THE ACQUISITIVE PRESCRIPTION ACT 2018

Act No. 13 of 2018

Proclaimed by [Proclamation No. 32 of 2019] w.e.f. 1 September 2019

Government Gazette of Mauritius No. 99 of 1 November 2018

I assent

PARAMASIVUM PILLAY VYAPOORY

1 November 2018 *Acting President of the Republic*

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Request to notary to draw up deed of prescription
4. Obligations of notary
5. Notice of objection
6. Disposal of notice of objection
7. Deed of prescription not to be transcribed where there is notice of objection
8. Transcription of deed of prescription
9. MIPD
10. Particulars of transcription to be endorsed on deed
11. Effect of transcription of deed of prescription
12. Offences
13. Regulations
14. Repeal
15. Consequential amendments
16. Commencement

SCHEDULE

An Act

To provide for a better legal framework for acquisitive prescription

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Acquisitive Prescription Act 2018.

2. Interpretation

In this Act –

"Conservator" means the Conservator of Mortgages;

"DCDB" has the same meaning as in the Cadastral Survey Act;

"land surveyor" has the same meaning as in the Land Surveyors Act;

"Minister" means the Minister to whom the responsibility for the subject of lands is assigned;

"Ministry" means the Ministry responsible for the subject of lands;

"MIPD" has the same meaning as in the Transcription and Mortgage Act;

"notary" has the same meaning as in the Notaries Act;

"objector" means a person who makes an objection under section 5;

"open market value" has the same meaning as in the Land (Duties and Taxes) Act;

"PIN" has the same meaning as in the Cadastral Survey Act.

3. Request to notary to draw up deed of prescription

The occupier of an immovable property who wishes to claim ownership of the immovable property by way of acquisitive prescription shall request a notary to draw up a deed of prescription on the submission of the following information and documents –

(a) an affidavit, sworn by the occupier –

(i) specifying the number of years during which he has occupied the immovable property; and

(ii) that he agrees with the contents of the affidavits of the 2 witnesses referred to in paragraph (e);

(b) a memorandum of survey drawn up, in accordance with the Cadastral Survey Act, by a land surveyor, setting out the location, description and exact boundaries of the immovable property;

(c) an affidavit of the land surveyor referred to in paragraph (b) regarding the contents of the memorandum of survey;

(d) the PIN in respect of the immovable property;

(e) 2 affidavits of 2 witnesses who are not less than 48 years of age and reside or occupy, or who have resided or occupied, a plot of land in the vicinity of the immovable property, confirming that the occupier has occupied the immovable property for at least 30 years;

(f) the occupier's recent passport size photograph and National Identity Card;

(g) the recent passport size photograph and National Identity Card of each of the witnesses referred to in paragraph (e); and

(h) a utility bill, in the name of each of the witnesses referred to in paragraph (e), issued not more than 2 months before the date on which the request is made to the notary under this section, as proof of address.

4. Obligations of notary

(1) Where a notary draws up a deed of prescription pursuant to a request made under section 3, he shall –

(a) cause a notice in the form set out in the Schedule to be displayed, in such manner as may be prescribed, for a period of 3 months starting on the date of display of the notice –

(i) in a conspicuous place of the immovable property forming the subject matter of the acquisitive prescription;

(ii) in such other places, which are visible to the public, as the notary may determine in consultation with the land surveyor referred to in section 3(b); and

(b) thereafter, cause the notice to be published, not later than 5 days after the date of display under paragraph (a) –

(i) once in the Gazette; and

(ii) in 2 daily newspapers having wide circulation in Mauritius, of which at least one shall be approved by the Conservator, on 3 consecutive days, including weekend.

(2) The notary shall send a copy of the notice to the Ministry which shall be posted on the website of the Ministry.

(3) Notwithstanding any other enactment, no notary shall cause any deed of prescription to be transcribed before the expiry of the period referred to in subsection (1) (a).

5. Notice of objection

(1) Any person who claims to be the owner or part owner of, or to have an interest in, the whole or part of the immovable property in respect of which a deed of prescription has been drawn up may, within 3 months from the date of display of the notice under section 4 (1)(a), object to the transcription of the deed of prescription by serving a notice of objection on the notary and on the occupier, by setting out the grounds of his objection.

(2) The notary shall forthwith record, in a register to be kept by him, the particulars of any

objection received by him under this section, including the date of service of the notice of objection.

(3) The notary shall inform the occupier of the objection under subsection (1) and shall not cause the deed of prescription to be transcribed until the objection is withdrawn or disposed of against the occupier who has claimed ownership by way of acquisitive prescription.

6. Disposal of notice of objection

(1) The occupier of an immovable property who has been served with a notice of objection may, within 3 months of the date of service on the notary, apply to a Judge in Chambers for an order setting aside the objection.

(2) (a) Where, after hearing the parties and considering the ground of objection, the Judge in Chambers is of the opinion that the ground of objection is frivolous and unjustified, he shall make an order setting aside the objection.

(b) The Judge in Chambers shall otherwise refer the parties to the competent Court.

7. Deed of prescription not to be transcribed where there is notice of objection

No deed of prescription of an immovable property in respect of which a notice of objection is served on the notary shall be transcribed unless –

(a) the objection is withdrawn by notice served on the notary; or

(b) the notary is in presence of an order of a Judge in Chambers setting aside the objection or of a certified copy of the judgment of a competent Court deciding the issue against the objector.

8. Transcription of deed of prescription

(1) Where no notice of objection is served on a notary within the period specified in section 4(1)(a) or where a notice of objection is withdrawn or disposed of against the occupier who has claimed ownership by way of acquisitive prescription, the notary shall submit the deed of prescription to be transcribed to the Conservator, accompanied by –

(a) copies of the issue of the Gazette and newspapers containing the notices referred to in section 4(1)(a); and

(b) the open market value of the immovable property, as certified by a valuer designated by the Registrar-General.

(2) Every deed of prescription shall be transcribed by saving a scanned copy of the original in the MIPD.

(3) The Conservator shall transcribe the deed of prescription in the manner specified in subsection (2) and on payment of the transcription fees.

(4) Notwithstanding any other enactment, a deed of prescription shall –

(a) contain a mention of the location, description and exact boundaries of the immovable

property forming the subject matter of the acquisitive prescription and the open market value of the property referred to in subsection (1)(b);

(b) contain the date on which the occupation started and be accompanied by a site plan showing the precise location of the immovable property;

(c) contain, in respect of the occupier –

(i) his first name or other names, in small letters, followed by his surname in capital letters, and his National Identity Card number, in format XXXXXXXXXXXXX (14 characters);

(ii) his occupation and the postal address of his residence;

(iii) his date of birth in format DD/MM/YYYY, with a reference to the registered number of his birth certificate in format Birth Certificate No./Year of Registration of Birth and the Civil Status Office where the birth was registered;

(iv) where applicable, his date of marriage in format DD/MM/YYYY, with a reference to the registered number of the marriage certificate in format Marriage Certificate No./Year of Marriage, the Civil Status Office where the marriage was registered and the matrimonial regime applicable to him at the time of the transfer; and

(v) where applicable, his business registration number under the Business Registration Act in format XXXXXXXXX (9 characters);

(d) contain, in respect of the immovable property –

(i) its address, its PIN and a site plan showing its precise location;

(ii) the area of land in format Xm^2 up to 2 decimal places and the nature and description of the building, if any, on it; and

(iii) its value in format Rs X;

(e) be of the typeface “Cambria” in regular style and has font size of 12 point and be printed on A4 size paper of not less than 90 grammes;

(f) be such that every page is consecutively numbered on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth and any annex thereto is numbered on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth;

(g) mention any date in format DD/MM/YYYY;

(h) not contain any abbreviation, interlineation or superscription, and any word erased or striked through has to remain legible;

(i) on the recto of every sheet, a blank margin of 3 centimetres on the left and

one centimetre on the top, right and bottom except on the first and last sheets, where the top margin is to be 10 centimetres;

(j) on the verso of every sheet, a blank margin of 3 centimetres on the right and one centimetre on the top, left and bottom;

(k) make the marginal entry on the last page; and

(l) where it contains marginal corrections which may be handwritten or words which have been erased or striked through, contain a certificate, to which the person filling the original shall affix his signature or his initials, setting out the number of marginal corrections made and the number of words erased or striked through.

9. MIPD

(1) The Conservator shall record in the MIPD the particulars of every deed of prescription of immovable property for transcription purposes.

(2) The MIPD shall be opened to the public for inspection.

10. Particulars of transcription to be endorsed on deed

No deed, whether authentic or under private signatures, witnessing the sale or transfer of, or the constitution of any privilege, mortgage or servitude or right of use over, an immovable property the title to which has been derived from acquisition by prescription witnessed by a deed of prescription, shall be valid unless the deed is transcribed, and a reference to the particulars of such transcription is endorsed on the deed.

11. Effect of transcription of deed of prescription

The transcription of a deed of prescription shall not confer on any party any rights on any immovable property which, but for this Act, that party would not have possessed.

12. Offences

Any person who –

(a) without lawful authority, removes, defaces, destroys or tampers with a notice displayed pursuant to section 4(1)(a); or

(b) otherwise contravenes this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

13. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under this section may provide –

(a) for the amendment of the Schedule;

(b) for the levying of fees and taking of charges;

(c) that an immovable property belonging to a religious body shall be imprescriptible;

(d) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

14. Repeal

The following Acts are repealed –

(a) the Affidavits of Prescription Act; and

(b) the Affidavits of Prescription Act (Suspension of Certain Provisions) Act.

15. Consequential amendments

(1) The Cadastral Survey Act is amended, in section 7, in subsection (1), by inserting, after the word "sale", the words ", prescribe".

(2) The Code Civil Mauricien is amended –

(a) in Titre Vingtième, in Chapitre Cinquième, in Section Deuxième, by deleting the following subheading –

II – DE LA PRESCRIPTION PAR DIX ET VINGT ANS

and replacing it by the following subheading –

II – DE LA PRESCRIPTION PAR DIX ANS

(b) in article 2263, by deleting the words ", si le véritable propriétaire habite à Maurice et par vingt ans, s'il est domicilié hors de Maurice";

(c) by repealing article 2264.

(3) The Prescription of Landed Property Act is amended, in section 2, by deleting the words "Affidavits of Prescription Act" and replacing them by the words "Acquisitive Prescription Act 2018".

(4) The Registration and Transcription of Deeds and Inscription of Mortgages, Privileges and Charges (Rodrigues) Act is amended, in section 12 –

(a) in subsection (1)(d), by deleting the words "Affidavits of Prescription Act" and replacing them by the words "Acquisitive Prescription Act 2018";

(b) by repealing subsection (3);

(c) in subsection (4), by deleting the words "section 4(1)(b) of the Affidavits of Prescription Act" and replacing them by the words "section 3(b) of the Acquisitive Prescription Act 2018";

(d) in subsection (5), by deleting the words "section 4(2) of the Affidavits of Prescription Act" and replacing them by the words "section 4(1)(b) of the Acquisitive Prescription Act 2018".

(5) The Transcription and Mortgage Act is amended, in section 3B(2)(a), by inserting, after subparagraph (ii), the following new subparagraph –

(iia) an acquisitive prescription under the Acquisitive Prescription Act 2018;

16. Commencement

Proclaimed by [Proclamation No. 32 of 2019] w.e.f. 1 September 2019

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

Passed by the National Assembly on the sixteenth day of October two thousand and eighteen.

Bibi Safeena Lotun (Mrs)
Clerk of the National Assembly

SCHEDULE

[Section 4]

NOTICE UNDER THE ACQUISITIVE PRESCRIPTION ACT 2018

Notice* is hereby given that ……,
(occupier)

residing at ....., has requested
(address)

me to transcribe a deed of prescription of an immovable property of which the location, description and boundaries are as follows –

(a)……; (b) ……..…;

(c) ...……

The deed of prescription of the immovable property, together with the memorandum of survey accompanying it, may be inspected at my office.

Any person who claims to be the owner or part owner of, or to have an interest in, the whole or part of the immovable property may, within 3 months of...…….……, object to the transcription of the deed
(date of display)

of prescription by serving on me and on the occupier a notice of objection setting out the grounds of his objection.

……. …….

Date Notary

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