

LCQ7: Adverse possession of land

Following is a question by the Hon Kenneth Fok and a written reply by the Secretary for Development, Ms Bernadette Linn, in the Legislative Council today (June 26):

Question:

There are views that with the progressive development of the Northern Metropolis, the value of the land in the area has increased significantly, and the situation of adverse possession of land has aroused concern. In this connection, will the Government inform this Council:

(1) whether it has compiled statistics on the number of litigation cases of adverse possession of land involving land in the New Territories in the past three years and, among them, the respective numbers of cases in which the persons in possession of someone else's land have been granted court orders to establish their adverse possession and cases which are still being processed;

(2) whether it has considered formulating measures or mechanisms to enable landowners to, by non-litigation means, enforce recovery of land which has not yet been in someone else's possession for 12 years, so as to avoid unnecessary litigations; if so, of the details; if not, the reasons for that; and

(3) whether it will consider adding provisions to the Limitation Ordinance (Cap. 347) to lay down a clear definition of "malicious occupier" and deny such persons the right to apply to the court for an order to establish their adverse possession, so as to better safeguard the properties of members of the public; if so, of the details; if not, the reasons for that?

Reply:

President,

The concept of adverse possession originates from common law. The key provisions and basic principles relating to adverse possession may be found in the Limitation Ordinance (Cap. 347) and relevant case laws. In general, if private land is occupied by others, land owners may apply to the court to evict the occupiers and recover the land. The application must be made within 12 years counting from the accrual of the relevant right of action. On the other hand, land occupiers may apply for a court order for establishing their adverse possession rights after being in possession of the relevant land for 12 years or more.

Litigations involving adverse possession of land include the occupiers citing adverse possession as a defence when owners apply to the courts for eviction order, or when the occupiers apply to the courts on their own for an order establishing their adverse possession rights. Under both circumstances,

the burden of proof for adverse possession lies with the occupiers. According to precedents of relevant court cases, occupiers must prove to the court on their (i) factual possession of the land in tandem with (ii) the requisite intention to possess the relevant land (i.e. the intention to possess to the exclusion of the owners and all other persons), as well as (iii) continuous and uninterrupted possession for 12 years.

Land and properties are valuable resources in Hong Kong. We believe most owners would properly manage their properties to avoid them being occupied by others. In fact, owners should be able to avoid their land being adversely possessed if they manage their land properly through suitable measures such as regular patrol, fencing off the land if circumstances allow, erecting warning signs, etc, and take appropriate actions when occupation of the land by others is detected.

In past cases, the courts pointed out that there are stringent requirements on the burden of proof on the applicants for adverse possession (see the three main requirements mentioned above), as a ruling to deprive the owners of their possession right to the land entails serious consequences. In addition, even if the courts establish the occupiers' rights of adverse possession, it does not imply that the occupiers (as adverse possessors) would enjoy the exact same rights as the owners. The Lands Department (LandsD) would proceed with caution for any application in relation to leases of land with court orders on adverse possession, or any compensation arising from land resumption, so as to protect the legal interests of the owners and adverse possessors. If needed, the LandsD would require the relevant persons to apply for court order to put things beyond doubt.

For the various parts of the question raised by the Hon Kenneth Fok, my reply is set out below:

(1) As litigations involving adverse possession of private land is a private matter between the owners and the occupiers, the Government does not compile the relevant information. In response to the Member's question, we have checked the relevant legal database (note), which shows that in the period from January 1, 2021 to June 19, 2024, the courts made 77 rulings involving adverse possession claims on private land in the New Territories. Among them, 39 cases were ruled in favour of the occupiers' adverse possession claims, and the remaining 38 were ruled against the occupiers. On the other hand, there is no information relating to adverse possession claims that are still pending court rulings in the relevant database, hence we are unable to provide statistics on such pending cases.

(2) As mentioned above, if occupiers wish to apply to the courts for adverse possession, they are required to prove possession for 12 years. As such, when it comes to owners' attention that their land has been occupied by others, they should take prompt actions to recover the land. If owners are unable to recover land after engaging the occupiers, owners should consider making prompt application to the courts to require the occupiers to depart and to recover the land, as the only way to avoid being time-barred from initiating land recovery actions is to file an application with the courts. Owners may also consider, before the limitation period expires, means other

than litigations to resolve the disputes, such as mediation. Mediation is an alternative means in settling disputes apart from litigation, where impartial and professionally trained mediators will assist all parties in undergoing negotiation and reaching a settlement that is mutually acceptable.

(3) As regard whether the Government will clarify the definition of "malicious occupier" in the legislation and exclude such persons from applying to the courts for establishing the rights of adverse possession as raised in the Hon Kenneth Fok's question, our understanding is that "malicious occupier" is not a legal term, and among discussion in the public domain it generally refers to persons gaining occupation and control over land by illegal or aggressive means, such as gaining possession of the land by damaging the fence or locks despite it having been fenced off or locked by the owners.

â€‹In law there is a principle that persons making a claim should not be benefited from their illegal acts. As to whether the involvement of illegal acts would affect the chance of establishing adverse possession, legal precedents show that the courts would take into account the specific circumstances of the particular cases when making a ruling, including the nature and severity of the illegal acts involved, so as to determine the applicability of the aforementioned principle.

â€‹The Law Reform Commission put forth in its 2014 report the recommendations that under the current deeds registration system, the existing provisions on adverse possession should be retained, but the law of adverse possession should be recast under the prospective title registration system under the Land Titles Ordinance (Cap. 585). As the Development Bureau mentioned when briefing the Legislative Council on the "New Land First" proposal under the Land Titles Ordinance in December 2022, we are considering dis-applying or disallowing adverse possession for "new land" under the title registration system, so as to dovetail with the principle of land title certainty conferred by the Land Titles Ordinance. We plan to further elaborate on the relevant arrangement when submitting to the Legislative Council the amendment bill on the Land Titles Ordinance early next year.

Note: The relevant research was conducted on the electronic database Lexis Advance® HK, with "adverse possession" and "new territories" as the key words under "HK Cases". The information gathered may not cover all cases.