriage.

This regime of communion of properties governing the marriage in the absence of

any agreement to the contrary is totally uncommon in India.

Code of Susegad:

Last but not the least, the key rule one must follow when in Goa – *“Live life the susegad way! Leave all your worries (property and otherwise) and come to Goa to live the susegad way.”*

Summarized by : **Mirat Patel**

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