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ARTICLES

Women's rights in the Nikahnama in Bangladesh : A critical study

An Application of Islamic Law in Bangladesh with Special Reference to Women

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Muslim wives' right to maintenance in Bangladesh: the role of N.G.O's in Rajshahi District

Prevention of Crime in Islamic Criminal Law: Perspective Bangladesh

যৌতুক : একটি সামাজিক ব্যাধি

সড়ক দুর্ঘটনা ও ট্রাফিক আইন : প্রেক্ষিত বাংলাদেশ

আদালত অবমাননা, সাংবাদিকতা-প্রকাশনা ও তথ্যের অধিকার : পরিপ্রেক্ষিত বাংলাদেশ

বাংলাদেশের রাজনীতিতে পঞ্চম জাতীয় সংসদের কার্যকারিতা : একটি পর্যালোচনা

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Real Estate-Its Defense System in Bangladesh: A Study

Dr. Md. Abdul Karim Khan*

Introduction

Bangladesh is a village-based country in South Asia. There are eighty six thousand villages in Bangladesh. Eighty five percent of the people live in the rural area. The economy of Bangladesh is based on agriculture. But recently the scenario is changing and people are moving from village to town. At present, with the expansion of economy and mounting movement of people from rural and mofussil areas to the sprawling metropolis of Bangladesh, housing and residential accommodation pose a really challenging sector. Almost two decades have passed the real estate business is running here. But the sustainable system and sufficient legal footing have not yet been formed for the real estate business and practice in Bangladesh. There is also resulting imphasis on the professionalism and ethics of these new real estate professional. Technological advancement in all phases of the real estate industry have placed both real estate education and real estate practice on a new level of competition and efficiency.¹ This article has been written to provide with an understanding of the basic principles and business fundamentals of real estate. A suggestion of legal framework with a authority to carry out the legal requirements have been upheld keeping two things in mind i.e. "Why" things are done and "how" these can be applied to every day activities.

Objectives of the Study

The study tries to address the following issues:

1. To measure the standard and status of the real estate business;
2. To find out a system and legal footing of the real estate business and practice;
3. To figure out the level of consumer protection in the real estate transaction;
4. To look into the ethical standard of the realtors;

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¹ Learning the Language of Real Estate by Barbara Cox, South-Western, 2002.

5. To make suggestions for legal framework and to provide guideline for implementing authority to put our real estate in the proper system and on the right track in our country.

Methodology of the study:

This is a descriptive type of research. This study is based on the books, laws, statutes, rules, policies, commentaries, magazines etc. The study is undertaken in the capital city, Dhaka, Bangladesh. Keeping in view of geographical dispersion Dhaka is selected for undertaking this study. The real estate business and practice has mainly expanded in Dhaka. Interview schedule is used for data collection. The respondents are selected randomly from the owner, agents, brokers, builders and purchaser of the real state. The interview schedule is developed in the lights of the objectives of the study. The interview is meant for the head of the households. A total of 50 head of the households are interviewed with this schedule. (The factor is considered here to develop in standard of the respondents.) Apart from interview schedule, observation method is followed by the researcher. Besides the primary data, relevant records are reviewed to come to the conclusion.

Limitation of the Study

This study is based on the real estate business and practice of Dhaka City and respondents are only 50; time and resources are major constraints for this study. The study is run on the self-notion of the researcher. For time constraints and also for want of fund a larger number of areas and respondents could not be covered for the study, which would have made it more representatives. Hence, the findings of the study, the suggestions made and the guideline for implementing administration proposed may not be the general picture.

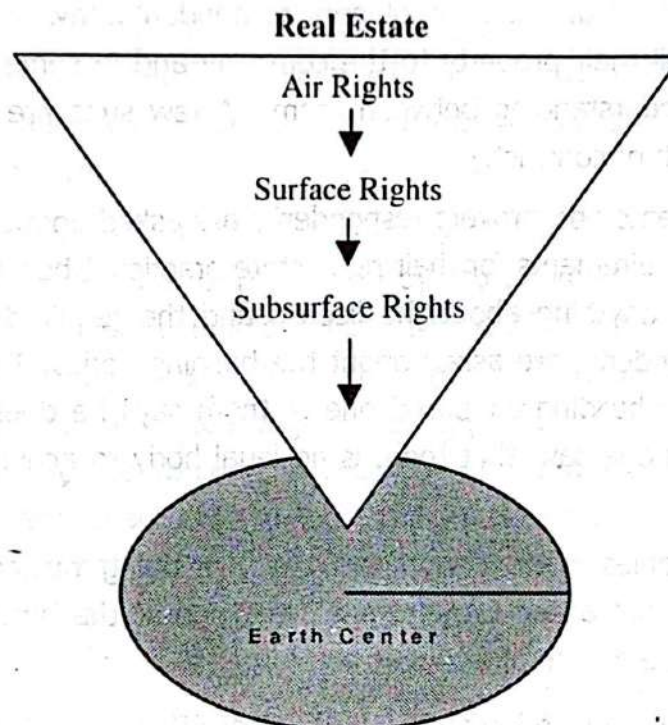
Real Estate defined

Real Estate or real property is land and the improvements made to the land and the rights to use them. Often one thinks of land as only the surface of the earth. It is substantially more than that. Land starts at the center of the earth which passes through the earth's surface and continues on into the space. An understanding of this concept is important because in a particular

parcel land, it is possible for one to own the right to use its surface (surface rights), another to own the right to drill or dig below its surface (subsurface rights) and still another to own the rights to use the airspace above it (air rights).²

Anything affixed to land with intent of being permanent is considered to be part of the land and therefore, real estate. Thus houses, schools factories, barns, fences, roads, pipelines and landscaping are real estate. As a group these are referred to as improvements because they improve or develop land.

For better understanding of real estate a figure is given below:



Land includes the surface of the earth and the Sky above and everything to the center of the earth.

The finding and the analysis of the study

During the field work fifty respondents are selected among the tenants, land owners, real estate agents and brokers, builders and real estate company. They are thirty tenants i.e., purchaser of the apartments or plots, ten land

² Real Estate Principles, 9th ed. by Charles J. Jacobus South-Western 2003.

owners who either sell the land or come in contract with the real estate company or realtors, five real estate agent and, brokers, three builders who build apartment or condominiums and two real estate company. The tenant and owner respondents are asked to point out about the protection of their rights, about the laws in real estate practice, malpractice of the real estate agent and brokers, confiscation of rights and illegal takeover of real estate. Ninety percent says there is no protection or safe guard for their rights, they are not known to the real estate laws but they know that there is a contract between them and the company. They say there is malpractice, confiscation and illegal takeover. Five percent of them say they can go for an action for the breach of contract but they do not like to go for action because they do not like to invite the trouble. Land owners respondents says in few cases they completely sell their property to the company and in some cases they come in mutual understanding between them. (A few suits are pending in the court for breach of contract.)

The real estate agents and brokers respondents are asked about the license and educational requirements for their real estate practice. They answer that they do not know anything about the license and the required education. The builders respondents are asked about the building codes. Two of them say they follow the building code and one of them says he does not know about it. But every one says that there is no legal body to activate building code.

Real estate companies respondents say they are doing business as per contract law. They are asked to point out the ethics of the business. They say they do not have a code of ethics as yet.

The real estate is not only an idea or a concept at present in Bangladesh. It is getting the academic forefront. It is almost two decades now that the real estate business is in full swing and it has got a tremendous growth and success specially in Dhaka. But the sustainable system for the real estate business and practice has not yet been introduced or made. It will not be over emphasized that to have real estate, there must be a system or means of protecting rightful claims to the use of land and the improvements thereon. In Europe and America the government in combination with the local government establishes courts and passes enactment's within the

country to protect the ownership rights of one person in relation to another person. Therefore we really do need to develop a system or means of protecting rights of the citizen in real estate. Bangladesh is as one of the common wealth countries has common law origin. Sometimes common law concepts are enacted into statutory law. In Bangladesh many statutory laws pertaining to land, leasehold estates, the rights and obligations of landlords and tenants have come directly from common law. Additionally statutory laws have been passed where common laws seems to be unclear or unreasonable. The existing laws regarding landed property for both residential and commercial real estate are not sufficient in the present perspective of Bangladesh.

At present, to put our real estate in the proper system and on the right track in our country, we need to enact laws for licensing of the real estate agents, zoning laws and building code with the income tax and local property tax laws in real estate.

Through interview of the tenants it is found that the silent confiscation of rights or illegal takeover of real estate by brute force or mal practice of real estate agent are not uncommon in Bangladesh. In most cases the people do not know what to do and how. The present land and civil suits are so complicated and time consuming that they do not feel encouraged to challenge the brute force. However our government should organise a defense system, enact laws, establish courts to prevent confiscation of the rights and interest in real estate, illegal takeover by brutal force and malpractice of real estate agents in Bangladesh. What laws can be enacted and how the implementing authority can be formed will be discussed in the following paragraphs.

Suggestions for enactment of Real Estate Regulations

There are a few questions in connection of the real estate business i.e., why and when a real estate license is required and how to obtain one. The answer is that one is required by law to obtain license for real estate practice. The license has to be obtained through rules and procedure specified by law. The next question is who makes these rules and how are they enforced. The starting point is the legislature. The legislature has the authority to enact laws to promote the safety, health morals, order and

general welfare of the people.³ This includes the licensing and regulation of real estate brokers and salespersons. In Bangladesh basically the real estate business is running on the basis of contract made between the parties under the Contract Act 1872, land laws and a few municipal laws. These laws are not up to the mark to deal with the real estate problems of this time. These are not enough and in some cases they are to be amended. The laws to be enacted for real estate in Bangladesh are now discussed.

License Laws

Right now the legislature should enact laws requiring that real estate agents be licensed. The laws could be passed in keeping the followings issues in mind:

1. That there will be a pre-license education requirement.
2. That there will be a license examination.
3. That continuing education will be required.

Zoning laws

Zoning laws codes are to be enacted for maintaining proper order and environment and putting our real estate in the right track. In addition a buffer zone must be marked in the zoning law code. A buffer zone is a strip of law that separates one land use from another.⁴ The national Building Codes should be implemented properly and in some cases it has to be amended to meet the need of this century.

Consumer protection laws

Consumer protection laws are to be either passed or amended to hold the real estate agent, real estate company, real estate trade organisation, builders and association liable for their work.

Real estate agent, trade organisation, associations are constantly working to elevate the status of real estate brokers and salespersons to that of a

³ "Real Estate: It's About Competition" by Jim Smith (ABA Banking Journal, February 2002, P. 81).

⁴ Real Estate Law, 2nd ed. by Charles Jacobus (South-Western, 1998).

competent professional in the public's mind. As professional status is gained, there is an implied obligation to dispense professional quality service.⁵ Thus an individual agent is not only responsible for acting in accordance with written laws but will also be held responsible for being competent and knowledgeable. Once recognised as a professional by the public, the real estate agent will not be able to plead ignorance.⁶ The law should be passed to keep the concept in mind "Let the seller beware and let the agent beware".

Homestead Protection Laws

Homestead Protection laws should be enacted in keeping the following matters in mind.

1. To provide legal protection for the homestead claimants from debt and judgments against them that might result in the forced sale and loss of the home.
2. To provide a home for a widow and sometimes a widower for life. Homestead law also restricts one spouse from acting without the other when conveying the homestead or using it as collateral for a loan.

Real Estate Settlement Procedures Laws

There are complaints for the consumers regarding real estate closing costs and procedures. In response to the consumers complaints real estate settlement procedure Act can be passed which will regulate and standardise real estate settlement practice with regard to loan made to one for residence, condominiums and cooperatives.⁷

⁵ Digest of Real Estate license laws (ARRELLO Association of Real Estate license law officials, 2001).

⁶ Leasing and Marketing for Property Managers by Dog Rossi (BOMI Institute, 1999).

⁷ "Can Eminent Domain Be Wielded Against Developers?" by Beth Wade (National Law Journal, February 18, 2002, vol. 24, issue 24).

Professional Societies

In Bangladesh real estate business is expanding day by day from Mega City to divisional cities of the country. We need to create societies, associations and institutions to educate our real estate professional and to recognise appraisal education, experience and competence. The continuing education is a pre-condition for providing professional services.⁸ REHAB is working in Bangladesh but is not enough to meet the demands of this century. The REHAB should set forth a code of Ethics and standards of practice of the realtors immediately.

Suggestions for Administration of Real Estate Management

The law can not work itself alone without the implementing authority. The legislature should establish two bodies to carry out the requirements.

1. The first body will deal primarily with adopting rules, statutes, ordinance and regulations to implement the license law as specified by legislature. This body may be called real estate commission which may consist of five to nine members. Some members can be licensees from the real estate community while others can be non-licensed members of the general public. Commission members will be volunteers and selected by the President of Bangladesh to represent all geographical parts of the country. The commission may sit from time to time and provide input to the state in real estate for the welfare of the general in dealing with licensees.

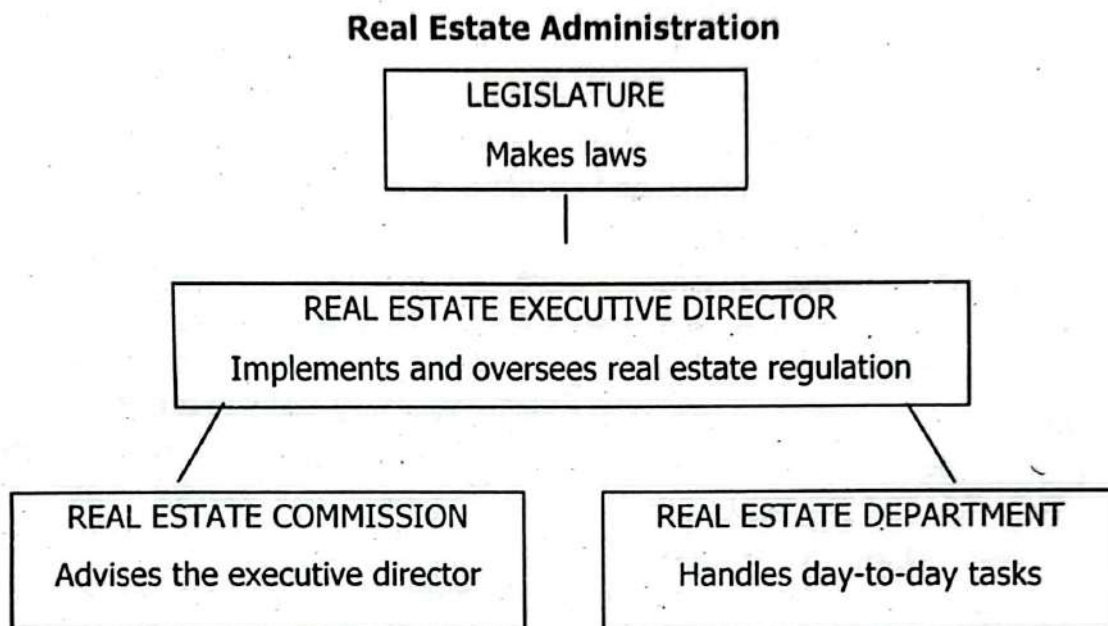
Executive director or officers to similar other equivalent post can be appointed by the government to oversee real estate regulations. His responsibility will be to carry out the wishes of the legislature and the real estate commission on a day to day basis.

2. The Second body may be called a real estate department or real estate division which can be established by the legislature to answer correspondence, send out application forms, arrange for examinations, collect fees, issue licenses, approve subdivision reports and so forth. Additionally the department will publish newsletters or magazines to

⁸ Doing the Rights Thing: A Real Estate Practitioners Guide to Ethical Decision Making 3rd ed. by Deborah H. Long (South-Western, 2001).

keep licensees informed about changes in real estate laws and will print leaflets describing the license laws of the country.

In short, it is the real estate department with which licensees will have the most contact but it is the commission, the executive director, and the legislature that will set licenses requirements and will tell a licensee what he can and cannot do in real estate transactions. A visual graph is given for better understanding.



Conclusion

Land is the vital part of economy. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. Realtors should recognise that the interest of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and firms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which realtors

should dedicate themselves and for which they should be diligent in preparing themselves. The trend today is for legislature to establish and implement laws and the intent is to strike a reasonable balance among the responsibilities of owners, purchasers, agents, builders, brokers, tenants, realtors and vice versa. On the other hand, the honest wishes to work in pursuance of love and respect for betterment of the country is a must to put our real estate in a proper system and on right track.