

NEW TITLE REGIME

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- **Rahul Kothari**
Editor

By The Way

Lawyer: "Now that you have been acquitted, will you tell me truly? Did you steal the car?"

Client: "After hearing your amazing argument in court this morning, I'm beginning to think I didn't."

INTRODUCTION OF A NEW TITLE REGIME

In India, Property and Real estate market is considered to be one of the best avenues for investment as the risk involved is much less and the returns are much higher than the actual investments as compared to the investment in stock market, mutual funds, debentures/bonds etc.

While the underlying legal system in India is based on English Common Law, the property title system and market practices followed in India present considerable difficulties in establishing clean title to property inasmuch as there has been limited modernization of real estate statutes since independence in 1947.

The basic drawback in the present system of recording rights is that the same is only presumptive and not conclusive, which means that if a person recorded in the government records as paying property or revenue tax on a property can only be presumed to be its owner. In the event there is any dispute as to the ownership, the proof of ownership has to be established in the court of law through usually drawn-out litigations. It is estimated that six out of 10 court cases filed or waiting to be resolved in India, relate to property.[1]

The administration of revenue records maintained in the country being almost entirely manual it leads to delays, inaccuracies and manipulations. As the traditional process of updating the revenue records is cumbersome and time-consuming, there exists a huge yawning gap and inordinate inconsistencies in the records maintained by the various authorities and the actual status of the rights of the property. The delay in disposal of disputes before revenue authorities and the difficulty of getting easy access to property records further add to the misery of investors in the property market.

The aforesaid reasons expose the interested parties to a wide range of risks / losses while dealing in property and real estate market.

For those who have suffered due to the aforesaid reasons and those who dread

such suffering, the initiative of the urban development ministry towards providing a guaranteed and conclusive title system will come as a much needed relief.

The proposed plan of action of the government will involve establishing a public record system that will truly and clearly describe the details of the property, its title, dispute, litigations, charges, etc. These specifications will be classified into three sets of registers viz. Register of Titles, Register for Disputes and Register for Charges and Covenants. There will also be a provision to record and reflect a transaction in respect of a property simultaneously when it is entered into. The urban development ministry intends to depute Title Registration Officers and further to constitute Land Titling Tribunals and Land Titling Appellate Tribunals to accelerate the process of ensuring conclusive title to properties.

States like Andhra Pradesh and Rajasthan have already undertaken schemes to guarantee title to properties and have commenced the humungous task of computerization of revenue records so as to enable the users to access and verify them conveniently.

Accurate and well-defined property title is one of the best supplements a growing economy can get. The move to give conclusive title to properties will bring about a radical change in the real estate market in this country. Dedicated tribunals specially constituted for resolving property disputes will curtail the instances of protracted litigations and thereby considerably reduce the burden on the judiciary.

The use of new and better technology will be of immense help in overcoming the lacunae of the conventional methods of maintaining revenue records. The inconsistencies in the records maintained by different authorities, which is one of the biggest barriers in guaranteeing conclusive title, can be done away with by establishing designated authorities who will be in charge of collating, verifying and certifying data maintained by such various authorities.

Such a radical change in the title certification system can revolutionize the land market and can also have major implication on the India's economy. Properties having guaranteed title can be easily leveraged as collateral to raise finance. Conversely, where the title of properties is insecure or disputable, it is less likely to be accepted as good collateral as there is the risk of such property turning into dead capital.

The availability of clear, substantiated and well-defined data will further assist in better planning and decision-making for a sustained development of properties. Guaranteed title to properties will result in greater transparency in property transactions, which would make it easier for both Indian and foreign real estate funds to invest in properties here. The country will thus see healthy and better competition in the property and real estate market.

It is estimated that guaranteeing private ownership will improve valuation of properties and could increase the country's national income by as much as

1.3%.^[2] Further, the country would see more insurance companies offering Title Insurances thereby making development projects more bankable and saleable to the end customers.

The implementation of such a plan by the government will also mean a substantial shift in the role of Advocates in the real estate market. Verification of title with due diligence constitutes a major portion of the field of conveyancing. With the government guaranteeing title to the properties, the need for conducting title due diligence may diminish substantially.

All in all, whereas on the one hand, the new plan of action chalked out by the government looks good to open new avenues towards achieving a well-organized property market in this country; on the other hand, it will involve a major shift in the roles played by Advocates, brokers, aggregators and facilitators in this market.

- Ketan Khare, Associate
Heena Chheda, Partner

[1] <http://www.indianrealtynews.com/real-estate-india/insurance-cover-for-real-estate-deals-to-become-a-reality-soon.html>

[2] <http://www.livemint.com/2007/11/12235529/Land-title-rollout-to-begin-i.html>

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