

DIGITIZATION OF LAND RECORDS - NEED FOR LAW REFORM

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INTRODUCTION: LAW OF THE LAND, QUITE LITERALLY

Land is a state subject in the Constitution, and the systems of land records management vary from State to State, often even within a State, depending upon their historical evolution and local traditions.¹ Land revenue is a major source of income of the State,² it is for this reason that it is important to identify those from whom it could be collected. It is also for this reason that the land records contain details like cultivable, non-cultivable and cultivated area, quality of the soil, sources of irrigation, cropping pattern, leases, easements and assessment of land revenue, etc. However this is not the only concern as we will see in the subsequent paragraphs.

India's land title framework rests principally upon the Registration Act of 1908, which despite its name established the recording system (and has been frequently amended since independence). The Act requires the registration of documents relating to real property rights in "the office of Sub-Registrar of sub-district within which the whole or some portion of property is situated."³ If the recipient of a document required to be registered does not do so, that document cannot subsequently be introduced in court.⁴

But this framework has hardly ensured anything; it is much like an administrative system. India's land records are today in a mess.⁵ Under the British Raj, the British were relatively uninterested in determining title; their focus was on collecting revenue, and so they usually recorded the land but not the owner of the land.⁶ And after Independence, the new government, either at the centre or in the states, did nothing to fix the situation.⁷

By the beginning of the new millennium, a consensus emerged that the lack of land records was causing a significant drag on the Indian economy. The McKinsey

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¹Entries 18 and 45, List II (States subject list), Seventh Schedule, Constitution of India, 1950.

²India Annual Review, Information Service of India, Competition Review Pvt. Ltd., 1990.

³Section 28, Registration Act, 1908.

⁴Section 49, Registration Act, 1908.

⁵William Nanda Bissell, *Making India Work* (Penguin Group India 2009) 66; Barun S. Mitra, 'India Lands in a Mess' Opinion India, *The Wall Street Journal*, July 13, 2010.

⁶ArvindPanagariya, *India: The Emerging Giant* (Oxford University Press 2008) 321.

⁷*ibid.*

study⁸ was not alone; ArunShourie, an investigative journalist, who had become the Cabinet Minister overseeing privatization, published a 2002 report in the Indian Express that laid out the problem with more graphic details.⁹ He observed that the Indian Tourism Development Corporation (ITDC), a government body slated for privatization, operated 32 hotels around the nation, and eight in the nation's capital. But when his ministry began the privatization process, "we discovered that not one of them, repeat not one of them had the title deed or lease documents in order. Documents were either just not available, or the lease was in dispute, and that in spite of the fact that the hotels had been in operation for up to forty five years."¹⁰ The issue even went to the Delhi High Court and is dealt in more detail under the subsequent heading.

An introduction to land law reforms would be incomplete without taking into perspective the view of the Planning Commission as to what land reforms actually entail. In a report titled "Report of the Working Group on Land Relations for Formulation of 11th Five Year Plan", the Planning Commission considered the following formula:

$$\sum \text{LAND REFORMS} = \frac{\text{Secure access to land} + \text{Security of Tenure} + \text{Non land support services} + \text{participation}}{\text{Resistance from the land owning class} + \text{Corporate Vested interests}}$$

The report went into the details of recommendations with regards to modernization of land management, implementation of appropriate ceiling and tenancy laws among others.¹¹ For the purposes of this research paper it is important to consider secure access to land and security of tenure. Both these factors are closely linked with land record management since land can be made absolutely secure not when people are enjoying its possession but only when it is recognized in law. The view of a developer in Bangalore (below) clearly shows the relevancy of land record management in a vast country like India,

The Indian real estate market can be something like the Wild West these days... A common situation is this: A developer buys a plot of land that was formerly agricultural land, and starts construction on a commercial building. Then, someone turns up and claims to be another legal heir of the seller's grandfather, etc., who also has rights to the land. Maybe they have a valid claim, or maybe not. But if the builder

⁸McKinsey and Company, India: *The Growth Imperative – Understanding the Barriers to Rapid Growth and Employment Creation*, 2001, available at: http://www.mckinsey.com/~media/McKinsey/dotcom/Insights%20and%20pubs/MGI/Research/Urbanization/India%20-%20The%20growth%20imperative/MGI_The_growth_imperative_for_India.ashx, Submitted to Prime Minister on September 6, 2001.

⁹ArunShourie, 'ITDC: dirty linen, right royal stink' Indian Express, July 8, 2002.

¹⁰*ibid.*

¹¹*Report of the Working Group on Land Relations for Formulation of 11th Five Year Plan* (Planning Commission 2006).

*goes to court, there will be the perception that 'there is litigation on the property.' Builders can't afford to have this negative public perception, so most would just pay the fellow off to go away. It happens quite often.*¹²

One of the reasons for the out-dated record of rights and in some cases even unavailability of land records as cited by Shri B.K. Mishra, I.A.S. (Retd.), former Director of Land Records, Orissa is that of the lack of appreciation of its utility and consequently lack of attention for its proper and timely maintenance.¹³

Digitization of land records has remained largely confined to making available scanned copies of title deeds online. Without fresh surveys of properties, digitization fails to reflect errors and disputes over property titles. The incumbent Rural Development Minister Jairam Ramesh recognizes that "States are just computerising old records and that is not of much help. Survey operations have not really picked up. There are many problems."¹⁴

It is in this background that we enter the next section with the goal of understanding the cause of the hoopla behind non-maintenance and old paper-documented land records.

NEED FOR LAND LAW REFORMS: CONSPICUOUS ENOUGH?

Before delving into reforms of law, it is important to consider the need and relevance of the reforms as dependent upon the status quo of the society. This consideration of the need for change is crucial for two reasons, one would like to believe that the Parliamentarians are involved with serious business and should not waste their time, and secondly, we surely would not like to experience the ramifications of a law which was enacted in isolation of socio-economic considerations.

The need for land law reforms cannot be better explicated by the bustle caused during the privatization of ITDC – the Indian Tourism Development Corporation. The ITDC operated 32 hotels around the country and 4 in the capital, New Delhi. ArunShourie explains the situation in much detail in his July 2002 article titled "ITDC: dirty linen, right royal stink".¹⁵ When the Ministry began the privatization it realized that not one of these hotels had a title deed or a lease documents in order.¹⁶ In fact the situation was embarrassing for the government, since two government agencies – the ITDC and the Department of Urban Development had battled for over a decade over the source of the title, because the identity of the land's owner under India's tax law

¹²D.C. Wadhwa, 'Guaranteeing Title to Land' (2002) XXXVII(47) Economic and Political Weekly 13.

¹³*ibid* 18.

¹⁴Devika Banerjee, 'Government to push fresh surveys for digitization of land records', Economic Times, September 14, 2011.

¹⁵Wadhwa (n 12).

¹⁶*ibid*.

would determine the tax-rate applicable.¹⁷ After this, Dr. D.C. Wadhwa noted that Shourie's account was incorrect, and that in fact this abovementioned scenario was not limited to state-owned properties but the land market throughout the country was hobbled by poor recordkeeping.¹⁸ The requirement of accurate taxation is the first answer to the question of 'Why land reforms?'

Another concern which comes tied in with poor land record management is that unrecognised land market distortions constrain biggest domestic sectors – this has been highlighted in unequivocal terms by the McKinsey Report.¹⁹ The question then is to see the impact of this on the domestic sector. A major component of these land market distortions include the issue of unclear ownership and the problems surrounding thereof.²⁰

Most land parcels in India – one estimate leads to the staggering value of 90 percent – are subject to legal disputes over their ownership.²¹ The problem would most definitely take Indian courts a century to resolve at their current rate of progress. Being unclear about who owns what makes it immensely difficult to buy land for retail and housing developments. Property disputes were identified as the motive for 8.8 per cent of murders and 3.1 per cent of culpable homicides, not amounting to murder committed.²² The property market in India is beleaguered by rampant title frauds and identity frauds on property mortgages.²³

Indian developers also have trouble raising finance since they cannot offer land to which they do not have a clear title as collateral for loans. As a consequence, most new housing developments are constructed on either land which is already owned by the developers, or is monopolised by the few insiders who know how to speed up the bureaucratic title-clearing process.²⁴

Another related point for consideration is that several departments are involved in managing land records in most States, and the citizen has to approach 3 to 4, or even more, agencies for complete land records, e.g., Revenue Department, Survey and Settlement Department, Registration Department etc. These departments work in a solitary manner, and any land records that are updated makes those of others outdated. Thus, most of the records are almost always outdated and does not reflect ground reality.²⁵ This hike between various ministries and departments leads to

¹⁷*ibid.*

¹⁸Wadhwa (n 12).

¹⁹McKinsey Report (n 8).

²⁰*ibid.*

²¹*ibid.*

²²National Crime Records Bureau, 'Crime in India' (Ministry of Home Affairs 2007) Chapter 3.

²³M.D. Mitra, 'Introducing Guaranteed Land Titles in India' (August 2009) HALSBURY'S LAW MONTHLY.

²⁴ParamitaDattaDey, 'Land Tenure Security: Is Titling Enough?' (National Institute of Urban Reforms 2006).

²⁵Department of Land Resources, The National Land Records Modernization Programme, 'Guidelines,

wastage of time, exposure to rent seeking, and harassment. Additionally, there is no integration of textual and spatial records which consequentially makes it difficult to give a maps-to-scale measurement with the records of rights.

Furthermore, the Registration Act, 1908 provides for registration of deeds and documents, not titles.²⁶ In other words, the registration of documents under the said Act only provides proof of presumptive ownership but is not a conclusive proof of title. This record of presumptive titles is based on complex documentation of past transfers. This creation of mere presumptive ownership further leads to duplicate claims and false registration claiming ownership. Present law provides for a presumption that the entries in the records of right are correct, unless proved to the contrary or substituted by another lawfully made entry. The record presumes that a person paying the property/revenue tax shown in the land/property record is the owner of the property. Any person aggrieved by an entry in the records of right can institute a civil suit in the courts contesting the records of right.²⁷ Also, there is significant time lag between registration and mutation, giving rise to scope of fraudulent transactions in land, disputes, etc. Here it must be recognized that the Land Titling Bill, 2011 -- which concerns itself with the maintenance of a single register of land titles for the entire country, conclusively establishing the names of current owners, is still pending with the Parliament.

Many farmers do not have legitimate documents to prove their ownership of the land they till. This makes it difficult for them to access loans, even though schemes allow for easy access to farm loans.²⁸

Having discussed the need for proper maintenance of titling of land, it is pertinent to now consider the need for digitisation of land records. It is true that land records date back to decades or some even back a century or so, it is for the purpose of ensuring their safe storage and availability that digitisation is essential. These documents need to be protected from dust and other pests. Additionally, the availability of soft-copies of land-related documents would create a higher access level of property ownership rights and thus higher transparency as a whole. However, it must be recognized that mere digitisation of land records without in fact updating land records would be an expensive fruitless exercise.²⁹ Wider availability would also

Technical Manuals and MIS' (Ministry of Rural Development, Government of India 2008-09) [hereinafter 'NLRMP Guidelines'].

²⁶Section 17, Registration Act, 1908.

²⁷The Supreme Court in *Sita Ram Bhau Patil v. Ramchandra Nago Patil (Dead) By L.Rs. and Another*, (1977) 2 SCC 49, observed: "Record of right is not a document of title. Entries made therein, in terms of Section 35 of the Indian Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable."

²⁸U. Goswami, 'Land Titling Bill, 2011: Centre plans to change the way land records are made, kept and used' *The Economic Times*, July 23, 2011.

²⁹Devika Banerjee, 'Government to push fresh surveys for digitization of land records' *Economic Times*,

mean reduction of fraudulent transactions by means of fake registration deeds. Also, the digitisation of land records would make it easier to continuously monitor and update ownership rights.

Additionally, it would be interesting to take an international perspective on the land record management system. Other countries too have faced these problems, but research shows that respite has come through introducing the system of conclusive titles, also popularly known as the Torrens system. Australia, New Zealand, the UK, Switzerland, Canada, the USA, Singapore, and also developing countries such as Kenya, Malaysia, etc. have successfully introduced this system.³⁰

The best comparison would be with Kenya. The British applied the Indian Registration Act, 1908 as it was, to Kenya. But after its independence, Kenya amended the Act and introduced the Torrens system. Interestingly, Puducherry is an example of the system of conclusive titles from within India itself. The French introduced the Torrens system there. However, after independence, Pondicherry had to regress from conclusive titles to the presumptive titles system prevalent in India due to the provisions of the Registration Act, 1908.³¹ The Torrens system was initiated by the National Land Records Modernisation Programme in 2008 but uniform growth of this system has not taken place due to differential degree of implementation by the various states.

Thus, the need to focus on land law reforms in specific relation to land records arises because of the possible broadly-worded benefits of reduction in litigation, efficient and accurate tax collection, and the possibility of uniform collection with regular updates of land ownership records in an efficient manner. Clear land titles will ensure that maintenance of property records will become more than just a tool for governance and revenue generation. A land titling system that would provide unassailable and conclusive proof of ownership of land has the potential of giving rural India a much-needed impetus through better access to credit, effective targeting of subsidies, less acrimonious land acquisition and effective and appropriate rehabilitation and resettlement measures.

THE UTOPIAN DREAM REALISED

Having identified the need for law reforms with regard to land records in India it would be pertinent to consider the various policies introduced by the government. This section aims at enumerating governmental efforts at tackling the problems relating to land record management and probes into the efficacy of these efforts.

September 14, 2011.

³⁰Jonathan Zasloff, 'India's Land Title Crisis: The Unanswered Questions' (2011) 3 *Jindal Global Law Review* 11.

³¹*ibid.*

Following a decision in the Conference of the State Revenue Ministers in 1985, the Government of India initiated two Centrally-sponsored schemes - Strengthening of Revenue Administration & Updating of Land Records (SRA&ULR) and Computerisation of Land Records (CLR).³²

The Strengthening of Revenue Administration & Updating of Land Records Scheme

The scheme of SRA&ULR was launched in 1987-88 to help the States and UTs in updating and maintaining the land records, setting up and strengthening of the survey and settlement organizations and the survey training infrastructure, modernization of the survey & settlement operations, and strengthening of the revenue machinery.³³

Funding under the SRA&ULR scheme has been on 50:50 cost-sharing basis between the Centre and the States. The UTs are provided 100% Central assistance.³⁴ The list of items covered under the scheme of SRA&ULR are construction of buildings (which includes construction of training institutes, hostels for these institutes, Patwarghars and Record Rooms), purchase of new survey equipment (includes purchase of modern survey instrument like GPS, aerial survey etc. for faster and efficient surveying), Maps/ Storage facilities and equipment for digitization of survey-records and land holdings.³⁵

Computerisation of Land Records Scheme (CLR)

The CLR scheme was launched in 1988-89 with pilot projects in 8 districts and was subsequently extended to cover the rest of the country. The main objective of the scheme was to ensure that the landowners get computerised copies of the rights of record on demand. Under this scheme, 100% financial assistance has been provided to the States and UTs.³⁶ A list of activities covered under the CLR scheme include undertaking data entry work, settling up of computer centres at taluk/tehsil/block/circle level, and sub-divisional level, imparting training on computer awareness to revenue officials and digitization of cadastral maps.³⁷

National Land Records Modernisation Programme

³²NLRMP Guidelines (n 25).

³³Dr.Raghuvansh Prasad Singh, 'Key to various land related issues: Implementation of National Land Records Modernization Programmes (NLRMP)' (Ministry of Rural Development August 2008).

³⁴NLRMP Guidelines (n 25).

³⁵Ibid, Annexure I.

³⁶Department of Land Resources, 'Report Committee on Computerisation of Land Records' (Ministry of Rural Development 2005).

³⁷*ibid.*

In August 2008, the Cabinet approved the merging of the above-mentioned schemes into the “National Land Records Modernisation Programme” (NLRMP).³⁸ The Programme aimed to institute the principles of the Torrens system. The Torrens system is based on 4 basic principles³⁹: (i) a single agency to handle land records (including the maintenance and updating of the textual records, maps, survey and settlement operations, registration of immovable property mutations, etc.); (ii) the “mirror” principle, which states that, at any given moment, the land records mirror the ground reality; (iii) the “curtain” principle, which refers to the fact that the record of title is a true depiction of the ownership status, mutation is automatic following registration, there is no need of probing into past title transactions, and title is a conclusive proof of ownership; and (iv) title insurance, which refers to the fact that the title is guaranteed for its correctness and the party concerned is indemnified against any loss arising because of inaccuracy in this regard.⁴⁰

The Guidelines’ work program under the Programme envisions amendments to the Registration Act and the creation of a “model law for conclusive titling.” (Land Titling Bill 2011). However, these documents under the Act have literally nothing to say on how the new Model Law will be implemented; how more vulnerable parties will be protected, or the ways in which the “curtain” and “mirror” principles will be upheld. It must also be noted that this is just a model law which is at the discretion of the states to accept since Land is a part of the state list.

Land Titling Bill, 2010 and 2011

In terms of the most recent work of the government on the issue of land records, it is pertinent to consider the differences between the Land Titling Bill, 2010 and the Land Titling Bill, 2011.

The Revised Bill in 2011 has dropped the principle of granting “indefeasible title”. The “indefeasible title” principle should be accompanied by listing of exceptions to indefeasibility, like fraud by the registered owner, wrong description of property in the register, claims of a prior registered interest, unlawful exercise of statutory authority, overriding interests, etc. which will limit the circumstances under which a person can challenge someone’s title.⁴¹

The 2011 Bill merely speaks of conclusive titles and Section 37 states that a property

³⁸NLRMP Guidelines (n 25).

³⁹Rita Sinha, Secretary, ‘Moving towards clear land titles in India: Potential benefits, A road map and remaining challenges’ (Department of Land Resources, Ministry of Rural Development 2009).

⁴⁰Klaus W. Deininger et al., ‘Innovations in land rights recognition, administration and governance’ (2010) World Bank Study 14.

⁴¹Section 37 of the Land Titling Bill, 2011. In other countries too this approach has been taken, Section 42 of State of Victoria, Australia, Transfer of Land Act, 1958 and also, Sections 29 and 30 read with Schedule 3 of the United Kingdom’s Land Registration Act, 2002.

registered in the Title Register will be held by the owner/ interest holder of the property conclusively except in case of fraud after expiry of three years from the date of notification of the entries or modified entries if so ordered by the Tribunal/ High Court.⁴²

The 2010 Bill proposed to maintain Registers in paper as well as in electronic form. Section 40 of the 2011 Bill provides that all Registers would be maintained in electronic form and also enables execution of future transactions in electronic form. Section 51 of the 2011 Bill provides for compulsory use of biometric identification or any other such method for establishing the identity of any person for any transaction in any immovable property recorded in the Register of Titles.

Section 13(5) of the 2010 Bill had restricted access to the titling information to non-parties at the discretion of the Director, Title Registry or any authorised officer. Section 59 of the 2011 Bill makes all records under the Registers public records and available for inspection by the public. Extracts are available for a fee to any "interested party", though it is not clear if that implies any restrictions to who can seek extracts.

The 2011 Bill dispenses with the idea of compulsory titling after 5 years as also the idea of prioritising grant of titles based on grading of property sizes from "small" "medium" and "large" properties, in that order.

Additionally, Section 54 of the 2011 bill enables appointment of licensees to carry out the State functions under this Act. It would allow the government to allow the participation of private players for survey and settlement work with a bottom-up approach.

A systemic part of the Torrens system includes the indemnity principle whereby Title Insurance is guaranteed. In essence being that the state would financially compensate a person deprived of his rights by the grant of conclusive title to a bona fide buyer because of any defect in determining the guaranteed title.⁴³ This in the Indian scenario would seem apparently difficult considering that about 80% of litigation in our courts today revolves around land disputes. Keeping this particularity in mind, the indemnification option by the State in the 2011 Bill has been limited to the "entries in the records" (Section 42) in the Register rather than "guaranteeing and indemnifying the correctness of title of ownership" as promised in the 2010 Bill. In fact, the whole concept of title guarantee has been dropped from the 2011 Bill.

⁴²Section 37 of the Land Titling Bill, 2011.

⁴³Pameia O'Connor, 'Double Indemnity - Title Insurance and the Torrens System' (2003) 3(1) Queensland University of Technology Law Journal 141.

The Land Titling Bill, 2011 is commendable in its approach to creating an efficient land record management system. However, it is not an exaggeration to say that implementing the said Bill which would only be a model law for the states would be an uphill task. An essential question which remains unanswered is that *whether all states in India would be able to implement such a system?* Putting it differently, one can say that while some states are efficient in administrative delivery and technological advancement, others are not. Nor should one forget that various issues will crop up if subjects like alienation of tribal land are taken into consideration as the Bill is silent on the matter. The next section deals with the challenges, drawbacks and suggestions with regards to land record management in India.

CONCLUSION: CHALLENGES, DRAWBACKS AND SUGGESTIONS

We, as a nation, have constitutionally fragmented the states and allowed the fragmentation to continue since Independence. Contrary to what is stated in the Preamble of this Bill as an objective, we would not get standardization and unification everywhere in India. It is an impossible objective unless there is hundred percent compliance.

While the benefits of a clear and conclusive Land Titling System are for all to enjoy, the Bill also proposes to confer some responsibilities on the people. It proposes to make it compulsory for people to declare any changes in their titles. They have to provide compulsory intimation of civil suits or appeals or revisions, equitable mortgages, statutory charges, pending action, power of attorney, grant of succession and transaction. Penalties are prescribed for wilful concealment of information or deliberate furnishing of false information to the proposed land titling authority.

Also, the implementation of the Bill will be a huge challenge for the government as the creation of the land titling authority, the tribunal, the survey system, the legal services and valuation cell, too, will be quite an uphill task. Regular updates of features, such as valuation, will require an infrastructure, which at present does not exist. What also needs to be noted is that the proposed law will not help the marginal farmers and people of the rural background. The reason for the same is that for most of these people, the work on settlement and recording of land rights happened in the 1930's and 1940's. Post-Independence, the settling of land rights has been perpetually ignored. The introduction of a new system now may prove to be more cumbersome than even the actual provisions existing today. Although it must be considered that conclusive ownership over property would provide farmers loans more easily.

Another criticism levied against the Bill is that it gives the government greater authority. Bureaucrats get to decide about accepting registration documents even in an uncontested conveyance. There is enormous potential for corruption within such

a framework considering the country's public sector is notorious for corruption.

And at the same time, it is also pertinent to note that even some of the positive aspects of the bill lack clarity. For instance, the bill says the titling authority will *Suo Moto* take up irregularities in provisional titles. This provision would be effective only if the rights of all are recorded as we ultimately come back to the very basic statement that land is a state subject and it is also not certain if all states would enact a Land Titling Bill or not.

A possible suggestion which would aid in mitigating the biggest drawback viz. the uncertainty over the implementation and acceptance of the model law by the various states, would be to provide financial assistance to the various states. In order to take cognizance of the fact that some states might need more aid than others, the Planning Commission could help in deciding the relative allowance of financial assistance to the states. As far as the issue of corruption is concerned, this is not a new issue and affects almost all the public sectors and thus there is a need to tackle this almost independently of the issue of land record management.

However, it must be realized that the Land Titling Bill, 2011 and its various features are an important first step towards solving various problems as highlights in the Introduction and ought not to be restricted in its early stages by mere speculation.