

Urban Land Entitlement—A Case Study of Rajasthan

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Abstract—*The land is a scarce resource and immovable asset which is indispensable for human existence as well as for development. It is of enormous economic, social and symbolic relevance. Traditionally, land was a major source of government revenue and is administered through revenue departments. Post-Independence land reforms defragmented the land parcels and made them more dynamic and complex system. It is assumed that persons liable to pay land revenue are proprietors of the land. Thus the present record-of-rights in India is fiscal in nature and presumptive in character.*

The paper provides a brief description of the nature and characteristics of land records in India and status of government initiatives to upgrade and digitise the spatial and non-spatial data. This is based on the analysis of documents and reports of various committees pertaining to land records. It reveals the prerequisites for a guaranteed titling system and elaborates the Torrens System of land titling in the context of Rajasthan State, which is considered forerunner in land titling. The state has taken some initiatives in this realm and is a model for other States to follow. The paper reports the progress made by Rajasthan till the passing of Rajasthan Urban Land (certification of titles) Bill 2016 and examined the efficacy and effectiveness of it in resolving the problems and complexities involved in the urban entitlement in Rajasthan.

1. INTRODUCTION

Land and water have been the basic elements of life support system on our planet since the dawn of civilisation. India constitutes 18 percent of the world's population, 15 percent of the livestock population and only 2 percent of the geographic area; one percent of the forest area and 0.5 percent of pasture lands. The per capita availability of forests in India is only 0.08 per hectare as against the world average of 0.8 percent, thus leading to the pressure on land and forests. Increase in population, change in social system and post-independence land reforms have made land records more dynamic and complex system. It poses a major challenge and urgent concern of the government to resolve the disputes pertaining to land entitlement due to lack of proper records and system of presumptive and financial character of land records. Even in the available land, the large chunks of land are under litigations, or there are flaws in the land records.

2. NATURE AND CHARACTER OF LAND RECORDS

In India, land is owned or held in two types – the land held directly from the government under a lease or assignment with right of permanent and heritable possession with or without

the right to transfer through a deed or, the land held in persons other than government with right of permanent and heritable possession with or without rights to transfer through a deed. Traditionally, land revenue was the major source of income for the State; it was necessary to identify those from whom it could be collected. Therefore, the land records were prepared and maintained by the state governments primarily for the collection of revenue and for this reason that the land records contains crops and soil details to assess the revenue. It was assumed that the persons liable to pay land revenue were the proprietors of the land [2]. Based on the same system, the land reforms were made for social and equitable goals.

The present records-of-rights of land in India are fiscal in nature and presumptive in character [2] [3]. Ownership is presumed from the executed deed or from revenue records. The person is shown in the record as responsible for paying land revenue for a particular piece of land is presumed to be the proprietor of that piece of land unless it is proved otherwise. Title to land is only incidental and springs from the presumption that he who pays land revenue is the owner. However, the entries in such records are not conclusive. Whatever be the entry in the record-of-rights in the land, it is permissible to challenge it in an appropriate court or tribunal. So, the revenue codes lay down that no suit shall lie against the State Government or any officer of the State Government in respect of a claim to have an entry made in any record or register that is maintained by the government or to have any entry omitted or amended [2]. But the question arises if the Governments have prepared these records with such care and depth to be sacrosanct.

Not only the land records are not up to date, in many cases, but they also are not available at all. The village accountant, gramalekkiga, karanamor patwari maintain the records, and in many cases, they are in very bad shape; under equipped to maintain proper records and surveys.

To improve the quality of land records, and make them more accessible, the central government implemented the National Land Records Modernisation Programme (currently called as Digital India Land Records Modernization Programme). It seeks to achieve complete computerisation of the property registration process and digitisation of all land records. Most of the States have crossed the half way mark but

that partial data is neither of the use nor are they satisfactory. However, the pace of modernisation of records and bringing them to an online platform has been slow. Table 1 below shows the present status of the programme.

Table 1: Status of completion of various components of the Digital India Land Records Modernisation Programme (DILRMP)

Sl. No.	Components	In Per cent
1	Computerisation of land records	86
2	Mutation computerized	47
3	Issuance of digitally signed Records of Rights	28
4	Cadastral Maps digitized	46
5	Spatial data verified	39
6	Cadastral maps linked to Records of Rights	26
7	Real-time updating of Records of Rights and maps	15
8	Number of villages where survey/re-survey work completed	9
9	Area surveyed	35

Sources: Department of Land Resources, Ministry of Rural Development (September 2017)

To address issues with land records, a move towards conclusive titling has been suggested by the peer committees on land records. In a conclusive titling system, the government provides guaranteed titles and compensation in case of any ownership disputes. Achieving this will require shifting to a system of registered property titles (as opposed to sale deeds) as the primary evidence of ownership, and having clear and updated land records. However, adopting a conclusive system of titling will require undertaking several measures and strong bank end system. All existing land records will have to be updated to ensure that they are free of any encumbrances and discrepancies. Information on land records, which is currently spread across multiple departments, will have to be consolidated into an umbrella agency. Further, several changes in existing laws that govern registration and transfer of land, and institutional changes in the maintenance of land records will also have to be done prior to implementation of a titling system.

3. CLEAR LAND TITLES AND URBAN DEVELOPMENT

High litigation due to cumbersome land deeds and no titles are the hurdles of urban growth. Rural areas at urban fringe have increasingly become subjected to rapid urbanisation. In many states, it is either revenue department or survey department which maintains the cadastral maps or spatial ownership details. Once the land comes under the ambit of the municipal area, it is the duty of urban local bodies to survey and maintain the spatial records, but urban local bodies are interested in maintaining spatial records only for tax purposes and not otherwise. While some have done so relatively well, implying that spatial records that were

established for tax purposes could, in principle, be used as a basis for ownership records, others did not live up to the task, resulting in outdated map products of inferior quality that appear to be one of the reasons underlying the high levels of land-related conflict (28% of parcels according to one study) in peri-urban areas [4]. It is observed that growth is more rapid at the periphery of the notified urbanisable area as the land prices are relatively lower and most of them are agricultural land. They also create sporadic or uneven growth patterns due to improper land records.

Over a past few decades, the economy of India has seen a shift from being agrarian-based to becoming manufacturing and services based economy [1]. This has necessitated the development of necessary infrastructure, and a shift in land use from agriculture to non-agricultural uses - commercial, industrial, and residential and others. Land that was earlier used for farming is now being used to set up industries, power plants, manufacturing units, building roads, water supply, sewerage, housing, and other services and amenities. This change in economy and thrust for infrastructure needs clear land records to cope with the growth.

Several new infrastructure projects are witnessing delay, with land-related issues often being a key factor. Report of the Committee of Streamlining Approval Procedures for Real Estate Projects in India 2013 observes that these delays occur because of non-availability of encumbrance free land (evidence that the property in question is free from any monetary and legal liability), non-updating of land records, and resistance to joint measurement survey of land records, demands for higher compensation by landowners, and filing of large number of arbitration cases by landowners.

In the absence of proper land records, title or tenure system, buyers and mortgagors face a risk that the title to a property may be imperfect or fraudulent; there is a risk to banks and housing finance companies that they may be unable to foreclose a mortgage, or that the property has been used to secure a prior mortgage. As many households are unable to prove legitimate ownership, they do not have access to mortgage finance; banks and finance companies are deprived of a significant part of their potential market. The absence of a verifiable property titling and record system has led to excessive litigation [2].

White paper on Black Money by the Ministry of Finance 2013, perceived that unclear land titles, accompanying costs due to title disputes and litigation, and lack of transparency in real estate transactions make the real estate market inefficient. Execution of new projects requires clarity on the ownership and value of land, both of which become difficult in the absence of clear land titles. Any infrastructure created on land that is not encumbrance free, or has unclear land records can be potentially challenged in the future, making such investments risky. [3]

4. EFFORTS FOR LAND TITLING IN INDIA

Realising the complexities of land records, transactions and financial-presumptive nature of land ownership, D C Wadhwa Committee on record of rights on land was constituted by the Planning Commission [5]. The Committee submitted its preliminary report in 1989. After extensively studying records of rights, existing revenue systems and related existing laws, the Committee suggested the Torrens System of Land Titling which was functional in Australia and many other nations, and Title Insurance which existed in some of the States in the USA as the possibilities in Indian context [6].

National Commission to Review the Working of the Constitution in 2002 recommended - "we move to a system where the state guarantees the title to land after carrying out extensive land surveys and computerising the land records. It will take some time, but the results would be beneficial for investment in land. It will be a major step forward in revitalising land administration in the country as it would enable Right to access, Right to use, Right to enforce decisions regarding land. Similar rationalisation of records relating to individuals rights in properties other than privately held lands (which are held in common) would improve operational efficiency which left unattended foment unrest. The Commission is of the view that a coherent public policy addressed to the modern methods of management would contribute to better use of assets and raise dynamic forces of individual creativity. Runaway expansion in bureaucratic apparatus of the state would also get curtailed by new management system". [2]

Government of Rajasthan passed an ordinance for title certification in the year 2007 which was lapsed without much action. Delhi Government also made an attempted to draft a similar law. An attempt was also made by theerst while undivided State of Andhra Pradesh in 2008 to introduce the Torrens system and starting a pilot project. It also made a draft bill for bringing the concept of land titling which was the model for other governments including Government of India to follow. Department of Land Resources of Government of India put up two drafts on its website, first in 2008 and second in 2011 to bring into effect an Act for titling to be introduced in the States and Union Territories. In 2013, the Union Government made a Committee headed by Vinod K Agarwal to suggest a model for land titling and other allied matters [5]. The Committee recommended the 'systematic titling' or 'systematic selective titling'. Both the D C Wadhwa Committee and the V K Agarwal Committee suggested Torrens System of titling for bringing clarity in Land Titling and resolving complexities related to land ownership.

The need for registration of title to land has arisen because the existing laws are no longer able to cope with the new conditions due to land reforms. Land parcels have become scarce, where well defined boundaries have become

imperative; individual property rights have acquired a negotiable value[3].

4.1 Torrens System of Titling

Torrens System originated in the State of South Australia and credit of this system goes to Sir Robert Torrens. This system was adopted worldwide with certain changes and customisation based on necessity. The main features of the Torrens system are- (a) achievement of certainty of title to land and (b) simplification of conveyancing relating to land. The certainty of title to land is achieved by certifying, or guaranteeing, by the state, the validity of title to land. Once the state registers the title to land of a person the title of the registered proprietor is paramount subject to certain specified exceptions mentioned in the title system. The purchaser of the land registered under the system need not go behind the certificate. [6]

Conclusive titling becomes guaranteed titling once the element of insurance is introduced. In the guaranteed titling model, the government not only keeps the records as per the principles of conclusive titling but also compensates a person who incurs a loss due to a wrong entry in the records.

V K Agarwal committee suggested that boundaries and location of properties are described with a reasonable level of accuracy and that all the properties are uniquely identifiable without any confusion as to the identity, location and boundaries with the integration and unification of graphical record and textual so that there is no gap between the two. There should be a system of registration of titles rather than deeds[3][4]. There should be no gap between the change in title and change in the record of the property meaning that the transfer of property and updating of the record are integral and no need of mutation. The Committee suggested three models of land titling which are prevalent in the world.

Systematic Titling envisages first registration of title over all the properties systematically in a campaign mode. In this method, duly qualified, trained and empowered staff appointed by the Government would determine the title over every property in a given area.

In Incremental - Compulsory Titling method, first registration of title is made compulsory by law when a property comes for transfer

In Incremental - Optional Titling method, the first registration is done by a competent authority on an application by the interested person. Whichever property comes under this would be operated under the title registration system, and the rest of the properties will continue to operate under the deed registration system. The UK is a good example of this where the parallel system operated from 1862 to 2002.

In the systematic titling, time taken is the least of all three models. In incremental compulsory method, the first registration goes on for decades together because it is made only when property comes for transfer. It is assumed that

systematic titling model is more viable in the Indian context and Government of Rajasthan passed a bill based on this assumption.

5. RAJASTHAN URBAN LAND (CERTIFICATION OF TITLES) BILL 2016

The land including rights in or over the land (entry no. 18) and maintenance of land records and survey for revenue purposes and records of land rights (entry no. 44) are state subjects in the 7th schedule of Constitution of India. Thus to legislate on land titling among other means, one of the options is States to legislate and the President of India gives his assent under Article 254 (2) of the Constitution. In April 2016, State Assembly of Rajasthan passed the Rajasthan Urban Land (Certification of Titles) Bill 2016. Presently the bill is under consideration by the President. As other States would like to follow or consider it as the model, salient provisions of the Bill have been described in order to identify critical gaps and explore whether the Bill would deliver the definitive land record, or lead to further litigation and complexities in the existing system of land.

5.1 Survey and Maintenance of Record

Section (4) of the proposed Bill empowers the State to make a survey of the land and premises in the urban areas by a gazette notification, through notice served under section (6), and the officials can enter upon land under section (5) between sunrise and sunset. The act authorises to prepare a survey map, register and a field book of all lands and premises with an indicative survey number assigned within the urban area.

5.2 Boundary Disputes

If any disputes of the boundaries occur that shall be inquired by an officer authorised under section (11[1]) of the act. He has power to serve the notice to the parties of disputed boundaries, to call evidences for the purpose of inquiry in the manner as provided in the act of a court under code of civil procedure, 1908.

After the completion of the inquiry, the officer shall pass the order in writing and his decisions; an appeal against the decision and order can be made in the Tribunal constituted for the same.

5.3 Record of Survey to be sent to ULBs/DAs

After completion of survey of an urban area, officer in-charge of survey shall send all maps, registers and other documents including notes related to survey to such urban local body or development authority or Department of the State Government. If the State Government is satisfied with the survey and approves it, a gazette notification will be issued.

5.4 Maintenance of Record

All maps, registers and other documents including connected files and other papers which are part of survey operations are

deposited with the concerned ULBs or Das. They shall be maintaining these data in a manner as may be prescribed. All these maps, register and other documents are open for public inspection, and certified copies can be granted on payment of fees.

5.5 Urban Land Title Certification Authority

The act provides for establishment of 'Urban land Title certification Authority by notification for the purpose of receiving applications, scrutinising the documents, verification from relevant official records including the records kept by the local urban bodies and issuance of certificate of title.

5.1.1 Certificate of title

A person who either holds title of any urban land immediately before the commencement of the Act, or a person who acquires title of any urban land after the commencement of the Act, may apply in such manner and within such time as may be prescribed (Section 23) along with additional information and documents (Section 24).

On the scrutiny and verification, if the certification authority is satisfied with the information and documents furnished by the applicant under section (22) and sought by him/her under section (24), about the veracity of the information and authenticity of such documents and is of the opinion that the title of the applicant may be certified confirming the status of applicant as lawful holder of title of the urban land specified in the application, he may record a finding to that effect stating reasons there for and enter the data in CLEAR in the prescribed manner and issue a provisional certificate of title for a period of two years without claiming any guarantee

No provisional certificate of title shall be issued if the person - has not paid the certification cum guarantee charges; has not produced no due certificate from such authorities; if the title is disputed or before a court or otherwise. There is also recall and cancellation of certificate if it is taken through malafide acts and or the land is before any court along with penalties (Section 31).

Subsequent changes has to be recorded in the certificate when there are changes in the ownership

6. APPELLATE TRIBUNAL

The Bill mandates for establishment of appellate tribunal through a gazette notification. Tribunal will have same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of hearing of appeals.

Any person aggrieved by an order of the Certification Authority may appeal within sixty days from the date of such order to the Tribunal (section 33).

7. INFERENCE

The above description makes it clear that the Bill does not define what the 'title' is and limitations and delimitations of the 'title'. It is unclear whether 'title' includes ownership only of land or also of built-up properties. Gujarat seems to have a more pragmatic view of urban records, where the office of the Settlement Commissioner and Director of Land Records proposes that each apartment would have a separate property card, in addition to a joint card stating the respective indivisible share in the land. [7]

The act also does not make it clear whether the "title" being granted would be conclusive or presumptive, and whether it can be challenged in a court of law. In this respect, it is similar to the Urban Property Ownership Record (UPOR) in Karnataka, which similarly promised a clear presumptive title. This is not an indemnity. Since the act neither states that the title is conclusive, nor bars title suits in civil courts, courts are likely to end up as the determining authorities. Verification of documents undertaken before certification might turn out to be critical; this brings back the salience of the spatial and textual integration issue, where attention has been inadequate [7].

As suggested by the V K Agarwal committee the proposed act mandates the establishment of Urban Land Title Certification Authority.

Subsequent changes in the title have to be recorded in the certificate by the applicant when there is a change in the ownership. The Bill establishes an appellate tribunal and any aggravated person may approach the appellate tribunal established for this sake. Any person having interest in the urban land may be allowed by the Certification Authority to inspect the relevant record of the Certification Authority and upon application being presented before the Certification Authority; such person may be provided certified copies of the record on payment of such fee and subjected to conditions.

The act provides for the integration of textual and spatial records. This integration is a significant problem in almost every state. It is unclear whether best practices from existing land record modernisation efforts in other states (for both urban and rural areas) have been considered. For instance, Gujarat drafted a detailed set of protocols and manuals for its officers, to address such discrepancies and various other operational issues faced during a survey. These were supplemented with regular training, capacity building, and performance incentives. [7] The act recommends a system where different urban bodies would collect and maintain survey records of properties under their respective jurisdictions. The data maintained by different agencies are often in different formats, has varying levels of detail, and more often than not, remains in silos. It requires a significant degree of coordination, across personnel as well as record formats. Section 26 of the act leaves coordination for the state government.

Presently Rajasthan has the computerised record or rights, and they are accessible to people through project Apnakhata. Similarly, the registration process has been computerised with the software Sarathi, and also there is a proposal to link these two. Thus linking the titling would have been the better and duplication of the work could be reduced.

8. CONCLUSION

Rajasthan state has opted for the 'incremental-compulsory' type of titling. To be successful in this regime *sin-qua-non* is the completion of Digital India Land Records Modernisation Programme, which consists of computerising existing records and procedures, digitising spatial records, and integrating textual and spatial records. The key challenge, after much effort, remains one of ensuring real-time accuracy, that is, up-to-date land records, beyond mere formalities of computerisation and digitisation. This is an uphill task requiring not just effective programme design, but also political economy interventions, incentive creation, and capacity building of government officials.

Some of the scholars are of the opinion that land titling as inadequate and costly, compared to broader tenure-based and more comprehensive recording systems. [8] [9] Rajasthan's law is a return to using titling and land acquisition as the critical levers for urban land administration, instead of sorting its record-keeping first. [7]

There are flaws and gaps in the intended system and provision for the appellate tribunal. It would increase expenditure and contribute more towards existing backlogs of cases than solving the problem. There is also a gap between existing and ongoing digitisation and documentation programmes, and the intended act would duplicate the work and probably serves no purpose. It is obvious that the Bill has been passed hastily, without considering the existing digitisation programmes, and ground realities of existing land records. It is suggested that it would have been more appropriate if the Rajasthan State would have gone through the recommendation and roadmap suggested by V K Agarwal Committee, the Bill would have been more pragmatic and useful.

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