

Real Estate Update

June 11, 2010

LAND TITLING BILL, 2010: NEW "CONCLUSIVE" PROPERTY TITLE REGIME PROPOSED

The Department of Land Resources ("DoLR"), Ministry of Rural Development, of the Government of India has introduced for public discussion, a draft of the proposed Land Titling Bill, 2010, (the "Bill")¹ seeking to change the very nature of land titles in India from being "presumptive" to being "conclusive". This hotline seeks to highlight some of the prominent features of the proposed bill and analyze its impact.

INTRODUCTION:

Due to historical and colonial reasons land regimes² have differed across India. Regardless of the regime there is another problem and this concerns titling. In any common law system, establishing titling is a horrendous affair, since title has to be traced back to its original roots and even title searches (with costs an additional issue) are no guarantee of ownership. Contrary to common belief, registration of sale deeds only registers the instrument and does not register titles. Thus under existing laws pertaining to land titles, in India are at best "presumptive" and not "conclusive", leading to heavy and increasing litigation and much strife.

Land is both a crucial yet complex resource required for development activities – crucial because no development is possible without land and complex because land is associated with several opportunities to use, invest and secure³. Thus it becomes crucial to ensure that land titling is conclusive in nature to promote development and the proposed legislation seeks to achieve exactly that.

EXISTING LEGAL FRAMEWORK:

The existing legal framework relating to land titles mainly comprises of Transfer of Property Act, 1882, the Registration Act, 1908, the Land Acquisition Act, 1894, and the Indian Stamp Act, 1899. All the above laws were introduced in colonial times and were in severe need of a re-look which would lead to conclusive titling of immovable properties and the proposed Bill does exactly that. While this legislation would not lead to the repeal of the existing laws it would over-ride the provisions of those laws.

PROPOSED PROVISIONS:

The Bill proposes to provide for a regime for establishment, administration and management of a system of "conclusive" property titles. Once property holders follow the due processes as laid out under the new law are completed, the title entered in the Register of Titles is to be considered as "indefeasible" which means title cannot be altered or voided and this title shall stand against the right of anyone else to claim that property. For the delivery of "indefeasible" and "conclusive" titles, the new legislation proposes the constitution of a Land Titling Authority ("Authority"). The authority shall prepare, maintain and update the Register of Titles, Register of Disputes, Register of Charges and Covenants and the Index of Maps for which it will operate through the setting up of four divisions namely Title Registry, Survey Settlement and Land Information System, Property Valuation, and Legal Services and Title Guarantee. The authority shall exercise powers as are vested in a civil court as also the Chief Controlling Revenue Authority and the Inspector General under the Registration Act.

Upon registration of a property with the Authority under the proposed Act, the Authority shall provide a unique property identification number. Also the Authority shall extend Title guarantee and indemnification against losses due to inaccuracies in property titles. The Authority will do all this through customer facilitation centers where citizens will have to report ownership or transfer of immovable property to register their titles. Once this law is promulgated, citizens will have a period of 5 years to get their titles registered for the first time and thereafter with every transfer. Non – registration of immovable property shall render the creation of right in such property and transfer thereof void *ab-initio* and any transaction thereof shall not be received as evidence as to transfer. Being a forward looking legislation it provides for digitization of documents and use of bio-metric authentication as well.

Appeals against orders passed by the Authority would lie before a Tribunal. Thereafter in turn one can appeal to the High Court and finally the Supreme Court (*see the diagram above*)

CONCLUSION:

The success of this proposed law will lie in its effective implementation. When this Bill becomes law it will have a positive impact on Infrastructure projects and Industry. The introduction of pioneering principles like *strata-titles* – a form of ownership of immovable property devised for multi-level apartment blocks and horizontal sub-divisions with shared areas will impact housing which will become easier to promote and maybe even cheaper as clearer titles will lower speculative transactions. Even Agriculture too will benefit as land will become easily available. Transacting in real estate including mortgages and funding would be facilitated as the Bill introduces reporting mechanism both by government and private entities/ persons. With increased transparency, frauds would decline and so will long-drawn property relate litigation.

However, on the other hand land administration is a State subject in India i.e. it is not within the purview of the Federal Government. Therefore, as of now it is proposed to be introduced for those Union Territories which do not

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have their own legislature and will be a suggested legislation for other states to follow. But already Delhi is adapting provisions from the Bill in its own similar proposed legislation. The key question then will be how many states will follow suit and draw from this proposed Bill and facilitate transparency and conclusiveness in land titling?

Watch this space for further updates.

- **Debargha Basu** [nishith\(at\)nishithdesai.com](mailto:nishith(at)nishithdesai.com) & **Chittaranjan Datar**

1 www.dolr.nic.in/landtitlingbill_notice.htm

2 Article : *Why giving land titles is hard?* : Bibek Debroy, *The Financial Express*

3 India Infrastructure Report , 2009, Land – related rights, Land Markets and Institutional Framework : Dr Piyush Tiwari

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