

"The law does not allow the syndic to make use of new technology"

This article highlights some of the weaknesses of the law of co-ownership, viz, articles **664** to **664-96** of the Civil Code, and makes some proposals for reforms.

A: INTRODUCTION

During the period 1960-1975, almost all the houses in Mauritius were made with wood and straws. After the intense cyclones Alix, Carol, Jenny, Gervaise, amongst others, almost all of those houses were destroyed and this situation resulted in many people being homeless. By virtue of the Ordinance 32 of 1966, there was a minor reform with regard to the law of co-ownership. During the

year 1978, with a view to solve the acute housing crisis prevailing at that time, the Legislator enacted Act 37/78 so as to encourage the construction of high rise buildings in Mauritius. The Act 37/78 was based on the French law of the 10th July 1965 "et son décret d'application du 17 mars 1967". It was during that period that the slogan: "Un toit pour tous" was coined.

B: SOME WEAKNESSES OF THE EXISTING LAW

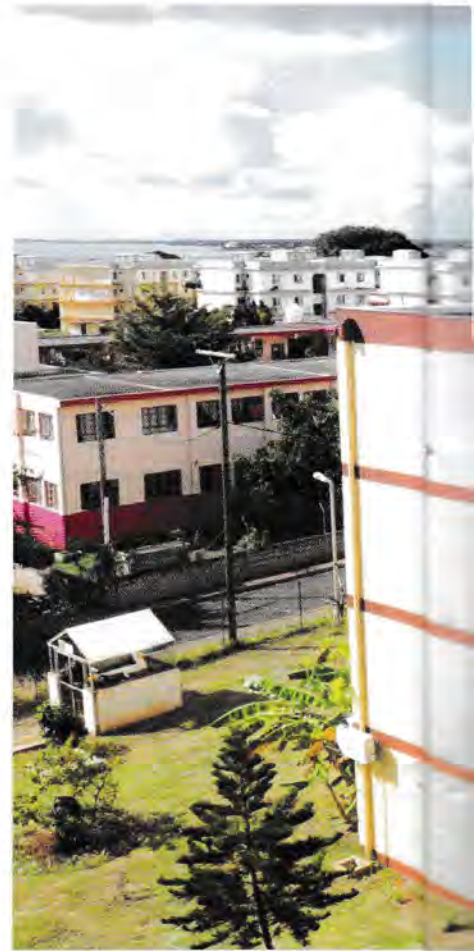
- i. The existing law was adopted without prior consultations with the stakeholders, viz, the syndics. It was also adopted without taking into account our local traditions and customs. For instance, one will find

concepts like "les coffres, gaines et têtes de cheminée, loggias..." embodied within almost all "règlements de copropriété".

- ii. Our present articles 664 to 664-96 were enacted during a period when there was only a handful number of "immeubles collectifs". But, during the last two decades, many "immeubles collectifs", commercial complexes, "morcellements" have grown like mushrooms all over Mauritius.

- iii. During the past four decades, the present law has remained static. On the other hand, there have been new developments in the "secteur immobilier", such as the Investment Real Scheme (IRS), the Real Estate Scheme (RES), the development of condominiums, new concepts like "volume immobilier" and also the creation of a new way of living, viz, the development of the smart cities all over Mauritius.

In practice, the management of these IRS and RES is done through the legal mechanism of the current articles 664 to 664-96 of the Civil Code and the "règlement de copropriété" or by means of the "cahiers des charges" which are themselves based on the current articles 664 to 664-96 of the Civil Code.



- iv. The current law is characterized by an excessive "formalisme". The excessive "formalisme" encourages futile disputes which are very often detrimental to the proper functioning of the "copropriété".

- v. Another criticism against our current law is that the same law applies to the "immeubles collectifs" considered to form part of the social housing (for instance, the majority of the housing units built by the National Housing Co. Ltd, i.e, the Malaysian I, Malaysian II, the Very Low Cost and the Core housing projects). The same law applies to the luxurious security gated IRS and RES villas. The same law applies to the small "copropriété" as well as to the large "copropriété".

- vi. The present law does not allow the syndic to make



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tribution from all co-owners because of the problem of "free riders".

iii. In Canada, Seniors are playing a significant role in the management of the "copropriétés" due to their past professional experience, their experience of life and also their availability. The new law must provide an innovative mechanism to enable the Seniors to participate actively in the life of the "copropriété".

iv. The Law Reform Commission has made some very interesting proposals which can be taken on board by the new law. For instance, it has proposed a procedure of "dessaisissement", viz, the withdrawal of the management of the "copropriété" which is in difficulty from the "syndicat" and the vesting of same with an "administrateur provisoire".

D: CONCLUSION

The present articles 664 to 664-96, which are based on the French law of 1965 "et son décret d'application du 17 mars 1967", are outdated. In France, this law has been amended on several occasions.

Today, there are new challenges ahead, such as the development of smart cities all over Mauritius. The development of new and green technology. New concepts such as "condo", the "volume immobilier" and so on are being developed. The two executive arms of the Government, viz, the National Housing Development Co. Ltd, which is involved in the construction of social housing, and the Mauritius Housing Company Ltd are constructing high rise apartments. Therefore, it is imperative that a new legal framework, more sophisticated be enacted for the proper management of the "immeubles collectifs".

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use of new technology, viz "l'utilisation du numérique dans le secteur de la copropriété". It does not allow the syndic to follow new trends, for instance "la rénovation énergétique dans le secteur de la copropriété". It does not provide for effective mechanism for the "copropriété en difficulté", when we know that in practice almost 70% of the "copropriétés" in Mauritius are in difficulty.

C: PROPOSALS

(i) One of the most fundamental issues which all syndics of all "copropriétés" have to deal with is effective preventive maintenance. Without the effective preventive maintenance, the infrastructures of the "copropriétés" shall be degraded and the monetary value of the complex will fall. A vivid example is the ex-

dockers' flats which was once a brand new housing estate but due to lack of preventive maintenance, it became a ruin.

(ii) Another important issue which all syndics have to deal with in the management of the "copropriété" is the collection of the common fund contribution from the "copropriétaires". The common fund contribution is used, inter alia, for the maintenance of the common infrastructures such as lift, if any, the stairs, the garden, the common lighting system, the common sewerage system, and for the payment for the employees of the "syndicat", payment of the administrative expenses, and so on. The new law must provide an innovative mechanism to deal with this issue in as much as almost all syndics have difficulty to collect the common fund contri-