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THE CRISIS OF LAND RECORDS IN INDIA AND THE WAY FORWARD

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ABSTRACT

In India, the property is a very revolving term. In every family, there is always an ongoing discussion over the property. The discussion is always intense which makes it a serious matter because obviously money. The process of registration, stamp duty, etc. is always a headache for anyone which makes it time-consuming as well. In this paper, we will discuss how India faces a crisis over recording the data of lands, its roots, and how to overcome it in the coming future. The focus of the paper will revolve around issues that led to such a crisis and how India's digitalization movement may be able to overcome it. An attempt has been made to include government reports and recommendations.

INTRODUCTION

The Transfer of Property Act, 1882 (hereinafter referred to as 'TPA') provides that certain transfers can be made only through a registered deed¹. For example, the sale or gift of immovable property is governed by the provisions of the Indian Registration Act, 1908² (hereinafter referred to as 'IRA'). A sale is defined under section 54 of the TPA³ as a "transfer of ownership in exchange for a price paid or promised to be paid". Essential of a valid sale under section 54 are-

- The parties are competent to enter into the sale of immovable property.
- The subject matter of the sale, i.e., the property must be in existence.
- The money consideration, i.e., the price has been fixed or referred.
- Conveyance, i.e., mode of transfer.

Sale of an immoveable property takes place via two modes as prescribed under section 54, which are, (i) delivery of possession and (ii) registration of sale deed. Registration of the sale deed⁴ is mandatory to complete the sale in the following cases-

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¹ Section 54 of the Transfer of Property Act, 1882

² Section 17 of the Indian Registration Act, 1908

³ Ibid.

⁴ Section 54(2) of the Transfer of Property Act, 188,

- Where the value of the tangible immovable property is equal to or more than Rs. 100, and
- Where the intangible immovable property is of any valuation.

The process of registration of documents is governed by the IRA. It prescribes a detailed procedure for such registrations.⁵ Where there is a transfer of tangible immovable property less than Rs.100, writing and registration are not necessary. It can be done through the delivery of possession only. However, the parties are at liberty to get the sale registered. In India, the ownership of land is presumptive, therefore it is subject to challenge⁶.

Other documents used to establish ownership include the record of rights (document with details of the property), property tax receipts, and survey documents. However, these documents are not a government-guaranteed title to the property, but only a record of the transfer of property. During such transactions, the onus of checking past ownership records of a property is on the buyer.

Owing to this and the lack of proper land records in India, the situation becomes haywire. The presumptive nature of ownership has been reaffirmed by the Hon'ble Supreme Court in its decision of '*Bhimappa Channappa Kapali (Dead) by LRs v. Bhimappa Satyappa Kamagouda (Dead) by LRs & Others and Vishwa Vijai Bharti v. Fakhrul Hasan & Ors.*'⁷

LAND RECORDS IN INDIA: A SPIRAL WEB

In the Indian Constitutional Jurisprudence, the property right is perhaps the one that has been litigated the most in terms of Constitutionality, as well as the right of property between an individual and the State. Land records have been at the core of the litigation. At the time when the Constitution of India came into force, the right to property was a fundamental right protected by "Part III of the Constitution" by way of "Article 19 (1) (f) and Article 31". Still, the government did not prioritize a systemic mechanism of creating land records. However, since the inception of the Constitution, a repeated effort was made by the governments in the curtailment of this right, particularly because the protection of property as a fundamental right restricted the efforts of the Government to perform and execute their efforts of development of the country.

⁵ Section 17 and 18 of the Indian Registration Act, 1908

⁶ *Bhimappa Channappa Kapali (Dead) by LRs v. Bhimappa Satyappa Kamagouda (Dead) by LRs & Others* (2012) 13 SCC 759; *Vishwa Vijai Bharti v. Fakhrul Hasan & Ors.* (1976) 3 SCC 642.

⁷ *Ibid.*

Unfortunately, in the early years of post-independence India, the right to property is a fundamental right that was seen as a big hurdle by the government and an impediment in the objective of the government to bring in a new socio-economic order in the country. Thus, it caused a big conflict in the expansion of infrastructure development in the country, particularly that of the industrial, railroad, etc. However, in the landmark judgment of **‘Kesavananda Bharti v. the State of Kerala,’**⁸ the Supreme Court stated that the right to property would not come under the ambit of the basic structure of the Constitution and it was in the aftermath of this judgment, that the government, through the 44th Constitution (Amendment) Act that repealed the right to property as a fundamental right and instead inserted Article 300A in the Constitution to include the right as a mere legal right. Regardless of the status of this right, keeping the land records should have been given due consideration as a policy matter. I would like to mention a few points below and explain why land records in India are a spiral web.

I. LETHARGIC ATTITUDE OF DEPARTMENTS AND THE OWNERS

Land records other than the registered sale deed such as electricity bills, survey documents, land revenue receipts, etc. are administered through various departments at the village or district level. A district is further divided into many levels like Sub-Divisions, Blocks, Taluk, villages, etc.⁹ The departments entrusted with the responsibility of maintaining such documents are still working under-staffed and with old methods due to which the entries and new documents are not updated regularly. It is very usual that due to failure in regularly updating the land records, the map available with authorities does not match with the actual location of the property, sometimes if a sale takes place between two parties, the Patwari or Tehsildar fails to update the new owner of the property which later poses many difficulties. In case of any inquiry or dispute, one has to go through decades-old documents manually searching for the chain of owners of a property which is a toiling and time-consuming task¹⁰. Moreover, such delay or neglect cannot be attributed to government departments only. The owners of the land often fail to inform the departments about changes they have made in their properties. The Land Revenue Codes of nearly all the states puts an obligation on the owner

⁸ (1973) 4 SCC.225.

⁹ Section 46 of the Madhya Pradesh Land Revenue Code, 1952. It says how a district is divided further to store land records information.

¹⁰ ‘India's poor risk loss of privacy, land in drive to digitise records’ (The Economic Times, 9 March 2020)

of the land to inform either the Tehsildar or Sub-Divisional Magistrate regarding the change in the user of their lands. This is often done deliberately to avoid land revenue or other taxes. In the case of '**Sajan v. State of Maharashtra & Ors.**'¹¹, the Supreme Court while dealing with compensation claims instituted by farmers against the lethargic attitude of the government in awarding them compensation for their lands acquired for construction of national highway, reprimanded the state government for the inordinate delay in awarding compensation to the farmers. The state contended before the court the delay due to the non-availability of land records. The Supreme Court directed the state government to constitute task forces and entrust them to update all the land records about the land which they had acquired from the farmers.

II. LAND LITIGATIONS

The Supreme Court very recently in the case of '**Shri Partap Singh (Dead) through LRs & Ors. v. Shiv Ram (Dead) through LRs**'¹² observed that the Civil courts or even the courts conducted by the DM and SDM always encounter land-related disputes languishing being not adjudicated since last two or three decades¹³. A paper released by NITI Aayog revealed that it takes almost 20 years to resolve a single dispute regarding land¹⁴. A study conducted by the World Bank in 2007 also suggests nearly 2/3rd of the disputes in the courts are related to land only¹⁵.

III. FAILURE OF GOVERNMENT SCHEMES

The government in India is always inclined towards bringing certain land-related schemes and incentives for the farmers like loan waiver and subsidies etc., and to avail, all these benefits, the landowners in rural areas are required to go through a long process of documents and claim verification but the land records being void of updates defeats the very purpose of these incentives and schemes. It is pertinent to mention here that most of the farmers are

¹¹ Civil Appeal No. 2170 of 2020.

¹² Shri Partap Singh (Dead) through LRs & Ors. v. Shiv Ram (Dead) through LRs (2020) Civil Appeal No. 1511 of 2020.

¹³ Ibid

¹⁴ NITI Aayog, 'Strengthening Arbitration and its Enforcement in India – Resolve in India'

¹⁵ World Bank, 'India- Land Policies for growth and poverty reduction, Agriculture and Rural Development Sector Unit, India Country Management Unit, South Asia Region'

working on landholdings without any formal title over the lands.¹⁶ Due to failure on their parts as well the neglect of the government departments in conducting land surveys, these kinds of farmers are prevented from availing the benefit of such schemes.

IV. HAMPERING THE INFRASTRUCTURE PROJECTS

The government in contemporary times, are more inclined towards bringing new infrastructure projects to boost the economy through the manufacturing and production sector instead of largely relying on the agriculture sector but this idea of the growth of the government is often defeated by the delay in the change of user in the land records which results in the issues in the assessment of adequate compensation. Also, due to failure to update the land records, the search of the land free from encumbrances become a very long and exhausting process.

V. BENAMI TRANSACTIONS

The menace of Benami transactions on a large scale poses huge obstructions in updating the land records. Section 41 of the TPA validates the transfer of property by an ostensible owner. Such transactions used to create a lot of problems in tracing back the owners in the process of land surveys conducted to update the land records. However, after the enforcement of the "Benami Transaction Act, 1988", the transfer under section 41 of the TPA is governed by the provisions of Sections 3, 5, and 8 of the Benami Transaction Act. It is suggested that the Prevention of Corruption Act, 2013 and the Benami Transaction Prohibition Act, 2017 would eliminate such transactions which will ultimately ease the process of updating land records.

VI. MULTIPLE ENTITIES AND DISPUTED LANDS

As we are aware that the land records system in India is a combination of three different types of records which are i) textual (RoR), (ii) spatial (maps), and (iii) transaction details (sale deeds). Therefore, multiple agencies are responsible for the maintenance of these records. The concerned authorities mostly find it difficult to ensure that all the records are

¹⁶ Indra Shekhar Singh, 'reform-land-ceiling-laws-incentivise-farmers-for-agro-ecological-plantations-and-agro-forestry'

updated. This leads to a lot of discrepancies in the land records system and people need to visit different agencies to find out their data.¹⁷

Also, in rural India, we often come across the word ‘VIVADIT ZAMEEN’ which means a disputed land. A disputed land in India may have a lot of civil cases revolving over it. This nature of the land attracts fewer buyers since finding information about such lands might be stressful and time-consuming for the parties.

WAY FORWARD

Since the inception of digitalization, all government departments have been trying to store property-related data in form of electronics and several attempts have been made but still, the major sectors remain unorganized. “One of the major manifestations of this is the state of land records in India.”¹⁸ If we take for instance my city to observe, the city’s development authority (Lucknow Development Authority) every year faces charges from the public that the files have gone missing and every year the government says the work is in progress to digitalize them. Somewhere, apart from rural areas, the authorities are also less competent to manage the land records in India.

The major land crisis that India observes are mentioned below:

- We often observe high stamp and registration duties especially in rural India which de-motivates the poor people to go forward for registrations.
- Sometimes, we observe that the files about registration for land are stored in different departments. This makes the general population uneasy in roaming to different departments daily. There is no organized way to store files in one single place.
- Sometimes, the land records are so poorly maintained that concerned authorities are unable to reflect the ground position of the required data.

Also, we lose out on government welfare schemes at times because we lack land records data when it’s required for to government to reflect their schemes for implementation.

¹⁷State and District Administration, 15th Report of the Second Administrative Reforms Commission, Government of India, April 2009.

¹⁸ ‘Modernizing Land Records in India’ Livemint, 10 September 2018

“In fact, in a short survey conducted in Rajasthan by National Institute of Public Finance and Policy, it was found that there were several errors and discrepancies between the land records and the ground reality in over 100 tehsils.¹⁹ But still, the concerned authorities are trying to manage and organize the land data with the help of programs like the Digital India Land Records Modernization Programme (DILRMP). The information in a newspaper says that states like Karnataka, Odisha, Tamil Nadu, and A.P. have digitized almost 100% of their land records.

For instance, if you have look at a property detail in the city of U.P. one can simply visit the website of (Lucknow Development Authority) and mention the specific prerequisites to check any property’s detail, all the information is available online (like the owner’s name, address, date of payment of installment, the amount paid to concerned authorities for registration, stamp, electricity, water charges, etc.). This is how regional governments have taken stances to improve the digitalization of property data. Despite this being a great step, we still face questions like, how will the people in rural areas tackle this? How will the population of rural areas enter a lot of details online if they are not very familiar with e-portals? The population in the rural regions has a fear of their privacy being endangered at times. So, for such issues, we need the concerned department's authorities to run schemes in rural areas and educate them over this issue.

Altogether, digitalization is the best way forward but still, certain reports recommended by various authorities can be kept in mind-

- If we look at the Report of Parliamentary Standing Committee on Commerce on Ease of Doing Business (2015), it suggested that there should be an integration of all the land records in a singular database.²⁰ Such integration will lead to the storage of all mortgage data and it being visible online. “It had also recommended the creation of a unique property identification code by linking city survey numbers to municipal bodies so that all data in the context of a particular property is available online.”²¹
- The FSRC (2009) Report has suggested a way to reduce corruption and delay in transactions by way of standardization and computerization of forms. It also suggested that the central body type of a department should be made that would look

¹⁹ DILRMP implementation in Rajasthan, National Institute of Finance and Policy.

²⁰ “122nd Report: Ease of Doing Business”, Standing Committee on Commerce, December 21, 2015.

²¹ Ibid

after the regulatory framework and enforce technical issues and improve cadastral mapping. “The draft Land Reforms Policy (2013) had also recommended setting up national and state authorities for the computerization of land records.”²²

To accelerate and ease the process of updating the land records in India, the government has come up with many reformatory models, such as-

I. DIGITAL INDIA LAND RECORDS MODERNIZATION PROGRAMME

The Union government came up with this programme as a part of their DIGITAL INDIA PROGRAMME²³ to ease the process of identification of the real owner of the land and to provide easy access of such land records to the public by digitizing them and to wipe out the process of maintenance of land records manually. However, the lack of computer knowledge among the staff especially in the inner regional belts is increasing the friction between the aim of the government and reality. Moreover, it is observed that due to lack of computer and technical know-how among the staff, often results in improper functioning of the computer system which increases the delay in land surveys, the update of land records, etc? Although “implementation of DILRMP has been a challenging task but most states use their local language and different terminologies in their textual and spatial land records. As of September 2017, 86% of land records have been computerized. This implies that the current land record on paper has been digitized and uploaded on system, from which citizens can access this information.”²⁴

II. CONCLUSIVE STATE GUARANTEED LAND TITLES

The government has proposed the idea of having a system of state-guaranteed conclusive land titles. Under this method, the state will give ownership based on evidence like registered property details like land tax instead of the conventional method of registration of sale deed. However, this method will take a very long time as the process of assessment of encumbrances to convert titles and other ancillary matters usually require the interference of many departments like the irrigation department, land revenue department, etc. Some of the major principles upon which the conclusive state land titles will be based are- (i) the cadastral

²² Draft National Land Reforms Policy, July 2013, Department of Land Resources, Ministry of Rural Development

²³ Digital India Land Records Modernization Program, Department of Land Resources, Ministry of Rural Development.

²⁴ Ibid

records will reflect all the significant details about the property titles and (ii) the government will guarantee the title which means there is going to be title insurance.

III. USE OF HYBRID AERIAL TECHNOLOGY

The government has proposed to use aerial identification of properties using drones to update the location of the property on maps and other documents etc. This will help in maintaining the ground report surveys on land boundaries along with giving accurate measurements of a property that might not be feasible regularly for a person.

Overall a policy paper 'Land Records and Titles in India' says that, to solve the land records problem in India conclusive titling may be the solution along with changes in laws across centre and state and administrative changes for the collection and maintenance of data. Moreover, to ensure that land data is updated regularly in the electronic systems no matter how small the change is in a property.