

TITLE REGISTRATION

AN APPROACH PAPER

1. TITLE – MEANING OF :

Every legal right has a title, that is to say, certain facts or events by reason of which the right has become vested in the owner. Thus if A buys a piece of land from B, A is the subject or owner of the right so acquired. The persons bound by the correlative duty are persons in general, for a right of this kind avails against the entire world. The content of the right consists in non-interference with the purchaser's exclusive use of the land. The object or subject matter of the right is the land. And finally the title of the right is the conveyance by which it was acquired from its former owner.¹

1. Salmond on Jurisprudence by P.J.Fitzgerald Page 221.

Thus, the title is essential source from which the right is derived. The title is the *de facto* antecedent, of which the right is the *de jure* consequent. The titles are of two kinds, being either *original* or *derivative*. The former are those which create a right *de novo*; the latter are those which transfer an already existing right to a new owner. The catching of fish is an original title of the right of ownership, whereas the purchase of them is a derivative title. The right acquired by the fisherman is newly created; it did not formerly exist in any one. But that which is acquired by the purchaser is in legal theory identical with that which is lost by the vendor.²

2. Salmond on Jurisprudence by P.J.Fitzgerald Page 331.

The facts that confer rights are vesting in nature, whereas the facts which cause loss of right are divesting in nature.

2. TRACING THE TITLE :

The tracing of title involves a detailed investigation into the source of title. In relation to immovable property, it involves scrutiny of various documents and papers available with various agencies, apart from application of various laws and legal principles having a bearing on the subject. The title scrutiny in India has become complicated on account of different personal laws (Succession Laws), various socio-economic legislations like land reforms, tenancy laws, land transfer regulations, apart from the general property law as contained in the Transfer of

Property Act, Easements Act, Contract Act, etc. Besides the substantive law, which deals with the creation or extinguishment of the rights and liabilities, various procedural laws and doctrines emerging from such laws have got a bearing on the property law. The most important of such doctrines is 'adverse possession' which is the result of the prescription of limitation under the Limitation Act, 1963. Likewise, the other doctrines such as *res judicata*, estoppel, waiver, etc., forming part of the procedural laws, have a lot of bearing in affecting the title to land.

3. IMPORTANCE OF POSSESSION :

The tracing of title involves a detailed investigation into vesting and divesting facts. In view of the Limitation Act, 1963, the limitation for recovery of possession is 12 years from the date the possession becomes adverse to the owner.¹ When exactly the possession becomes adverse is purely a question of fact.² Permissive possession or mediate possession however long cannot operate as adverse.³ Likewise, co-owners and the co-parceners cannot plead adverse possession against the other co-parceners or co-owners in the absence of clear evidence of ouster.⁴ The Law does not permit any person, including owner, to take law into his own hands and take possession even from a trespasser. The possession must be recovered only in accordance with the procedure established by Law.⁵ Any person illegally dispossessed may recover possession by way of a summary suit for possession, without even going into the question of title. The title in such cases is totally irrelevant.⁶ Any person in possession is entitled to protect the same against any one, except the true owner.⁷ Therefore, even where the possession is sought to be recovered on the basis of the title, the person who is having better title is entitled for decree. The proof of absolute title is not necessary in all cases. These principles and remedies have led to the concept of Possessory Title.⁸

1. Art. 65 of the Limitation Act.
2. *Tajibai v. Hasan Khan*, AIR 1987 MP 219.
3. *Thakur Kishan Singh v. Arvind Kumar*, (1994) 6 SCC 591 : AIR 1995 SC 73; **see also** *Roop Singh v. Ram Singh*, AIR 2000 SC 1485.
4. *Roop Singh v. Ram Singh*, AIR 2000 SC 1485; **see also** *Thakur Kishan Singh v. Arvind Kumar*, AIR 1995 SC 73.
5. Sec. 5 of the Specific Relief Act, *Rama Gowda v. M. Varadappa Naidu*, AIR 2004 SC 4609.
6. Sec. 6 of the Specific Relief Act, *Lallu Yeshwant Singh v. Rao Jagdish Singh*, AIR 1968 SC 620.
7. *Sommath v. Dr. S.P. Raju*, AIR 1970 SC 846.
8. *Nair Service Society Ltd. v. K.C. Alexander*, AIR 1968 SC 1165; *Mariumbi Aslamkhan v. Vithoba Yeshwanta*, AIR 1970 Bom. 405.

Possession is *prima facie* evidence of title.¹ The possession is always taken as nine points in Law. In fact, the genesis of title is the established possession, which is recognised by the State. The recognition by the State of such rights for the purpose of revenue assessment and collection has made the person in possession of the land, a Pattadar/Khatadar. Throughout the ages, the tiller who re-claimed the land and brought into cultivation was recognised as owner and he could not be evicted from the land so long as he was paying the revenue to the State. Such ownership was heritable and transferable. Therefore, the State was not construed as the absolute owner and what all it had was the right to collect the revenue. It was this right to collect revenue, which was farmed out to the intermediaries by way of permanent settlement constituting the Zamindari system. However, on account of lack of understanding with the Indian land tenures and on account of the manor system prevalent in Europe, the British officers treated these revenue farmers as landholders. Unfortunately, the Zamindars though only revenue farmers, were pampered by the British Rulers as they always acted as reactionaries to any kind of revolt from the farmers against the extraction of the disproportionate land revenue by the colonial rulers. In fact, though Sir Thomas Munroe as Governor of Madras and in the later years, the British Capitalists opposed the continuance of these intermediaries, the British administration continued them for the purpose of protecting their colonial interests.² Till the Estate Lands Act was enacted, the Zamindars exercised unfettered power to evict the tiller and induct the person of their choice. Even after the said Act, the Zamindar was treated as a landholder and the position of the actual cultivator who tilled the land since ages as owner was reduced to that of a tenant. Throughout the freedom struggle, the nationalists pleaded for abolition of the Zamindari system and for grant of ryotwari pattas to the actual tillers.

1. Sec. 110 of the Evidence Act, *Parsinni v. Sukhi*, (1993) 4 SCC 375.
2. See, *The Economic History of India*, Vol. I Chapters VIII & IX. by Romesh Dutt, *The Cambridge Economic History of India*, Vol. II, by Dharma Kumar, *Essays on Medieval Indian History*, Edition 2003, by Satish Chandra, *Essays in Modern Indian Economic History*, Edition – 1987, by Sabyasachi Bhattacharya.

Irrespective of the land tenures, it is possession, which became the source of title in the Common Law and this is the essential difference between the Roman Law and the English Law (Common Law). The Roman Law made a clear-cut division between dominium and possession, much clearer than is the case in English Law. The Romans began with a technical concept of dominium as the absolute right to a thing, possession denoting rather a mere physical control, which had, as such no legal consequences in early law. The English Law on the contrary, reached the concept of the ownership as an absolute right through development in the Law of Possession. He was the owner, who could prove a better right to possession than any one else.¹

1. Paton : *Textbook of Jurisprudence*, Page 466.

Under Roman Law, there can be, at any point of time only one title from which all other titles must be traced and under this system no new title independent of old title can be acquired except by divesting the previous owner of his title. On the other hand, the fact that in English Law, the plaintiff needs only to prove a better title than that of the defendant, implies the existence of someone, who has the best possible right to possess and who is therefore the true owner. Further, under English Law, a thing may be owned by two or more persons at the same time. Much more important is the way in which the rights of the ownership can be split up between several persons on temporal plane. Thus, under English Law, multiple or several ownership is perfectly feasible. Thus, a building can be owned without owning the land and different floors can be owned by different persons. The same land can be held concurrently by different persons in different capacities. When we speak of land, we mean all such rights and interests in the land.¹

1. See, Law of Flats, Apartments and Buildings, 5 Edition, by the same Author page 4.

These principles of English Law have been incorporated in our statutes and have been applied by the Courts, since the British rule came into existence.¹ In fact, there is a presumption of ownership in favour of a person in respect of a thing, which is shown to be in his possession.²

1. See *Park View Enterprises v. State*, AIR 1990 Mad 250 and *N.S. Ramachandra Raju v. Joint Sub-Registrar*, 1991 (1) An.WR 489.
2. Section 110 of the Indian Evidence Act.

Above all, Possession has lot of bearing on law and order. It reflects reality. Possession and actual use of land alone shall become the basis for our future planning, lest the planning goes awry. The power subsidy management, ground water regulation etc., is impossible with proper data. Greater care is required in identifying or recognising or recording possession and it should be evaluated legally.

In view of the importance of possession, all the evidence as to the possession assumed significance like revenue records, mutation registers, property tax receipts, land revenue receipts, settlement and survey records, assessment registers, electricity charges receipts, water charges receipts, land line telephone bills, etc. None of them confer title, but they are evidence of established possession which will support the case of adverse possession set up by the defendant and may result in the divesting of title of the real owner.

4. WHEN TITLE ASSUMES SIGNIFICANCE :

In view of the Limitation Act, there is no need to investigate into the source of title beyond limitation period. In case of Government lands, it is 30 years¹ and in other cases, it is 12 years.² In case of Religious and Charitable Endowments and Wakf properties, the relevant statutes presently in force made the law of limitation inapplicable. So also, in case of lands in respect of which sale is prohibited by law.³ In such cases, the title assumes all the significance and possession becomes irrelevant. Even in case of open and fallow lands title is more significant, as the principle applicable in such a case is that the possession follows title as there would not be any documentary evidence to the contrary. Further, under the present Limitation Act, it is enough for the plaintiff to prove title and he need not prove possession.⁴ Law presumes the possession to go with title unless rebutted.⁵ Hence, we need to investigate into the genesis of title, however ancient it may be, in all such cases.

1. Art. 112 of the Limitation Act.
2. Art. 64 & 65 of the Limitation Act.
3. See Note 6 on Land Transfer Regulations. See also *Lineai Gamango v. Dayanidhi Jena*, AIR 2004 SC 3457; *2004 AIR SCW 3257*; *Amrendra Pratap Singh v. Tej Bahadur Prajapati*, AIR 2004 SC 3782.
4. *Indira v. Armugam*, (1998) 1 SCC 614.
5. *Rama Gowda v. M. Varadappa Naidu*, AIR 2004 SC 4609.

5. TRANSFER OF TITLE :

Transfer of title vests title in the transferee, while divesting the same from the previous owner. The transfer takes place by act of parties and also by operation of law. The transfer by act of parties is regulated by Transfer of Property Act, Easements Act and the Registration Act, etc. These Acts require registration of some specified documents only. There are certain other transfers which do not require written instrument and in such cases, the oral transfers are permissible viz., partition, release, relinquishment, family arrangement etc. Further, the Registration Act exempts the instruments executed by the Government. The Government and its Officers make assignments only by executive orders and these orders resulted into several title disputes. In fact, in many cases, the Government chose to disown such orders or to dispute the genuineness or competency of such orders. There are instances where the orders passed by the top officers of the cadre of Chief Secretary who is the custodian general under the Evacuee Property Act were disputed by the Government.

The transfer by operation of law takes place without an act of parties by directly effecting transfer. It is the legal consequence of an event viz., birth, death, adoption, marriage, divorce, partnership, dissolution, amalgamation, merger, liquidation etc. Such transfer takes place by inheritance, survivorship, succession etc. They have a dynamic impact on the title. They are governed by the relevant Laws.

6. LAND TRANSFER REGULATIONS :

Land Transfer Regulations impose prohibition on the transfer of land. Any such prohibited transfer is void viz, assigned lands, land in schedule areas etc.¹ By their very nature, these laws do not permit the application of adverse possession.² The original owner or the transferor, for whose benefit the prohibition is made, would be entitled for resumption of the land and it is the duty of authorities under the Act to restore the possession.² Similar view is also taken in respect of the rights of the protected tenant under the A.P. (T.A.) Tenancy Act.³ In case of these lands, several disputes arose on account of tampering of land records, forged pattas, non-availability of the original pattas to know whether it is an assigned land or not, and in many cases, the officers initiate proceedings without even verifying whether the land is subject to such prohibition or not. This makes the title in respect of the lands very uncertain and inchoate.

1. Sec. 3 of A.P. Assigned Land (Prohibition of Transfers) Act, 1977.
2. Sec. 4 of A.P. Assigned Land (Prohibition of Transfers) Act, 1977.
3. *Sada v. The Tahsildar, Uttoor, Adilabad District*, AIR 1988 AP 77 (FB).

Therefore, the investigation into title necessarily involves close examination of all the above laws and scrutiny of relevant documents and also the verification of actual possession. Any proposed law should also provide sufficient safeguards in respect of the allotments, assignments or other land transactions to be made by the Government.

7. TITLE REGISTRATION :

The registration of title was originally conceived and developed by Sir Robert Torrens and schemes and relevant legislations in several countries passed in this regard, are based on Torrens schemes. Under these schemes, when a title is registered, a certificate from the Registrar carrying on the face of it, a title protected by the statute is substituted for a bundle of deeds which has to be scrutinised, each time a transfer relating to land is contemplated.¹ It is the State or the Registrar which defines the title to the land and whoever is registered as proprietor can sell the land.

1. See Introduction Chapter in Commentaries on A.P. Rights in Land and Pattadar Pass Book Act 1971, 9th Edition 2006 by the same author.

ENGLAND :

A registration curtain is in force in England under section 110 of the Land Registration Act, 1925, as amended by the Land Registration Act, 1988. The Land Registration Act, 2002, provides for registration of title in respect of unregistered legal estate any interest therein. It excludes the registration of estate for less than 7 years term and the rights under the Agreements. The registration of title is compulsory in case of transfer of qualifying estate for consideration or by way of gift or in pursuance of an order of any Court or by means of an assent. The qualifying estate means freehold estate in land or leasehold estate in land for more than 7 years term. It excludes transfer by operation of law and need not be registered. Certain mortgages are excluded. The titles are classified into different categories like absolute title, qualified title, leasehold title, possessor title, etc., and provides for first registration and registration of disposition. Thus, the Law in England does not affect the existing right.

The country is divided in Districts, each with its own land registry under over all supervision of Chief Land Registrar. The District Land Registrar is divided into three sections (1) Property Register (2) Proprietorship register and (3) Charges Register. Section 58 (1) of the Land Registration Act, 2002 states “if, on the entry of a person in the register as the proprietor of a legal estate, the legal estate would not otherwise be vested in him, as a result of the registration”. Therefore, even if a person was not entitled to legal estate, but had still been registered as proprietor and he need not rely on title deeds to prove his title. But, this will not destroy the equitable estate.

THAILAND :

The Land Code of Thailand made a revolutionary change in the title registration. Section 5 of the Promulgating Act mandates every person in possession of land without certificate of ownership prior to the commencement of the Land Code shall give notice of his possession within 180 days from the date of the commencement, failing which he shall be deemed to have intended to abandon his right to possession of the land and the State shall have the power to re-allot the land in accordance with the provisions of the Land Code, unless an order for extenuation is granted. The Land Code confers only the ownership and other possessory rights. Non-possessory rights like mortgage, charges, etc, are not covered. Section 2 of the Land Code declares that the land the ownership of which is not vested in any person, shall be deemed to be the property of the State. After the Land Code, a person other than the State will have title only where the title was acquired in accordance with Law prior to the Code or by title deeds under the Code. All the future acquisition of land can be only by way of allotment under the Code by the National Land Acquisition Commission. The Land Code also provides for delimitation of rights in land (ceiling), the land use regulations, issuance of documents of title to land, cadastral survey, registration of rights and juristic act, limitations of rights of aliens, companies, etc. It also seeks to regulate the trade in land as it requires permission

from the Minister in accordance with the procedure prescribed by the Ministerial Regulations.

Thus, the English Model is based on extension of the existing land registration scheme, the Thailand Model provides for creating a new title to land altogether by prescribing a one-time registration with far reaching consequences of forfeiting the existing title in case of default.

8. INDIAN SCENARIO :

In India, though the title registration scheme as obtaining in England was known to the authors of Registration Act, 1908, they did not feel feasible to introduce the same in India at that point of time. However, both Mr. Evans, who piloted the Legislation on Transfer of Property and Mr. Ellis, the author of the Registration Act hoped that some day the title registration would be introduced in India. The Law Commission of India headed by Sri M.C.Setalvad in their Sixth Report (1957) at paragraph 104 suggested wider coverage of the property register in Book No.1.¹

1. See Banking Laws Committee Report on Real Property Security, 1977 by Dr. P.V. Rajamannar, retired Chief Justice of Madras High Court, at 03-02-37.

The Registration Act by and large remained the same through out except the small changes made to facilitate the computerization and to make agreement of sale, leases of all kinds, compulsorily registerable by A.P. Amendments Acts, 4 and 16 of 1999. The Parliament also introduced the amendment for the purpose of computerization and also for making it compulsory to affix the photographs and the thumb impressions of the parties to the documents to be registered. Thus, the Registration Law only provides for registration of certain documents and not title. The Registering Officer has no power to enter into an enquiry as to the title and his jurisdiction is limited to proper execution of the documents by the executants concerned and preserving the registered documents and to inspection, search and issuance of copies thereof.¹ As suggested by the Law Commission, as above, it is advisable to make all transfers inter vivos as compulsorily register able by keeping the registration fee and stamp duty within the affordable level.²

1. *K. Sulochanamma v. H. Nanjundaswamy*, 2001 (1) CCC 461 (Ker); **also see** *Property Association of Baptist Churches, Kavali, Nellore v. Sub-Registrar, Jangaon, Warangal Dist.*, 2004 (1) ALT 174.

2. See also, *Manual of Stamp Duty and Registration*, 3rd Edition, 2005-2006 by the same author, page 54.

9. THE RECORD OF RIGHTS:

The Record of rights were originally prepared and maintained for the purpose of the settlement and collection of revenue.¹ The primary object is the revenue and not either to confer ownership or to recognize ownership, which has to be found out on the basis of the substantive law for the time being in force. The Records of Rights Act, 1971 as amended from time to time and the issuance of the Pattadar Pass Book and Title Deed under the provisions of the said Act, is only for the purpose of facilitating the credit to the farmer in possession of land as owner, tenant, usufructuary mortgagee and occupant.² The Act has no application to non-agricultural lands and Government lands.³ The proceedings under the Act are summary in nature and subject to the decree of Civil Court in any suit for declaration of title. The Act in its implementation is abused and particularly in urban and semi-urban areas and even in respect of Government lands and non-agricultural lands which are excluded. The Act failed in updating the entries in the Pass Book and the Title Deed and in preventing issuance of duplicate pass book and title deed.

1. *Murari v. Union of India*, AIR 1997 SCW 284 : (1997) 1 SCC 734.
2. Section 2(4) of R.O.R. Act. State of Objects and Reasons (Act No. 11 of 1980); **see also** introduction chapter in Commentaries on A.P. Rights in Land and Pattadar Pass Books Act, 1971 (Popularly called R.O.R. Act) 9th Edition 2006, by the same author. See also Land Reforms in India, Volume – X, 2005 Edition, by Wajahat Habibullah, and Manoj Ahuja for evolution of computerization of land records in various states in India. See also Computerisation of Land Records, Inter-State variations by Manoj Ahuja and A.P. Singh, Kurukshetra, May-2005.
3. Section 12 of R.O.R. Act.

The Act is definitely a step forward towards providing wider information as to title. However, the record of rights always remained only as an evidence of title or possession but was never a source of title. Though the Act contemplated updating of entries in the Pass Book by the Registering Officers and credit agencies, it was a total failure in the lands of the latter and is implemented in a belated and halfhearted manner by the former. Once an integrated land information system is available which is applicable to all the lands and immovable properties, the record of rights may become totally unnecessary.

10. SURVEY AND SETTLEMENT RECORDS:

The topographical survey was done by the survey of India and cadastral or revenue survey is undertaken by the department of Survey Settlement and Land Records. Though, different procedures are followed in the Andhra area and the Telangana area of the State, the object is the settlement. The abolition of land revenue made the settlement proceedings obsolete and the maintenance of the survey records a mere formality. On account of lack of interest on the part of the administration and rapid urbanization and poor maintenance and lack of adequate safeguards, the survey records as well as marks have been tampered. The staggered implementation of the various Tenancy Laws and Ceiling laws also resulted in adding confusion to this state of affairs. Issuance of supplementary Sethwar or their implementation has become very selective and incoherent. The town survey has not been conducted with the kind of devotion and diligence required and there was no proper co-ordination with the revenue and municipal authorities while conducting such survey and as a result the town survey records have not achieved the credibility sought to be conferred on such survey by the statute. Further, after the town survey, the revenue records and survey records were maintained in a parallel manner. The survey department always suffered for want of trained personnel and advanced technical equipment. No attempt is made, to make use of the advanced technical methods like remote sensing, digital or aerial survey. As a result, the survey and land records are now being used to create confusion rather than to clear the same.

11. TENANCY LAWS :

The Tenancy Laws can be broadly classified into two categories: (1) which provided for abolition of intermediaries like Zamindars, Inamdars etc. and revenue grants and conversion of the lands into Ryotwari and (2) which provided for the protection of the tenants in the Ryotwari lands.

- (1) The abolition of intermediaries and revenue grants and the grant of ryotwari pattas resulted in a new source of title to the grantee. All estates and inams were abolished and vested in the State subject to the rights of the persons concerned to obtain ryotwari patta or the occupancy right certificate as the case may be. But the implementation of these tenancy laws did not make any progress at all till 1973 in Telangana area and the proceedings are still pending in various stages in respect of some lands and in case of many valuable lands they are being re-opened in different ways. Even in Andhra area though the disputes for grant of ryotwari pattas between the land holders of major or minor estates and Inams and the ryots, was by and large resolved long back, the disputes with regard to the communal lands and the service inam lands are still pending in various stages.

- (2) The Andhra Area Tenancy Act, 1956 and A.P. (T.A.) Tenancy and Agricultural Lands Act, 1950 fall in this category. Whereas in Andhra area, the rights given to the tenant are limited to protection against illegal eviction, (except preemptive right to purchase) in Telangana area the protected tenants were given the right to acquire the ownership in various ways. On account of historical reasons, intermediaries like Jagirdars and Inamdars managed to hold thousands of acres claiming their personal cultivation either by illegally evicting the actual cultivators or by tampering the record of rights. The Jagirdari system is not strictly comparable with the estates prevalent in Andhra area. There was no permanent settlement as such with the State between the Jagirdar and the State. The Jagirdari rights were not heritable unless a re-grant was made. The Jagirdar was not the owner of the land. The "Jagir" was a free grant of one or more villages from the ruler of the State to the grantee as a reward for some conspicuous service either military or otherwise. The grantee, called Jagirdar, had right to collect land revenue and generally retained the whole of it without passing it to the state.¹ They were like a State within the State as they enjoyed a limited sovereign powers including the right to have their own administrative and military establishments. There is no uniformity with regard to the status, powers and rights among the Jagirdars. The Jagirdars had power to make revenue grants or land grants or both and these grants were valid. There was no law which regulated these powers and rights etc. of the Jagirdars except the limitations that might have been imposed in the muntha-kab itself. The land holder or Zamindar in Andhra area had no such wide powers. The power enjoyed by the Jagirdars continued to create confusion even after their abolition and the attempts that were made by the State after their abolition to confer ryotwari pattas on the actual tillers met with a very limited success. Even in case of Diwani lands or Kalsa lands (Ryotwari lands), though the survey and settlement was made in 1875, the settlement was not properly implemented. Therefore, thousands of acres were held by individuals on paper though in fact they were cultivated by the tenants. Even in respect of the personal estate of the Nizam, lot of disputes arose on account of the grants allegedly made by the erstwhile Nizam. The abolition of surfekhas villages and merger of the same with the revenue administration was not properly done and several disputes remained unresolved till date.

1. Economic & Social Effects Jagirdari Abolition and Land Reforms in Hyderabad by Dr. A.M. Khousoo, at Page 1.2.

12. CEILING LAWS :

The confusion arising out of the implementation of the Tenancy Laws is compounded by the implementation of the ceiling laws.¹ The land holders and tenants started making parallel and even self-contradictory claims for different purposes and in different contexts to suit their convenience. The implementation of section 38-E conferring ownership rights of tenants in Telangana area was made simultaneously with the implementation of the Land Reforms Act, offsetting the confusion to some extent. But, there is no such co-ordination or integration with regard to the implementation of the other Tenancy Laws and the Ceiling Laws. Further, the implementation of the Urban Land Ceiling Act is noticed mostly in its violation and it only resulted in destruction of the town planning as agreed by the Government itself while issuing G.O.Ms. No. 733. The Parliament which enacted the Act has repealed it, leaving it to the option of the individual states to adopt the repealing statute or not. The Government in Andhra Pradesh saw a great opportunity for revenue in granting exemption from the Act and the exception has become the Rule. This resulted in a new litigation in land and competing claims for exemption and also revival of abandoned rights. It is a matter for debate whether, the exemption order can create a new source of title or would only remove the embargo or the cloud, to re-agitate the revival of the auxiliary claims for lands.

1. See also, Land Reforms in India Vol. 3, Edition 1996, by B.N. Yugandar.

A number of overlapping, contradictory, outdated laws are allowed to remain on the statute book leading to confusion and facilitating abuse. Though an attempt was made to partially remove this dead wood, by unanimously passing the A.P. Land Revenue Code as early as in 1999, it did not receive the Presidential assent and consequently it did not become law. Of course, there are several shortcomings in the said bill.

Hence, proposed new legislation must aim at repealing over-lapping and outdated laws and must lay a curtain in respect of all matters covered by Notes at Serial Nos. 9 to 11 above.

13. LAND USE REGULATIONS :

The land use restrictions are contained in various statutes and there is no attempt to codify the same. Permission of the Collector is required in Telangana area for conversion of agricultural lands into non-agricultural lands.

But, this is not required in the areas to which the Municipal Corporation of Hyderabad Act or in the Urban areas notified under the A.P. Urban Areas Development Act. The land use is regulated by the master plan and zoning regulations made under the Urban Areas Development Act, 1975 in respect of the "Urban Areas" constituted there under and the A.P. Town Planning Act in other

areas. There is no provision for transfer of the powers of the local bodies like Gram Panchayats, Municipalities etc., to the Town Planning Authority, unlike the Urban Development Authority. The town planning in “non-urban areas” is done by these local bodies with the approval of the Town Planning Department of the Government.

There is lot of confusion created on account of these land use laws in respect of title in urban and semi-urban areas. Though land use laws prohibit the use of land contrary to the land use regulations, the land use regulations became a farce. Though section 12 of the Urban Areas Development Act permits a limited modification of plans which do not affect important alterations in the character of the plan and which do not relate to the extent of land user or the standards of population density, change of land use has become a matter of course. Almost all agricultural lands earmarked for agriculture, bio-conservation, recreation etc., were converted into residential areas either legally or illegally. Here also the political compulsions and revenue justification has become a pretext. The illegal layouts and constructions were regularised as a matter of course and even where they were not so regularised, the infrastructural facilities like electricity, water, road etc., have been extended without any reservations. Likewise, exemption from urban land ceiling, the conversion from the land use is being justified on revenue grounds. The Government has become the biggest violator of law paving the way for small violators without any sense of impunity. The continuous grant of large extents of land by the Government to various industrial and software units and other realtors in the Bio-Conservation Zone and catchment areas of the major sources of drinking water like Hussain Sagar and Himayat Sagar in the teeth of the Supreme Court Judgments, G.O.Ms. No. 111 and other prohibitory laws is a glaring example.

Again the title is the major casualty of such violations. Though the land is illegally converted, (the illegal conversion of large agricultural lands and other green areas into plots without layout permission and change of land use) and documents are registered by the Registration Department and the illegal constructions are being allowed in such plots by the local bodies. The assessment and extension of civic amenities thereto, gives a shadow legitimacy. The duplicate or multiple sales of the same lands / plots has become easy. The ban on registration wherever implemented, resulted in unregistered documents and transactions. The purchasers’ possession became illegal and the vendors who sold started making illegal claims to title and possession on various grounds. They gave rise to title disputes. The illegal constructions without layout resulted in total destruction of survey marks and it has become easy for everybody to fish in troubled waters.

Even where the layout was sanctioned, the local bodies and even the Government permitted repeated revision of layouts under the guise of relaxation and a number of open areas including parks and roads were allowed to be illegally converted into plots and the constructions thereon were allowed. In several cases, the original layouts were tampered with and were illegally replaced leading to several disputes with regard to land. The plots were given a number of sub-numbers like 17A, B, C, D etc., and in many cases the house numbers were illegally obtained and they were transferred under the guise of bearing the house numbers

without reference to survey numbers. All these have resulted in disputes with regard to land. The proposed new legislation must have an adequate safeguards to prevent this kind of violations.

14. JURISDICTION OF COURTS :

The Constitutional Scheme of separation of powers resulted in judicial review vested with the High Court and Supreme Court under Articles 226 and 32 of the Constitution. Though, the separation of executive and judicial functions is only a directory principle, the judgments of the Supreme Court may not permit a purely administrative tribunal adjudicating the rights and liabilities of citizens without the association of the judicial officers and judges. At any rate, the Supreme Court and the High Courts with their power of judicial review will be the final arbitrators. This judicial review cannot be restricted even by an amendment to the Constitution.

Judicial review is not only an integral part of the Constitution but it also constitutes a basic structure of the Constitution which cannot be abolished or whittled down even by amendment of the Constitution.²

1. S.P. Sampath Kumar Vs. Union of India (1987) 1 SCC 124;

L. Chandra Kumar Vs. Union of India (1997) 3 SCC 261

2. *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 : AIR 1973 SC 1461.

However, the procedures to be followed by the courts are always subject to legislation by competent legislature. The principle of sub-judice, *lis pendens* etc., have to be taken into account in drafting any law on title registration. The courts unlike tribunals derive their authority from the sovereign power of the State. Therefore, a careful examination of these aspects is necessary, in such context.

15. THE OPTIONS OPEN :

1. The curtain and mirror method adopted by the Thailand model.
2. The registration of titles without forfeiture of existing rights adopted by England.

It is significant that in both the cases the registration of the title is on the basis of the existing rights to or in relation to land. Therefore the investigation into title, as it exists on the date of the commencement of any new law introducing title registration, is a must.

However, if the option is made to the first category, the possibility of the disputes and abuse of the system is more. Further, the fundamental rights guaranteed by the Constitution of India and also right to the property still protected under Articles 30(1A) and 31-A and Article 300-A of the Constitution have to be taken into consideration. The Union legislations may not come in the way, as the Presidential assent to any state legislation would protect such legislation from any repugnancy, provided the state legislation is otherwise competent and within the legislative power of the State. In our country, where the land is divided in infinite manner and the land holdings are too small and innumerable and the large number of landholders are illiterate and semi-literate, the introduction of curtain - mirror type of title registration leads to frauds, resort to extra legal remedies, social and political unrest etc. Therefore, the Author opines that introduction of title registration in the following manner is desirable :

16. SCHEME FOR IMPLEMENTATION OF INTEGRATED LAND INFORMATION AND TITLE REGISTRATION :

(1) THE MODEL BILL :

The model bill may provide for the following :—

- (i) Establishment of permanent independent machinery with sufficient powers and responsibilities, permanent source of funds, advanced and fool proof technical equipment and know-how, fresh recruitment of permanent staff with advanced qualifications and rigorous training with accountability.
- (ii) Transfer of all the functions relating to the preservation and maintenance of records from the various departments dealing with the land and other immovable properties, viz., Revenue, Survey, Registration, Town Planning/Urban Development Authorities, Ceiling, Municipal and local bodies dealing with building permissions and assessments and also records pertaining to the decrees and orders of various courts, tribunals and other quasi-judicial authorities etc., touching upon the land, to a single institution with a well defined, integrated, operational database and management system in relation to the land.
- (iii) Legal sanctity to the data prepared and maintained by them, by making it binding on all persons including Government and Courts, to recognise such data.

- (iv) Casting a duty or imposition of an obligation on all persons having any right, title and interest in land or possession thereof or entering into any deal in relation thereto to register their claims and entailing suitable penalties, disabilities etc., for default.
- (v) Constitution of a permanent Land Allotment Commission with transparent and strict legislative guidelines which, inter alia shall impose prohibition on the Government and all its Departments from issuing any proceedings whatsoever in relation to the land, with a built-in provision to render any such proceedings issued in violation thereof, as void.
- (vi) Identification of Government and Community lands and permanent foolproof safeguards for their protection.
- (vii) Technical and legal safeguards against any manipulations and tampering of records, and entries contrary to law and stringent penal provisions to have deterrent effect.
- (viii) Provision for continuous upgradation of title registration, stage by stage to achieve the ultimate object of conclusive title as on any date so that all the future titles in respect of any land or any rights in respect thereof, must necessarily be traced to such conclusive title crystallized under the Act. The certification of title must make the title card as conclusive.
- (ix) The provisions for foolproof authenticated easy dissemination of data with legal sanctity and access to database.
- (x) Provision for data bank for future flow of title, planning, statistical record for socio-economic studies and projects and also for the permanent title card which can also be used for identification, heir-ship etc., to avoid litigation with regard to not only land but also bank deposits and service benefits viz., pensions, provident funds etc.
- (xi) The Constitution of mechanism for disputes/claims resolution and for corrections like appeals, revisions, foreclosure of future claims, by giving finality to the title dispute.
- (xii) Lastly, repealing of all parallel and outdated laws to remove duplication, inconsistency and confusion.

(2) PREPARATORY MEASURES:

Since the drafting of the Bill and obtaining the necessary administrative approvals before introducing the same before the Legislature and obtaining the

Presidential assent required in this case would involve some time, the following preparatory measures are suggested :

(A) PHASE-I – CONSTITUTION OF LAND AGENCY :

An agency required to do speedy work at primary level, called, for brevity, Land Agency can be constituted by an executive order. The power of the executive government under Article 162 of the Constitution of India extends to all matters with respect to which the Legislature of the State has power to make laws. The only limitation is that such executive power cannot be exercised contrary to the provisions of the Constitution or any law relating to the matter. Such body can be given a statutory status by making suitable provision in the proposed legislation.

- (1) Issuing Government Order constituting Land Agency as a Government Department, alternatively registering it as a Government Society under Section 28 of the Andhra Pradesh Societies Registration Act, 1964, in which case, it becomes a legal entity.
- (2) Building up the organization by recruiting suitable personnel, required for the purpose.
- (3) Providing necessary funds to the Land Agency.
- (4) Entrusting the preparatory work to Land Agency which shall include the aerial digital survey, collection of information and records from various departments, comparative study of the information collected from various departments viz., Revenue, Survey, Local Bodies, Registration, etc., process of the information and computerizing the data.
- (5) The Government to direct all the departments concerned in the District to provide the information and records to Land Agency for preparatory work. For the better coordination and authority for compliance, it is advisable to have the Heads of the Departments and also the District Collector concerned as members of the Governing Body of the Land Agency.

(B) PHASE-II – LEGISLATIVE MEASURES :

- (1) Preparation of draft bill.
- (2) Circulation of draft bill to various authorities and agencies both for the purpose of administrative approvals as well as generating the public interest by enlisting public interest in the entire project.

- (3) Introduction of the Bill.
- (4) Passing of the bill.
- (5) Obtaining Presidential assent.
- (6) Liaisoning with Union Government for expediting Presidential assent.

(C) PHASE-III – IMPLEMENTATION OF THE ACT :

- (1) Bringing the Act into force by appropriate notification in select District.
- (2) Framing the Rules under the Act.
- (3) Reorganization of Land Agency if necessary in terms of the Act and Rules framed thereunder.
- (4) Publicity and public contact management to ensure people participation.
- (5) Monitoring Committee under the Chairmanship of the District Collector to review the implementation of the Act every fortnight and to issue necessary instructions to the Departments concerned in the day to day implementation of the Act and to submit Action Taken Reports to the Government every fortnight projecting the problems required to be tackled at the Government level.
- (6) High Power Committee at the State level to guide the District Administration and the Land Agency and to sort out the teething problems in the implementation by way of necessary administrative measures, with an open mind with regard to the legislative measures.
- (7) After the completion of compilation of database, the objections would be invited from the public by appropriate notifications and the final registration would be published in terms of the Act and the Rules. The Act and the Rules shall make it mandatory to all the claimants to file their claim statement with all the supporting evidence to enable Land Agency to make suitable reference in case of dispute. Where there is no dispute, the title registration becomes final. Where there is a dispute undermentioned machinery will resolve it in the manner prescribed therein.
- (8) A Tribunal shall be constituted under the Chairmanship of Grade I District Judge with a revenue member of the rank of Joint Collector to try and dispose of all the disputed claims in a time bound manner preferably within six months. To avoid frustrating delays in service of notices, etc.,

suitable provision would be made to identify all the claimants by the Land Agency itself and the proceedings before the tribunal would be only referential. Land Agency shall have a presenting officer and it shall be his duty and responsibility to provide all the information and records to the tribunal for quick disposal of such reference. Thus, the reference will be comprehensive with regard to claims and documentary evidence. The tribunal will have its own rules of evidence and procedure to the exclusion of the adversarial system and the Civil Procedure Code and the Evidence Act which will not have any application. Even the scope of oral evidence can be limited if Land Agency data base includes the genealogy and relationship of parties and other information relating to joint family, partnership, co-owners, etc. This will minimize and eliminate all kinds of delays which usually occur in adjudication of title disputes. If the claims are more, there can be more benches with additional judicial and revenue members of the same rank. It shall be ensured that such members have got sufficient experience in adjudication of land disputes by making appropriate provision in the Act. The tribunal shall not have any power to pass interlocutory orders in the nature of injunction, appointment of receiver, etc., to avoid wastage of time on such matters and no appeal shall lie against any interlocutory orders by providing that all such interlocutory orders shall be reviewed only in the Appeal against the final order. By this method there will not be much scope for invoking Article 226 of the Constitution of India by filing writ petition. All appeals shall be only to the High Court within a period of one month to be heard by a Special Bench.

- (9) After successful completion of the project in District, the Government may extend the Act to other Districts in a phased manner.

(3) EXCLUSION OF PUBLIC LANDS FROM TITLE REGISTRATION :

All the public lands shall be excluded from title registration. These lands would be identified by the Land Agency after suitable enquiry and they would be registered as public lands. No private claim will be allowed in respect of those public lands at all and they vest in the State free of all encumbrances. Any pre-existing right, title or interest in such lands shall be deemed to have been acquired by the State for public purpose and any such persons having such pre-existing right, title or interest shall be entitled only to the compensation in accordance with the provisions of the Act. Such claims also must be registered with the Land Agency with supporting material and the matter would be referred to the Tribunal on such terms and conditions as may be prescribed by the Act. Unlike other referral matters, the burden of proving such pre-existing right would be entirely on the claimants. The public lands shall include all roads, canals, rivers, public water bodies, forests, parks, and other community lands and properties which cannot be alienated even by

the State and which are held by the State under the *doctrine of public trust* for the benefit of the entire community¹.

1.M.C. Mehta vs Kamalnath (1997) 1 SCC 388 , M.I.Builders vs radhesyam AIR 1999 SC 2468

(4) IDENTIFICATION OF THE GOVERNMENT LANDS :

Unlike public lands which are unalienable even by the Govern-ment, the other lands and properties held by the Government as owner of such lands which it can transfer like any other private owner shall be categorised separately. The disputes with regard to such lands will be referred to the tribunal like any other land dispute. However, the lands which are held, administered or regulated by the Government as custodian or as regulatory authority like evacuee property, assigned lands, etc. will not be included in the category of the Government lands. However, the claims and disputes with regard to such lands will also be referable to the tribunal. The Government lands can be broadly categorised as follows : –

- (1) Central Government lands including railway properties, cantonments, etc.
- (2) State Government properties including the lands situated in cantonments and the lands belonging to various Govern-ment departments, institutions, agencies, etc., including local bodies.
- (3) Wakf and Endowment lands.
- (4) Government controlled lands like evacuee assigned lands etc.
- (5) Private properties, properties under the lease to the Government and Government bodies, the Government lands under lease to the private persons.

(6) STEPS SUGGESTED FOR EXPEDITIOUS IMPLEMENTATION:

The following procedure is suggested for the expeditious implementation of the scheme by the Land Agency: —

- (1) Conducting of aerial digital survey of all lands and proper-ties on the surface of earth.
- (2) Comparison of the survey with the existing revenue, survey, municipal and registration records.
- (3) Identification of the public lands and registration of the same as such excluding them from title registration.
- (4) Identification of Government lands.
- (5) Identification of patta lands.
- (6) Identification of Wakf and endowments lands.
- (7) Identification of semi-government lands.