

Land Titling Bill, 2011- A revolution in offing

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A great part of disputes relating to property in India are title disputes, wherein the Courts have to adjudicate between the parties who is the owner of the property and/or whether the person who executed the transfer document, had the title to the property. The existing system of maintaining land records in India establishes at best a presumptive title of the owner. The legal system only mandates registration of deeds recording transactions and does not look into the legal competence of the party seeking to create/transfer a right, title or interest in the property.

Such a presumptive title creates an uncertain regime of ownership which is prone to challenge and litigation. Further, there are multiple agencies handling land records such as Revenue Department, Survey Department, and Registration Department etc. There is no common pattern or prototype for maintenance of records between the various Departments or the same department of different states of the country.

With a view to overhaul the present decentralized system, the Government of India in August 2008 took a decision to move towards registration of titles which would create more secure private property rights and a computerized system on maintaining records. In furtherance of the same the Government has proposed the Land Titling Bill 2011.

The underlying objective of the Government is to introduce in India the system of registering titles of property based on the "Torrens System" which originated in Australia 1858. The "Torrens System" is a Land Registration system in which the government is the keeper of land and title records, and a land title serves as certificate of full, indefeasible, and valid ownership.

The Act is to provide for the 'establishment, administration and management of a system of conclusive property titles through registration of immovable properties'. It is an embodiment of the three principles of the Torrens System:

- i) The mirror principle- indicating in the Register of Titles the exact reality.
- ii) The curtain principle- implying that entry in Register of Titles is conclusive evidence of the title and interested parties need not enquire any deeper or beyond the entry for the purpose of any transaction with regard to immovable property.
- iii) The assurance principle- guaranteeing indemnification by the government for errors in the Register.

The proposed bill provides that the record prepared shall contain a survey of the boundary or boundaries or any part of boundary of every immovable property duly identified with distinct I.D. This distinct I.D may be tagged with the unique identity being developed by the Unique Identification Authority of India. In other words it means that each property shall have a unique number attributed to it, which will be used for identification of the property.

The bill further provides that the preparation of three kinds of the Register of Titles viz:

- a. Register of undisputed titles;
- b. Register of disputed titles;
- c. Register of charges in the nature of easement rights or any other condition having a bearing on the absoluteness of title.

The land register shall be based upon the available land records data. It shall be notified. Any person interested in challenging an entry in the register of titles, shall have a right to file objections to the registration of title. The objections would be considered and only upon clearance of objections, the title would be registered. The objections to the entry in the register of titles could be maintained by persons having either of the following rights/claims:

- a. a claim as leasehold title or right or interests of persons in actual occupation, easements, customary rights, public rights, mines and minerals, franchise,

b. a non statutory right in respect of an embankment of sea or river wall, any subsisting power of attorney authorizing the agent to sell or develop or construct the property,

c. any subsisting sale agreement with or without possession of the property,

d. any subsisting agreement cum GPA or any pending suit or appeal under Specific Performance Act,

e. any pending proceedings regarding dissolution or winding up or bankruptcy before any authority,

f. pending proceedings for recovery of statutory duties, levies taxes or any other claim,

g. charge or encumbrance on the receiver, or writ or an order affecting immovable properties made by any court for the purpose of enforcing a Judgment or recognizance of any deed of arrangement or arbitration or settlement if any etc. The bill further provides that the Title Registering officer (TRO) shall be compulsorily intimated of certain events which may have a bearing on the title of the property. The events/contingencies contemplated by the Act are as follows:-

a. In case the rights or interests in any immovable property are subject matter of any pending suit, appeal or revision, parties to such dispute shall get the same recorded with the TRO.

b. In case of any notification issued under Sec. 4(1) or declaration under Sec. 6 or award u/s 15 of the Land Acquisition Act, 1894 the duty of intimation lies upon the Collector.

c. All transactions made by the Government in respect of any property shall be intimated to the TRO by the Collector of the District concerned or by any officer of the Government competent to make such transactions.

d. Financial institution/bodies or individuals holding or creating equitable mortgage in respect of any property are to intimate the TRO of such mortgage to prevent the same from being rendered unenforceable.

e. The obligation of compulsory intimation extends to any party in whose favour a statutory charge or lein is pending or created. The bill provides for compulsory registration of all documents which are required to be registered u/s 17 of Registration Act 1908. The Act also requires compulsory registration of memorandum recording creation of mortgage by deposit of title deeds, family settlements involving immovable properties, notices u/s 52 of TPA, 1882, letter of administration, probate or succession certificate issued under the Indian Succession Act 1925, or any documents as may be notified by the Authority from time to time.