MOVING TOWARDS CLEAR LAND TITLES IN INDIA: POTENTIAL BENEFITS, A ROAD-MAP AND REMAINING CHALLENGES

By Rita Sinha
Secretary
Department of Land Resources
Ministry of Rural Development
Government of India

Introduction

On 21st August, 2008, India took a historical decision to move from the present system of "presumptive" property titles to the system of clear property titles, or the Torrens system, as prevalent in other countries, such as Australia, New Zealand, UK, USA, Canada, Switzerland, Singapore, Malaysia, etc. In India, the Registration Act, 1908 provides for registration of deeds and documents, but does not confer titles on the property owner, whose title remains merely "presumptive".

2. Conclusive Titles

2.1 A Conclusive Title may be defined as an unassailable and conclusive proof of ownership of property. In order to reach the stage of conferring Conclusive Titles, four fundamental principles need to be in place, namely, that:

(i) there should be a single agency to handle property records;

(ii) the "Mirror" principle should be operative. This requires that at any given moment, the property records should

mirror ground reality, i.e., they should be "real-time records";

(iii)   the "Curtain" principle should be applicable.   This requires that the record of a title should depict the conclusive ownership status and probing into past transactions and titles of the property should become unnecessary; and

(iv)   there should be title guarantee and insurance for indemnifying the property holder against any loss arising due to inaccuracies.

2.2   With regard to the four principles mentioned above, the status in India today is that, most of the States have two or three agencies handling property records.   The Revenue Department usually prepares and maintains the textual records; the Survey and Settlement Department prepares and maintains the maps; the Registration Department does verification of encumbrances and registration of transfer, mortgage, etc. of property.   A few States have a Consolidation Department in lieu of a Survey and Settlement Department. In some of the States, the local bodies have been empowered to do undisputed mutations.   The urban local bodies update property records for purposes of taxation in urban areas. Merging these departments into a single agency is, in many cases, administratively and politically difficult.

2.3   The tedious manual processes of survey and of the system of property record management have resulted in outdated maps and vast arrears of data entry in a vast number of cases.   The result is

that the records do not always reflect the ground reality and, hence, are not universally "real-time records".

2.4 At present, registration of deeds and documents in India requires probing into past ownerships and transactions of properties to establish non-encumbrance due to the system of "presumptive" titles and due to arrears in mutation.

2.5 In the system of "presumptive" titles the question of giving title guarantee and indemnification does not arise.

3. Potential Benefits expected from Conclusive Titling

3.1 As a result of Conclusive Titling, maintenance of property records will cease to be merely a tool for governance and revenue generation but will be added to the agenda of citizen services.

3.2 Since computerization will enable property records to be placed in the public domain, property owners will have easy access to their records, in contrast to the present system, where the property records are in the custody of a Revenue Department official, usually known as the "patwari".

3.3 The computerized property records will be real-time records obtainable from a single window, thereby, saving the citizen time and effort in obtaining property records.

3.4 The bane of presumptive titling is litigation, which will be considerably reduced once the titles are conclusive and tamper-proof.

3.5   The time taken for preparing and obtaining real-time records, registration and mutation will be greatly reduced.

3.6   Since market value of property and the legacy of past transactions and titles will be available on the website, it will facilitate property transfers and electronic payment of stamp duty and registration fees.

3.7   While the citizens are likely to be the real beneficiaries of Conclusive Titling, real-time cadastral records will help in better governance as well, in areas such as disaster management, land acquisition, rehabilitation and resettlement, land use planning and consequential food security, management of barren land and watershed programmes, e-credit facilities, enhanced revenues due to proper valuation of stamp duty and registration fees, etc.

4.   A Roadmap for Clear Land Titles

4.1   As we have already seen, Conclusive Titling involves four major components viz. single-agency property record management, "mirror" principle, "curtain" principle, title guarantee and indemnification. The last principle will be possible only when the first three have been put into place. Hence, priority has been given to the implementation of the first three principles.

4.2   The Government of India has launched a major programme by the name of "National Land Records Modernization Programme" (NLRMP) which incorporates activities leading upto implementing the first three principles, viz., single-agency for property records, the "mirror" principle and the "curtain" principle. This programme has

four major components – (i) computerization of property records; (ii) survey and preparation of maps using modern technologies, (iii) computerization of the Registration process and (iv) training and capacity building. In turn, each of the components has several sub-activities.

4.2.1   Computerization of property records involves the following sub-activities: data entry and entry into the National Code, conversion of textual data into the digitized format, digitization of cadastral maps, integration of textual and spatial data, setting up data centres at sub-divisional/tehsil[1], district levels, data centres at State level as part of data recovery and disaster management, modern record rooms at tehsil level and inter-connectivity among Revenue Offices.

4.2.2   The survey component consists of fresh cadastral surveys, re-surveys and updating of survey and settlement records including ground control network and ground-truthing.   The technologies identified for the survey are (a) pure ground truthing using total stations (TS) and Global Positioning System (GPS) (b) Hybrid technology using aerial photography along with ground truthing using TS and GPS (c) High resolution satellite imagery (HRSI) along with ground truthing using TS and GPS.

4.2.3   Computerization   of   Registration   includes computerization of the Sub-Registrar's Office, data entry of property valuation, data entry of legacy encumbrance data, scanning and

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[1] India is divided into 28 States and 7 Union Territories. Each State is further sub-divided into districts. The districts are further sub-divided into sub-divisions known variously as tehsils/talukas/blocks/anchals. Four to six villages in a district are placed in the charge of a village level Revenue functionary usually known as the "patwari".

preservation of old documents and inter-connectivity between the Registration and Revenue Offices.

4.2.4   Training and capacity building and strengthening of training institutions are major activities under the NLRMP to build up cadres well versed with the new technologies and new processes.

4.3   The district has been taken to be the unit for completing all the activities enumerated above.   The country has a little over 600 districts. Each State Government was requested to take up a few districts per year in such a way that the entire State is covered in the next eight years under the NLRMP.   The States that are undertaking cadastral surveys for the first time may take a little longer to complete the NLRMP.   The eight year Perspective Plans include the numbers, names and details of districts chosen per year, activities proposed to be undertaken, technologies proposed to be used, milestones, time-frames and expenditure involved. Sixteen State Governments have sent their Perspective Plans to the Government of India.   The latter has sanctioned Rs.2372.6 million during the current financial year through its Project Sanctioning Committee, for implementing the NLRMP in 56 districts.   It is anticipated that the activities in one district will be completed within two to three years.

4.4   The total project cost of the NLRMP for eight years has been estimated to be a little over Rs.56 billion of which the Central Government will fund around Rs.31 billion and the State Governments will be required to raise the remaining amount of Rs. 25 billion.

4.5   It is obvious that even with the combined efforts of the Central and State Governments, there may be gaps in fulfilling such an ambitious programme within the targeted period.   Public-private partnerships for the NLRMP have, therefore, been made an integral part of the scheme.   The State Governments can identify areas which can easily be contracted out to private parties, with Government functionaries fulfilling only their legal obligations.

4.6   To roll out the NLRMP, the Government of India was expected to prepare guidelines and technical manuals.   The guidelines have already been prepared and are in the process of being implemented.   The technical manuals are under preparation.

4.7   Several committees were required to be set up at the Central Government level for better implementation and monitoring of the programme such as:

(i)   an Advisory Committee on the Legal Changes for Conclusive Titling to examine the changes that will be required in the legal framework of the country to implement the Conclusive Titling regime. This Committee has already been put in place and is examining the issue in detail.

(ii)   A Core Technical Advisory Group for addressing issues relating to technology, transfer of technology to the States and to give continuous advice regarding technological upgradation. This Committee has been set up and is functional.   The State Governments

have been advised to set up similar Technical Advisory Groups and the matter is under progress.

(iii)   A Programme Management Unit at the national level to monitor and evaluate the progress under the NLRMP. A Consultant has already been appointed to help set up this body. The State Governments have been advised to set up similar bodies and the matter is under progress.

4.8   It is, thus, clear that the NLRMP will enable India to achieve three out of four principles which form the basis of Conclusive Titling. Although it is envisaged that the NLRMP will be completed in eight years, the country need not wait till then to introduce Conclusive Titling. Appropriate legislation can enable the States to implement Conclusive Titling in a modular way by introducing it in those districts which complete all activities necessary for the same.

5.   The Remaining Challenges

5.1   Magnitude of the Problem

5.1.1   The challenge of implementing the NLRMP can be better appreciated if we see the true dimension of the exercise being undertaken – probably one of the largest in the world!

5.1.2   India has to survey an area of approximately 2.16 million sq. kms.

5.1.3   In the rural areas alone, more than 140 million land owners have more than 430 million records. There are about 92 million ownership holdings each with four to six parcels of holdings. Not only has the survey to be done for each plot of land, but a

settlement has to be arrived at between the Government and each land owner, certifying that the owner is satisfied with the survey. This involves meticulous ground-truthing after using the sophisticated technology of either satellite imagery or aerial photography along with TS and GPS.

5.1.4   A similar survey is required for approximately 55 million urban households.   Urban areas would require door-to-door surveys, which will be all the more cumbersome in multi-storied buildings.   The technology for surveying urban properties is yet to be finalized.

5.1.5   Considering the vast size of the country, i.e., 3.29 million sq. kms., establishing the ground control point library (GCPL) presents a major problem. The Survey of India (SoI) has developed a national control frame and the first phase of GCPL of 300 points at a spacing of about 200 to 300 kms. apart covering the whole country has been provided. In the second phase, 2200 points at a spacing of 30 to 40 kms. apart, and a third phase of GCPL with control points at a distance of about 8 to 10 kms. apart have yet to be established.

5.1.6   India has approximately 6,40,000 villages. Out of these, 1,40,000 villages, largely in southern and western India, are surveyed by using field measurement books (FMBs) based on data of plot measurements, i.e., the "FMB method". Each village has approximately 300 FMBs. Thus, around 42 million FMBs are required to be digitized. The remaining 5,00,000 villages follow the system of "village maps". One village has between 1 to 3 map

sheets. Thus, the minimum village maps estimated to need digitization is around 1.00 million.

5.1.7 India has 4018 registration offices in the country. Of these, 1896 have yet to be computerized. Barring the State of Haryana all other Registration Offices have to be inter-linked with the Revenue Departments of the respective States.

5.1.8 Some parts of the country have never been surveyed and cadastral surveying is being done for the first time. Even in those States where surveys have been carried out, Government lands, rural residential areas known as "abadi sites" have never been surveyed. Urban areas require fresh surveys as the urban local bodies merely update data for purposes of taxation but not for ownership.

5.2. Constitutional Provisions

5.2.1 Under the Indian Constitution, "Land" is a State subject and the Central Government cannot legislate on it. Each State Government will have to usher in its own laws keeping in mind the overall spirit of Conclusive Titling and at the same time adjusting local requirements in the legislations. Some Central Acts may also need modification for which the Central Government will have to take the initiative. The latter is developing a "model law" for Conclusive Titling as a hand-holding exercise for those States which may request for help in drafting the State legislation.

5.3. The Challenge of language computing

5.3.1   Land records in India are maintained by State Governments in the local language.   India has nine major scripts covering 18 languages.   Moreover, in each State, a different terminology is used for describing the record of property rights. India has had to come out with information technology software capable of being compatible with the regional languages.   The challenge lies in operationalizing the software across the country.

5.4   Problem of Integration

5.4.1   Not only do the States have different languages and terminologies for property records, they also have different methodologies for preparing textual and spatial land records. Even within a State there may be more than one method of preparing and maintaining these records, depending upon historical factors in the creation of the State. For example, the State of Andhra Pradesh has been created by the unification of the erstwhile Telengana State and some areas taken out of the erstwhile Madras Presidency. Villages falling within the erstwhile Telengana State continue to follow the pattern of land records preparation and maintenance of the Telengana State, while the rest of the villages follow the pattern of the Madras Presidency. Karnataka State was carved out of four erstwhile princely kingdoms, each of which followed its own system of preparing and maintaining land records. These four methods continue to be followed in the State even today.

5.4.2   For preparing software for computerization of data, digitization, and integration of textual and spatial data, these factors

have to be kept in mind. It is difficult to have single software for use throughout the country, and virtually each State has had to evolve software compatible with its land revenue system/s. Those States that are doing their first cadastral survey have to evolve their own system/s for preparing textual and spatial land records.

5.5 Creating a National Code for data computing

5.5.1 Due to variations in languages and terminologies among the States while referring to the property records, the Central Government developed a National Code for data computing and circulated it to all State Governments for filling in the data. This will facilitate creation of a national database of property records and other attributes. The challenge lies in ensuring that each State adopts this National Code and fills it up systematically. The Programme Management Unit will monitor and interpret this vast volume of data that will be accessed at the national level.

5.6 Technology

5.6.1 Selection of technology is a major challenge for the country as a whole, as well as for each State Government. The varied topography of the country requires a judicious combination of technologies for proper survey. A single district may have a variety of terrains such as plains, hills and valleys and forests. The technology for valleys and forests and urban areas has yet to stabilize.

5.6.2 Even where appropriate technologies have been identified, transferring the technology down to the field level workers

all over the country is a daunting task. It is difficult to organize national level programmes and workshops for technology transfer due to the variety of languages spoken by the field level workers.

5.6.3	Due to change in technology, issues relating to security of data, redefinition of accuracy standards and a system for 100% quality check for errors in computerization and digitization have to be put into place.

5.7 Capacity Building

5.7.1	Intimately linked with transfer of technology is the issue of capacity building. Where once the knowledge of measuring land by chain and tape was enough for Revenue functionaries, they now have to be well versed with computers, scanning, digitization, TS, GPS, aerial photography, satellite imagery, and to some extent, with the registration process. Similarly, the Registration Officers have now to be trained in computers as well as in land record management. The capacity building involves between 0.1 to 0.2 million "patwaris", staff for approximately 5000 tehsils and 4000 Registration Offices, and over 50,000 survey staff.

5.7.2	The first step would be to build a cadre of master trainers at the State level who would then ensure percolation of technology to the district level, from where it would be transferred to the village level. This requires time, effort and financial resources.

5.7.3	For effective capacity building, upgradation of existing training institutes has been made an integral part of the NLRMP.

Some States do not have a training institute and a way will have to be found to establish one.

5.8 Pendency

5.8.1   The manual systems of survey, record keeping, registration, mutation, etc. have created a large backlog of work which must be attended to in a mission mode to ensure updation of records.   One way of addressing this challenge could be outsourcing the work or hiring of temporary staff by Government agencies.

5.9 Departmental integration

5.9.1   In most of the States, the Revenue, Registration, Panchayati Raj or local bodies Departments are headed by separate Ministers/Secretaries. Politically and administratively it may be difficult to integrate them immediately.   Information technology has provided a way out by letting them be inter-linked procedurally without disturbing the administrative arrangements. However, it will be a challenge to make this integrated system function smoothly within the existing regimen.

5.10 Moving together

5.10.1   The States within the country are at different stages in the modernization process – some of them doing cadastral mapping for the first time while others have already integrated the revenue and registration processes and are just a few steps away from Conclusive Titling. The challenge for the Central Government is to bring all the States to the same level of modernization, so that the country moves together towards Conclusive Titling without

disturbing the varied socio-economic systems prevailing in the States.

6.   The Way Forward

India has begun the journey towards the goal of ushering in the system of Conclusive Tiles with title guarantee. Modernization of the land records management and property registration systems is the first step.   The task appears to be stupendous, with monumental challenges at every step of the way.   With the unstinted support of the State Governments, the Department of Land Resources in the Ministry of Rural Development, which has rolled out the NLRMP, is confident of fulfilling its charter.

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It shows even greater promise for moving towards a decentralised governance mechanism in all avenues by allowing smart contracts to be executed over the blockchain. Blockchain technology represents a paradigm shift in the social contract that exists between citizens and the State and centralised institutions. It stresses the importance of citizens who record and maintain the public record. In this way, the blockchain upholds the ideals of liberalism; albeit with an algorithmic twist. The technology futurist Melanie Swan lists a set of potential governance ideals that the blockchain can empower like direct democracy, societal maturity, and borderless government services, amongst others. Four basic principles need to be followed in order to reach the stage of conferring conclusive Titles are: a single window (agency) to handle land records, the mirror principle, the curtain principle and the insurance principle. in "Moving Towards Clear Land Titles In India: Potential Benefits, A Road-Map And Remaining Challenges" by Rita Sinha, Department of Land Resources, Ministry of Rural Development [66] It is a research-based data journalism project that maps and analyzes ongoing land conflicts in India. It is put together by researchers and journalists who are spread across the country http://www.landconflictwatch.org. [67] Farmers are unhappy with the compensation offered or fear of losing economic value of the productivity of their lands.