

# USHERING INTO A NEW ERA OF CONCLUSIVE PROPERTY TITLING SYSTEM THROUGH PROPOSED LAND TITLING ACT, 2010

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## *Background*

The murkiness of land deals in our country as shown in recent Bollywood flick “Khosla Ka Ghosla” is just an indication to the widespread problem of getting the title of land with conclusive certainty. In our country where land deals are still governed by the age old maxim of *Caveat Emptor* (Let the buyer beware), the land purchase or sale is inherently risky. Add to that the archaic and ineffective system of decentralised land recording by the Government and no guarantee of accuracy of government record of land title in case of losses suffered due to faulty land title. Surely a system of centralised land title recording was a long overdue development. What came as bonus with the proposed Land Titling Act, 2010 are electronic record system and the proposed indemnification scheme for losses suffered due to inaccurate land record by government. This will prove to be a landmark development for a country where land deals have always been regarded as a matter of undue long litigation and harassment in the event of disputed ownership largely due to inaccurate and inconclusive government recording system. One more thing to be taken cognisance is regarding recording of title of land instead of earlier recording of deeds to establish claim on the land property. Title itself gives a sense of conclusive claim over property rather than deeds which are always subject to the dispute and multiplicity of claims.

In the light of above let us examine the salient features of the proposed Act.

## *Salient features of the proposed Land Titling Act, 2010*

The Draft Bill is divided in nine chapters dealing with the various aspects of the new titling system like preamble and definitions, land titling authority, title registry, legal services and title guarantee, land titling Tribunal, Compulsory intimation to the land titling authority and miscellaneous provisions. The draft is prepared as a model code for framing of laws by respective state governments. It is to be noted that land is a state subject and according to the Constitution of India state governments are empowered to pass legislations on the subject of land.

Let us examine and analyse some of the major aspects of the Draft Bill

### **1. The Land Titling Authority**

Chapter II of the Draft Bill is dedicated to the establishment, composition, powers, functions, duties, scope, administration and other matters related to the Land Titling

Authority (hereinafter referred to as Authority). Let us see at a glance some of these provisions relating to the Authority-

- i. **Functions-** A total of twenty six functions are prescribed under Section 4 of the Act. These functions cover almost all the aspects relating to set up of new infrastructure of land title recording, its functioning, controlling, guidance, clarification on the new system from time to time, valuation of land, publicity and general awareness creation regarding new order etc. Apart from these purely administrative functioning, Authority is entrusted with judiciary functions of making inquiries, examining on oath, awarding penalty and issuing orders also.
- ii. **Power-** The Authority shall be having same powers as a Civil Court has under Code of Civil Procedure, 1908 in the matters relating to the land titles. Apart from this it will also be empowered to exercise all the powers of the Chief Controlling Revenue Authority under the Indian Stamp Act, 1899. Also it will have the power to issue regulations under this Act for proper functioning of new system.
- iii. **Composition of the Authority-** The Authority shall consist of a Chairperson and four members to be appointed by the Government. The qualification of Chairman and members are not prescribed however a selection committee for selecting these members are prescribed.
- iv. **Other matters-** Apart from these matters other aspects like jurisdiction, term and condition of Authority members, Divisions of Authority, Officers and Staffs of the Authority, Finance, Accounts and audit of Authority are dealt in detail.

## 2. The Title Registry

This is perhaps going to be the most path breaking development of the proposed Bill. The Authority shall for the purpose of this Act establish a central Title Registry for the entire Union Territory (or the state) and may also establish sub-offices or citizen facilitation centre for the proper and hassle free receipt, recording and maintenance of the Land Titles (Section 12). Chapter III of the Act is fully devoted to the establishment of the new order in land title recording and maintenance in our country. Some of the salient features of this chapter which will go on to revolutionise the system are discussed as under-

- i. **Registers to be maintained-** The Title Authority, after survey and settlement to prepare an Index of Maps with unique property identification numbers, prepare a Register of Titles, a Register of Charges and Covenants and Register of Disputes. These registers shall be in both paper as well as in electronic form.
- ii. **Evidence-** The electronic records shall be construed the same meaning as evidence under the Indian Evidence Act, 1872.
- iii. **Contents of the records-** At any given time the record shall show all the relevant information of the land like market value, identification number, built

up area, details of transfer by way of sale or succession, details of pending disputes etc.

- iv. **Entries in the Register-** Every possible point is covered for recording in the Registers prescribed under the Act like Register of Title, Register of Charges and Covenants and Register of Disputes.

### **3. Survey, Settlement and Land Information System**

For the facilitation of this Act, the Land Titling Authority shall establish a Survey, Settlement and Land Information division. The whole of Chapter IV of the Draft Bill is dedicated to this very purpose. The Director, Survey, Settlement and Land Information System shall prepare a record of boundaries in a notified area and give it a unique identification number after cadastral surveying and mapping of each immovable property in the area. It shall also accept request for survey of immovable property by any title holder or a third party on payment of fees as may be prescribed. It may also hire services of private licensed surveyors for the purpose of surveying of immovable property with prior approval of Government.

### **4. Property Valuation Division**

Chapter V of the Draft Bill deals with the establishment and functioning of Property Valuation Division for the purpose of this Act. The Division will undertake the assessment of immovable property for the purpose of its valuation under this Act. The valuation will also serve as a base for calculating the Stamp Duty payable on such immovable property. Again use of electronic media and information technology is provided for in the Draft Bill as it advocates usage of proper software for auto calculation of stamp duty, registration fees and other applicable levies & fees payable on a particular immovable property. The provision for property valuation on request is prescribed on payment of requisite fees.

### **5. Legal Services and Title Guarantee Division**

Chapter VI of the Draft Bill proposes to establish the Legal Services and Title Guarantee Division for the purposes of this Act. The Division shall be empowered to render the legal advice to the Land Titling Authority. It shall also maintain, monitor and supervise the Guarantee Fund established under this Act to indemnify the public for losses sustained by them due to faulty land record in the land title register.

### **6. The Land Titling Tribunal**

Chapter VII of the Draft Bill proposes to establish and constitute a Land Titling Tribunal by Government for the purpose of this Act. The functions of the Tribunal are to adjudicate on the claims preferred for payment of compensation out of the title guarantee fund of the Authority and of the private parties authorised by the Authority

to operate such a fund. Tribunal shall hear appeals against the orders of the Land Titling Authority by an aggrieved party within three months of date of notification of such an order. The Appeal against the order of the Tribunal shall lie with the High Court. Tribunal is empowered act under laws of natural justice which provides it with necessary freedom to discharge its duties in more timely and accurate manner. Also it provides for exclusive right of Tribunal to hear on the matter related with land. This shall expedite the settlement of land dispute in our country which is typically characterised by long and harassing litigation.

## **7. Compulsory Intimation to the Land Titling Authority**

Chapter VIII of the Draft Bill lays down different events to be compulsorily intimated to the Land Titling Authority. These events are such which change or is potentially capable of changing the title, ownership, beneficial ownership, control, possession, usage, rights, obligations etc. relating to the immovable property and land. This very provision will help to arrive at the conclusive legal and title status of a land and an immovable property as due to single and centralised recording of all matters concerned with land like transaction and transfer of legal or substantial ownership in it or any charge, mortgage, covenant etc created on it in the country.

## **8. Miscellaneous Provisions**

Chapter IX is the last chapter of the Draft Bill and it deals with all the miscellaneous provisions relating to the Act. Following are some of the important provisions mentioned under this Chapter-

- i. **Target time frame for compulsory titling-** The model Draft stipulates a period of five years from the date of promulgation of this Act for every property owners to obtain a title from the Authority for each property owned in the manner as may be specified. It also aims to grade every property among small, medium and large.
- ii. **Immunity to the employees of the Authority-** Section 71 grants to the employees immunity against any legal proceedings for anything done in good faith under this Act.
- iii. **Amendments in other Acts to make them compatible with the Act-** Necessary amendments are proposed under Indian Stamp Act, 1899, Registration Act, 1908, Limitation Act, 1963 to make them consistent with the new order as proposed by the Draft Bill.

## *MAJOR AFTER EFFECTS OF THE PROPOSED LAW*

Every new statute tries to bring about the change in the existing system. The new Bill Draft aims to weed out many flaws of the system which is currently operational in the country. Some of the major reforms in the existing system due to implementation of the new order are listed below-

- 1. Mandatory provisions for registration of transactions regarding land-** There is provision of compulsory registration of any transactions in land- sell, purchase, lease, rental etc. The provision of compulsory registration extends to charges, covenants, mortgage and other similar and related events and transactions. Certainly this is a major development towards an era of centralised recording of a land titling in the country as it would enable the stakeholders to get the current status of a land property on the basis of point of time concept. Really a major move considering the multiplicity of recording and even non-recording which were the major causes of inconclusive and faulty recording system in the country.
- 2. Necessary registration of Power of Authority in case of transactions in land-** Currently much of the fraud and confusion in case of land title is due to validated dealings under the Power of Attorney. A party is currently not required to register his Power of Attorney before any legal or regulatory bodies and this becomes a major way of getting illegal or invalid possession of land giving rise to multiple claims over a single property. Now with the proposed system in place a Power of Attorney to deal in land is required to be compulsorily registered as and when it is granted otherwise it will be deemed to be an invalid deal.
- 3. Expected impact on equitable mortgage-** As we know that an equitable mortgage is an informal and non legal way of entering into a mortgage especially in case of land and shares by the mere passing of title deed and certificate, the system is expected to become redundant with the outset of electronic record system. Non physical and dematerialised status of land titles will certainly limit and check this imperfect and faulty mortgage system if not fully abolishes it. This is imperfect because it is informally and without proper documentation entered into and faulty because this system can give rise to opaqueness of land title status. At the best the new system requires compulsory registration of equitable mortgage (it implies that the new system does not prohibit the concept of equitable mortgage)
- 4. A covenant to be recorded compulsorily-** A covenant **is** a condition tied to the use of property. Now a covenant will be compulsorily required to be recorded with the title registry under the new regime. This will move us towards yet another step closer to the greater transparency in land deals. Any conditions attached with the property will be known at any given time before entering in a deal and confidence in the land deals will certainly be at a higher level.
- 5. Indefeasible Title-** It means a title of land as recorded with the Authority will be deemed to be correct and undisputed. Every land titles will be made indefeasible in

the registers of land maintained with the Authority to free them from fear of litigation in future.

6. **Indemnity provision-** Another milestone in the new system is the guarantee taken by government for the accuracy of land records maintained by it. It also provides for compensation to those who suffer any loss (real) due to incorrect land title record of the government. This is widely being seen as a self control measure by the government.

## *SWOT ANALYSIS OF THE NEW SYSTEM*

The best way to reach at the efficacy of a new system to be followed is through SWOT Analysis involving strengths, weaknesses, opportunities and threats with following the new system. A SWOT Analysis is hereby presented with respect to the Draft Bill on Land Titling Act, 2010.

### **STRENGTHS**

The new system is expected to have following strengths-

1. The new system will bring about an era of conclusive title for the immovable property in the country
2. New system of computerised recording of titles of property, disputes and valuation etc. will make information more transparent and freely available to all stakeholders
3. It will decrease the litigation- both in quantity and time involved in it
4. The Act aims to establish a self sufficient and robust system of land record in the country
5. Unique identification numbering and grading of property to keep track of nation's biggest asset i.e. land
6. The system lays sufficient checks and internal control mechanism and control in the form of Appealing provisions, rights and duties of Authority and proper disclosure from time to time
7. Different divisions such as title registry, Survey, Settlement and Land Information System, Property Valuation and Legal Services and Title Guarantee are expected to make land recording more comprehensive, accurate and transparent in the country
8. Biometric identification will serve as the best mode of establishing conclusive identification as proved worldwide
9. Indemnification against the losses due to faulty record by the Titling Authority is a great strength of this system as it will go a long way in confidence generation among general public
10. Electronic system of record keeping will rule out physical deterioration of deeds and documents

## **WEAKNESSES**

As any other new system this is also subject to following weaknesses which will hinder or delay the execution of the same-

1. In our country land is subject matter and we all know political motives coming in way of execution of any new proposals by state governments. This is the basic weakness of this Draft Bill as it is finally state which is empowered to accept or reject the provisions of this model Act in part or in totality
2. The infrastructure on offer seems too meagre considering the quantum and magnitude of change required to accommodate the new system
3. The lack of trained personnel to implement and run the new computerised system is also one of the major weaknesses
4. The general low awareness and dogma involving computerised system in the rural area where majority of our population resides is one of the obstacles

## **OPPORTUNITIES**

There are many opportunities on offer in the new system. The opportunities under new system may be assessed just by the fact that as per estimation several years ago by consultants McKinsey & Co., land titling reform would raise India's GDP by 1-2 percent. Following are the major opportunities due to implementation of the new Act-

1. The transparent recording system for land and immovable property will accelerate economic activity in the country
2. Indemnification system will bring about hedging against the risk inherent in dealing with land and immovable property in the country
3. The new Act will make land acquisition more convenient and speedy for both Government and industrial houses
4. It will give rise to fair compensation for the farmers in case of acquisition of their land by Government or industrialist
5. Due to more transparent land recording system the process of industrialisation in country will get a new boost
6. New infrastructural facilities will be expedited due hassle free land record
7. Insurance companies will get new avenues of to spread their business into by insuring against the losses occurred due to faulty land record
8. Foreign Direct Investment will get a fillip in the country due to change in perception and risk coverage
9. SEZ will be easier to commence due to flawless land recording
10. Land mafia will face heavy problem and difficulty to operate under the new system

11. Benami purchase of immovable property, Stamp Duty evasion, wealth tax evasion will be very difficult under the new system
12. Multiplicity of claim over a single property will soon be a thing of past as sale under Power-of-Attorney will be required to be furnished with the Authority
13. Many IT Companies and professionals will get new opportunity to work for the Government in implementing and running new computerised system

### ***THREATS***

There are many threats which can be perceived with the outset of the new system. Some of them are listed below-

1. The biggest threat in my opinion is the immunity given by Section 71 of the Draft Bill which immunizes every employees of the Authority against any legal proceedings for the work done by them under good faith. This is a potential threat as it may give them freedom to do wrongs in the garb of good faith
2. Considering the diversity of geographical features and sheer size of our country surveying of land and immovable property seems an arduous task
3. Not all areas are having proper law and order situation. Some of them are marred by Naxalite and other forms of insurgency. Survey and mapping of these areas pose a serious security threat
4. Employing new computerised system has its own share of security threats in the form of viruses, hacking, data loss and other forms of cyber and computer crimes
5. Present system of bureaucracy which is marred with nepotism and red tapeism is a major blockade in the transformational phase of new system
6. The success of new system depends much on the local support. Their non-cooperation is also a threat

### ***CONCLUSION***

It is surely too early to draw any conclusion. But one thing which is apparent from the new proposed system is that it will see India in a new era. Firstly dematerialisation of shares, then e-filings, MCA-21, computerised reservation system of Indian Railways and now in yet another development a proposal by Kapil Sibbal, Union HRD Minister to make certificates of educational qualifications dematerialised..... Are we moving towards a new order of e-governance? The answer is apparently affirmative and the proposed Land Titling Act, 2010 is nothing but the next link in the same chain. This system of land titling is already being followed in many countries like USA, New Zealand, England and Australia with much ease and success. The prerequisite for its success in our country requires great deal of political will power and congruence of central and state governments on the issue. To thwart an age old system and implement the new one requires strong public support and awareness also which at present are missing. Passing of law is another thing and getting desired result on grassroots' level is yet another matter. But one thing is sure that land is such a matter which

concerns all and sundry. And this very fact makes the new Draft Bill revolutionary and path breaking in nature.